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## SCHEDULES

### [F1]SCHEDULE 1ZA

Section 1A

#### THE FINANCIAL CONDUCT AUTHORITY

##### Textual Amendments

- F1** Schs. 1ZA, 1ZB substituted for Sch. 1 (24.1.2013 for specified purposes, 19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 3](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)\(c\)\(2\), Sch. Pts. 2, 3, 4](#); [S.I. 2013/423, art. 3, Sch.](#)

### PART 1

#### GENERAL

##### *Interpretation*

- 1 In this Schedule—
- “the Bank” means the Bank of England;
  - “functions”, in relation to the FCA, means functions conferred on the FCA by or under any provision of this Act (see section 1A(6) which affects the meaning of references to such functions).

##### *Constitution*

- 2 (1) The constitution of the FCA must provide for the FCA to have a governing body.
- (2) The governing body must consist of—
- (a) a chair appointed by the Treasury,
  - (b) a chief executive appointed by the Treasury,
  - (c) the Bank's Deputy Governor for prudential regulation,
  - (d) 2 members appointed jointly by the Secretary of State and the Treasury, and
  - (e) at least one other member appointed by the Treasury.
- (3) The members referred to in sub-paragraph (2)(a), (c) and (d) are to be non-executive members.
- (4) In exercising its powers under sub-paragraph (2)(e) to appoint executive or non-executive members, the Treasury must secure that the majority of members of the governing body are non-executive members.
- (5) An employee of the FCA may not be appointed as a non-executive member.
- (6) In the following provisions of this Schedule an “appointed member” means a member of the governing body appointed under sub-paragraph (2)(a), (b), (d) or (e).

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- 3
- (1) The terms of service of the appointed members are to be determined by the Treasury.
  - (2) In the case of a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State about the terms of service.
  - (3) Before appointing a person as an appointed member, the Treasury (or as the case requires the Treasury and the Secretary of State) must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.
  - (4) The terms of service of an appointed member (“M”) must be such as—
    - (a) to secure that M is not subject to direction by the Treasury or the Secretary of State,
    - (b) to require M not to act in accordance with the directions of any other person, and
    - (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.
  - (5) If an appointed member is an employee of the FCA, the member's interest as employee is to be disregarded for the purposes of sub-paragraphs (3) and (4)(c) and paragraph 4(1)(b).
  - (6) A person who is an employee of the PRA is disqualified for appointment as an appointed member.
  - (7) The FCA may pay expenses to the Bank's Deputy Governor for prudential regulation in respect of that person's service as a member.
- 4
- (1) The Treasury may remove an appointed member from office—
    - (a) on the grounds of incapacity or serious misconduct, or
    - (b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.
  - (2) Before removing from office a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State.
- 5
- The validity of any act of the FCA is not affected—
- (a) by any vacancy in any of the offices mentioned in paragraph 2(2)(a), (b) or (c), or
  - (b) by a defect in the appointment of a person—
    - (i) to any of those offices, or
    - (ii) as an appointed member.
- 6
- The Bank's Deputy Governor for prudential regulation must not take part in any discussion by or decision of the FCA which relates to—
- (a) the exercise of the FCA's functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

#### *Remuneration*

- 7
- The FCA must pay to the appointed members such remuneration as may be determined—
- (a) in the case of the non-executive members, by the Treasury;

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- (b) in the case of the executive members, by the FCA.

*Arrangements for discharging functions*

- 8 (1) The FCA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the FCA, but subject to the following provisions.
- (2) In exercising its legislative functions, the FCA must act through its governing body.
- (3) For that purpose, the following are the FCA's legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64 or 119;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 or 312J,
    - (ii) section 345D (whether as a result of section 345(2) or section 249(1)), or
    - (iii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316, 318 or 328.
- (4) The function of issuing general guidance (as defined in section 139B(5)) may not be discharged by an officer or member of staff of the FCA.

**Modifications etc. (not altering text)**

- C1** Sch. 1ZA para. 8(2) modified (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **3(8)(a)(9)**

*Records*

- 9 The FCA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

*Publication of record of meetings of governing body*

- 10 (1) The FCA must publish a record of each meeting of its governing body—
- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or
  - (b) if no meeting of the governing body is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.
- (2) The record must specify any decision taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the deliberations of the governing body.
- (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the governing body be against the public interest.

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(4) Publication under this section is to be in such manner as the FCA thinks fit.

**Modifications etc. (not altering text)**

**C2** Sch. 1ZA para. 10 applied (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **7(3)(a)**

*Annual report*

- 11 (1) At least once a year the FCA must make a report to the Treasury on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its operational objectives have been advanced,
  - (c) the extent to which, in its opinion, it has acted compatibly with its strategic objective,
  - (d) how, in its opinion, it has complied with the duty in section 1B(4),
  - (e) its consideration of the matter mentioned in section 1B(5)(b),
  - (f) its consideration of the principles in section 3B,
  - (g) how it has complied with section 3D,
  - (h) any direction received under section 3I or 3J during the period to which the report relates,
  - (i) how it has complied with section 354A(1) so far as relating to co-operation with persons outside the United Kingdom, and
  - (j) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the FCA be against the public interest.
- (3) The report must be accompanied by—
- (a) a statement of the remuneration of the appointed members of the governing body of the FCA during the period to which the report relates, and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

*Annual public meeting*

- 12 (1) Not later than 3 months after making a report under paragraph 11, the FCA must hold a public meeting (“the annual meeting”) for the purposes of enabling that report to be considered.
- (2) The FCA must organise the annual meeting so as to allow—
- (a) a general discussion of the contents of the report which is being considered, and
  - (b) a reasonable opportunity for those attending the meeting to put questions to the FCA about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.

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- (3) But otherwise the annual meeting is to be organised and conducted in such a way as the FCA considers appropriate.
- (4) The FCA must give reasonable notice of its annual meeting.
- (5) That notice must—
  - (a) give details of the time and place at which the meeting is to be held,
  - (b) set out the proposed agenda for the meeting,
  - (c) indicate the proposed duration of the meeting,
  - (d) give details of the FCA's arrangements for enabling persons to attend, and
  - (e) be published by the FCA in the way appearing to it to be best calculated to bring the notice to the attention of the public.
- (6) If the FCA proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5), it must—
  - (a) give reasonable notice of the alteration, and
  - (b) publish that notice in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

#### *Report of annual meeting*

- 13 Not later than one month after its annual meeting, the FCA must publish a report of the proceedings of the meeting.

#### *Accounts and audit*

- 14 (1) The Treasury may—
  - (a) require the FCA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any provision of that Act about accounts and their audit is to apply to the FCA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the FCA.
- (2) Compliance with any requirement under sub-paragraph (1)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.
- 15 (1) The FCA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
  - (a) examine, certify and report on accounts received under this paragraph, and
  - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) Except as provided by paragraph 14(1), the FCA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.

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- (5) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

## PART 2

### STATUS

#### *Status*

- 16 In relation to any of its functions—
- (a) the FCA is not to be regarded as acting on behalf of the Crown, and
  - (b) its members, officers and staff are not to be regarded as Crown servants.

#### **Modifications etc. (not altering text)**

- C3** Sch. 1ZA para. 16 applied (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **7(3)(b)**

#### *Exemption from requirement for use of “limited” in name of FCA*

- 17 The FCA is to continue to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 18 If the Secretary of State is satisfied that any action taken by the FCA makes it inappropriate for the exemption given by paragraph 17 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

## PART 3

### PENALTIES AND FEES

#### *Penalties*

- 19 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the FCA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 20 (1) The FCA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FCA's “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
- (3) The FCA's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under this Act.
- (4) For this purpose the FCA's enforcement powers are—

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- (a) its powers under any of the provisions mentioned in section 133(7A),
  - (b) its powers under section 56 (prohibition orders),
  - (c) its powers under Part 25 of this Act (injunctions and restitution),
  - (d) its powers under any other enactment specified by the Treasury by order,
  - (e) its powers in relation to the investigation of relevant offences, and
  - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) “Relevant offences” are—
  - (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act,
  - (d) offences under Part 7 of the Financial Services Act 2012, and
  - (e) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
  - (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FCA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the FCA to provide the Treasury at specified times with specified information relating to—
  - (a) penalties that the FCA has imposed under this Act, or
  - (b) the FCA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 21 (1) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 20(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.
- (2) “Regulated persons” means—
  - (a) authorised persons,
  - (b) recognised investment exchanges,
  - (c) issuers of securities admitted to the official list, and
  - (d) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of regulated person.
- (4) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.

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- (5) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 22 (1) The scheme details must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the FCA within a specified time.
- (4) Before making the scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the FCA makes the proposed scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (3), and
  - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The FCA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The FCA may charge a reasonable fee for providing a person with a copy of—
- (a) a draft published under sub-paragraph (2);
  - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

#### *Fees*

- 23 (1) The FCA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
  - (c) to maintain adequate reserves.
- (2) The “qualifying functions” of the FCA are—
- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 1A(6), and
  - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.



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- (3) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the FCA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the FCA—
- (a) in preparation for the exercise of functions by the FCA under this Act, or
- (b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.
- (4) Neither section 1A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if any of those things were done at a time when the FCA was known as the Financial Services Authority).
- (6) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—
- (a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,
- (b) access to any list or register within paragraph (a), and
- (c) the continued admission of financial instruments to trading on a regulated market.
- (7) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (8) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

*Services for which fees may not be charged*

- 24 The power conferred by paragraph 23 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the FCA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
- (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

**PART 4**

MISCELLANEOUS

*Exemption from liability in damages*

- 25 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA's functions—
- (a) the FCA;

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- (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the FCA;
  - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 166 to 169 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the FCA's functions.
- (3) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

**Modifications etc. (not altering text)**

- C4** Sch. 1ZA para. 25 applied (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **7(3)(c)**

*Accredited financial investigators*

- 26 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who—
- (a) is, or is acting as, an officer of, or member of the staff of, the FCA, or
  - (b) is appointed by the FCA under section 97, 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the FCA.

*Amounts required by rules to be paid to the FCA*

- 27 Any amount (other than a fee) which is required by rules to be paid to the FCA may be recovered as a debt due to the FCA.]

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