
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Over the Counter Derivatives, Central Counterparties
and Trade Repositories (Amendment, etc., and
Transitional Provision) (EU Exit) Regulations 2018

PART 4

SPECIFIC PROVISION FOR TRADE REPOSITORIES

CHAPTER 2

ENFORCEMENT PROVISIONS RELATING TO TRADE REPOSITORIES

Warning notice

65.—(1) If the FCA proposes to—

- (a) publish a statement in respect of a trade repository under regulation 67; or
- (b) impose a penalty on a trade repository under regulation 68,

it must give the trade repository 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.

Decision notice

66.—(1) If, having considered any representations made in response to the warning notice, the FCA decides to—

- (a) publish a statement under regulation 67 (whether or not in the terms proposed); or
- (b) impose a penalty under regulation 68 (whether or not of the amount proposed);

it must without delay give the trade repository concerned a decision notice.

(2) In 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 FCA decides to —

- (a) publish a statement in respect of a trade repository under regulation 67; or
- (b) impose a penalty on a trade repository under regulation 68;

the trade repository may refer the matter to the Tribunal.

(5) After a statement under regulation 67 is published, the FCA must send a copy of it to the trade repository concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the FSMA (third party rights) (as applied by regulation 76).

Public censure

67. If the FCA considers that a trade repository has contravened a requirement imposed by or under this Part, the EMIR regulation or the TRATP Regulations, the FCA may publish a statement to that effect.

Financial penalties

68.—(1) If the FCA considers that a trade repository has contravened a requirement imposed by or under this Part, the EMIR regulation or the TRATP Regulations, it may impose a penalty of such amount as it considers appropriate on the trade repository.

(2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

Statement of policy

69.—(1) The FCA must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under regulation 68; and
- (b) the amount of penalties under that regulation.

(2) The FCA'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 contravened; and
- (b) the extent to which that contravention was deliberate or reckless.

(3) The FCA may at any time alter or replace a statement issued by it under this regulation.

(4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under regulation 68 in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

Statement of policy: procedure

70.—(1) Before the FCA issues a statement under regulation 69, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that representations about the proposed statement may be made to the FCA within a specified time.

(3) Before issuing the proposed statement the FCA must have regard to any representations made to it in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (2); and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

(7) This regulation also applies to a proposal to alter or replace a statement.

Powers to issue guidance

71.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate in respect of—

- (a) the operation of this Part, Titles 6 and 7 of the EMIR regulation or the TRATP Regulations;
 - (b) any matters relating to the functions of the FCA under this Part, Titles 6 and 7 of the EMIR regulation or the TRATP Regulations;
 - (c) any other matters about which it appears to the FCA to be desirable to give information or advice about this Part, Titles 6 and 7 of the EMIR regulation or the TRATP Regulations.
- (2) The FCA may—
- (a) publish its guidance;
 - (b) offer copies of its published guidance for sale at a reasonable price;
 - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Injunctions

72.—(1) If, on the application of the FCA, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under this Part or by or under Title 6 or 7 of the EMIR regulation; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the FCA, the court is satisfied—

- (a) that any person has contravened a requirement imposed by or under this Part or by or under Title 6 or 7 of the EMIR regulation; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the FCA, the court is satisfied that any person may have—

- (a) contravened a requirement imposed by or under this Part or by or under Title 6 or 7 of the EMIR regulation; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.