



Financial Services Act 2012

2012 CHAPTER 21

PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Recognised investment exchanges and clearing houses

33 Power to take disciplinary measures against recognised bodies

After section 312D of FSMA 2000 insert—

“CHAPTER 3B

DISCIPLINARY MEASURES

312E Public censure

- (1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.
- (2) Where the FCA is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—
 - (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange,
 - (b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange,
 - (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or

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- (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).
- (3) Where the Bank of England is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—
- (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house,
 - (b) a requirement that is imposed under any other provision of this Act by the Bank,
 - (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
 - (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).

312F Financial penalties

If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may impose on the body a penalty, in respect of the contravention, of such amount as it considers appropriate.

312G Proposal to take disciplinary measures

- (1) If the appropriate regulator proposes—
 - (a) to publish a statement in respect of a recognised body under section 312E, or
 - (b) to impose a penalty on a recognised body under section 312F,
 it must give the body a warning notice.
- (2) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

312H Decision notice

- (1) If the appropriate regulator decides—
 - (a) to publish a statement in respect of a recognised body under section 312E (whether or not in the terms proposed), or
 - (b) to impose a penalty on a recognised body under section 312F (whether or not of the amount proposed),
 it must give the body a decision notice.
- (2) In the case of a statement, the decision notice must set out the terms of the statement.
- (3) In the case of a penalty, the decision notice must state the amount of the penalty.
- (4) If the appropriate regulator decides—

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- (a) to publish a statement in respect of a recognised body under section 312E, or
 - (b) to impose a penalty on a recognised body under section 312F,
- the body may refer the matter to the Tribunal.

312I Publication

After an appropriate regulator publishes a statement under section 312E, it must send a copy of the statement to—

- (a) the recognised body concerned, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

312J Statement of policy

- (1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 312F, and
 - (b) the amount of penalties under that section.
- (2) An appropriate regulator's policy in determining what the amount of a penalty should be must include having regard to—
 - (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned, and
 - (b) the extent to which that contravention was deliberate or reckless.
- (3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.
- (4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 312F in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

312K Statement of policy: procedure

- (1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

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- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.
- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2), and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”

Commencement Information

- I1** S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
- I2** S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
- I3** S. 33 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)