
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Public Offers and Admissions to Trading Regulations 2023

PART 3

Regulation of public offers and admissions to trading

Further powers of FCA

Withdrawal rights

32.—(1) A person who has agreed to buy or subscribe for relevant securities offered to the public may withdraw the acceptance in such circumstances and in such manner as may be specified in the appropriate rules.

(2) Regulated market admission rules or rules made by virtue of regulation 17 may include provision requiring the offeror, or an intermediary through whom the relevant securities are bought or subscribed for, to take such steps as may be specified in the rules in question to inform any person entitled to withdraw an acceptance of any right conferred by virtue of paragraph (1).

(3) Rules made by virtue of regulation 15 may require the operator of a primary MTF to include in its rules provision requiring the offeror, or an intermediary through whom the relevant securities are bought or subscribed for, to take such steps as may be specified in the rules to inform any person entitled to withdraw an acceptance of any right conferred by virtue of paragraph (1).

(4) The appropriate rules may provide that, in the event of a failure by the offeror or an intermediary to comply with any duty imposed under paragraph (2) or by virtue of paragraph (3), any transaction resulting from the person's acceptance of the offer is to be void or unenforceable.

(5) In paragraphs (1) and (4) “the appropriate rules” means—

- (a) in the case of an offer made in connection with an admission, or proposed admission, to trading on a regulated market, regulated market admission rules,
- (b) in the case of an offer made in connection with an admission, or proposed admission, to trading on a primary MTF, rules made by virtue of regulation 15,
- (c) in any other case, rules made by virtue of regulation 17.

(6) This regulation does not limit any rights that a person falling within paragraph (1) may have apart from this regulation.

FCA's power to require information

33.—(1) The FCA may, by notice in writing given to a person, require the person—

- (a) to provide specified information or information of a specified description, or
- (b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified, and

(b) at such place as may be specified.

(3) An officer who has written authorisation from the FCA to do so may require a person without delay—

(a) to provide the officer with specified information or information of a specified description,
or

(b) to produce to the officer specified documents or documents of a specified description.

(4) “Officer” means an officer of the FCA and includes a member of the FCA’s staff or an agent of the FCA,

(5) This regulation applies only to information and documents reasonably required by the FCA in connection with the exercise by the FCA of its functions under or by virtue of these Regulations.

(6) The FCA may require any information provided under this regulation to be provided in such form as it may reasonably require.

(7) The FCA may require—

(a) any information provided, whether in a document or otherwise, to be verified, or

(b) any document produced to be authenticated,

in such manner as it may reasonably require.

(8) “Specified” means—

(a) in paragraphs (1) and (2), specified in the notice, and

(b) in paragraph (3), specified in the authorisation.

Powers exercisable to protect investors or advance FCA’s operational objectives

34.—(1) The FCA may give directions under section 71O of FSMA 2000 (designated activities: directions)⁽¹⁾ to a person imposing on the person such requirements as the FCA considers appropriate in relation to the carrying on of an activity that is a designated activity by virtue of regulation 9, 10 or 11.

(2) The FCA may exercise the power conferred by virtue of paragraph (1) only if the FCA considers it desirable to do so for either or both of the following purposes—

(a) protecting the interests of investors;

(b) advancing any of its operational objectives.

(3) The power to impose requirements under section 71O of FSMA 2000 by virtue of paragraph (1) includes (among other things) power—

(a) to require a person to suspend an offer of relevant securities to the public for a period specified in the direction;

(b) to prohibit the offering of relevant securities to the public in circumstances specified in the direction;

(c) to require a person not to advertise the offer, or to take such steps as the FCA may specify in the direction to suspend any existing advertisement for a period specified in the direction;

(d) to require a person to withdraw an offer or an advertisement.

Power to suspend, restrict or prohibit offer to the public

35.—(1) This regulation applies where a person has made an offer of relevant securities to the public (“the offer”).

(1) Section 71O is inserted by section 8(2) of the Financial Services and Markets Act 2023.

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been contravened, it may—

- (a) require the offeror to suspend the offer for a period not exceeding 10 working days;
- (b) require a person not to advertise the offer, or to take such steps as the FCA may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that it is likely that an applicable provision will be contravened, it may require the offeror to withdraw the offer.

(4) If the FCA finds that an applicable provision has been contravened, it may require the offeror to withdraw the offer.

(5) “An applicable provision” means—

- (a) a provision of Part 6 of FSMA 2000;
- (b) a provision of these Regulations;
- (c) a provision of—
 - (i) regulated market admission rules, or
 - (ii) designated activity rules made by virtue of regulation 15 or 17.

(6) The FCA may require the offeror to suspend or restrict the offer on the ground that—

- (a) before the offer was made, the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the offeror,
- (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the relevant securities to which the offer relates or any financial activity or practice of the offeror,
- (c) before the offer was made, the FCA had found that a financial activity or practice of the offeror had contravened product intervention rules or financial promotion rules, or
- (d) the FCA has decided that the offer, if not suspended or restricted, would be likely to result in a contravention of product intervention rules or financial promotion rules.

(7) A requirement imposed under paragraph (6) ceases to have effect—

- (a) where it was imposed on the ground specified in paragraph (6)(a) or (b)—
 - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
 - (ii) when the FCA notifies the offeror that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the relevant securities to which the offer relates;
- (b) where it was imposed on the ground specified in paragraph (6)(c), when the FCA notifies the offeror that it is satisfied that the contravention of product intervention rules or financial promotion rules does not have, or no longer has, any bearing on the relevant securities to which the offer relates;
- (c) where it was imposed on the ground specified in subsection (6)(d), when the FCA notifies the offeror that it is satisfied that the offer, if no longer suspended or restricted, would not result in a contravention of product intervention rules or financial promotion rules;
- (d) upon the FCA giving notice under regulation 38(5) revoking its decision to impose the requirement;

- (e) where the FCA's decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.
- (8) "Product intervention rules" has the same meaning as in section 137D of FSMA 2000 (FCA general rules: product intervention)(2).

Power to suspend, restrict or prohibit admission to trading on regulated market

36.—(1) This regulation applies where a person has requested the admission of transferable securities to trading on a regulated market.

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been contravened and the securities have not yet been admitted to trading on the regulated market in question, it may—

- (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
- (b) require a person not to advertise the securities to which it relates, or to take such steps as the FCA may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that an applicable provision has been contravened and the securities have been admitted to trading on the regulated market in question, it may—

- (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
- (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been contravened, it may require the market operator to prohibit trading in the securities on the regulated market in question.

(5) "An applicable provision" means—

- (a) a provision of Part 6 of FSMA 2000;
- (b) a provision of these Regulations;
- (c) a provision of regulated market admission rules.

(6) Paragraphs (7) and (8) apply where—

- (a) before the request was made for the admission of the securities to trading on the regulated market in question ("the request"), the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation (product intervention) in relation to any financial activity or practice of the person who made the request;
- (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the securities or any financial activity or practice of the person who made the request;
- (c) before the request was made, the FCA had found that a financial activity or practice of the person who made the request had contravened product intervention rules or financial promotion rules; or
- (d) the FCA has decided that the admission of the securities to trading on the regulated market in question, if not suspended or restricted, would be likely to result in a contravention of product intervention rules or financial promotion rules.

(2) Section 137D was inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

(7) Where the securities have not yet been admitted to trading on the regulated market in question, the FCA may—

- (a) require the person who made the request to suspend or restrict the request;
- (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.

(8) Where the securities have been admitted to trading on the regulated market in question, the FCA may—

- (a) require the market operator to suspend or restrict trading in the securities;
- (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.

(9) A requirement imposed under paragraph (7) or (8) ceases to have effect—

- (a) where it was imposed on the ground mentioned in paragraph (6)(a) or (b)—
 - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
 - (ii) when the FCA notifies the person who made the request that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the securities;
- (b) where it was imposed on the ground mentioned in paragraph (6)(c), when the FCA notifies the person who made the request that it is satisfied that the contravention of product intervention rules or financial promotion rules does not have, or no longer has, any bearing on the securities;
- (c) where it was imposed on the ground mentioned in paragraph (6)(d), when the FCA notifies the person who made the request that it is satisfied that the admission of the securities to trading on the regulated market in question, if no longer suspended or restricted, would not result in a contravention of product intervention rules or financial promotion rules;
- (d) upon the FCA giving notice under regulation 38(5) revoking its decision to impose the requirement;
- (e) where the FCA's decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.

(10) Where the FCA considers that the financial or other situation of a person at whose request transferable securities have been admitted to trading on a regulated market is such that trading would be detrimental to the interests of investors, it may require the market operator to suspend trading in the securities.

(11) "Product intervention rules" has the same meaning as in section 137D of FSMA 2000.

Power to suspend or prohibit trading on a trading facility

37.—(1) This regulation applies in relation to the trading of transferable securities on a trading facility.

(2) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been contravened, and
- (b) the securities have not yet been traded on the trading facility in question,

the FCA may require the person who proposes to trade the securities to suspend taking any action to implement the proposal for a period not exceeding 10 working days.

(3) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been contravened, and
- (b) the securities have been traded on the trading facility in question,

the FCA may require the operator of the facility to suspend trading in the securities for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been contravened, it may require the operator of the trading facility in question to prohibit trading in the securities on that trading facility.

(5) In this regulation—

“an applicable provision” means—

- (a) a provision of Part 6 of FSMA 2000,
- (b) a provision of these Regulations, or
- (c) a provision of designated activity rules made by virtue of regulation 15;

“trading facility” means a multilateral trading facility or organised trading facility, each of those expressions having the same meaning as in Part 18 of FSMA 2000 (see section 313(1) of that Act).

Regulations 34 to 37: procedure and right to refer to Tribunal

38.—(1) If the FCA—

- (a) proposes to exercise the powers in any of regulations 34 to 37 in relation to a person, or
- (b) exercises any of those powers in relation to a person with immediate effect,

it must give that person written notice.

(2) A requirement under any of regulations 34 to 37 takes effect—

- (a) immediately, if the notice under paragraph (1) states that that is the case;
- (b) in any other case, on such date as may be specified in that notice.

(3) The notice under paragraph (1) must—

- (a) give details of the FCA’s action or proposed action;
- (b) state the FCA’s reasons for taking the action in question and choosing the date on which it took effect or takes effect;
- (c) inform the recipient that the recipient may make representations to the FCA within such period as may be specified by the notice (whether or not the recipient has referred the matter to the Tribunal);
- (d) inform the recipient of the date on which the action takes effect or took effect, and
- (e) inform the recipient of the recipient’s right to refer the matter to the Tribunal.

(4) The FCA may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it, the FCA decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in paragraph (1).

(6) A notice under paragraph (5) must, where relevant, inform the person to whom it is given of the person’s right to refer the matter to the Tribunal.

(7) If a notice informs a person of the person’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(8) If a notice under this regulation relates to the exercise of the power conferred by regulation 36(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

(9) A person to whom a notice is given under this regulation may refer the matter to the Tribunal.

Public censure

39.—(1) If the FCA finds that—

- (a) an issuer of relevant securities,
- (b) a person offering relevant securities to the public, or
- (c) a person requesting the admission of transferable securities to trading on a regulated market,

is failing or has failed to comply with the person’s obligations under an applicable provision, it may publish a statement to that effect.

(2) In this regulation “an applicable provision” means—

- (a) a provision of these Regulations, or
- (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17.

Penalties for contraventions

40.—(1) If the FCA finds that a person is failing or has failed to comply with the person’s obligations under an applicable provision, it may impose on that person a penalty of such amount as it considers appropriate.

(2) If, in the case of a contravention by a person (P) of an applicable provision, the FCA considers that a person who was at the material time a relevant officer of P was knowingly concerned in the contravention, it may impose on that person a penalty of such amount as it considers appropriate.

(3) In this regulation—

“an applicable provision” means—

- (a) a provision of these Regulations, or
- (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17;

“relevant officer” of a person means—

- (a) a director or other similar officer of the person, or
- (b) if the affairs of the person are managed by its members, a member of the person.

Regulations 39 and 40: procedure and right to refer to Tribunal

41.—(1) If the FCA proposes to take action against a person under regulation 39 or 40, it must give the person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(4) If the FCA decides to take action against a person under regulation 39 or 40, it must give the person a decision notice.

- (5) A decision notice about the publication of a statement must set out the terms of the statement.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) If the FCA decides to take action against a person under regulation 39 or 40, the person may refer the matter to the Tribunal.

Statement of policy

- 42.**—(1) The FCA must prepare and issue a statement of its policy with respect to—
- (a) the imposition of penalties under regulation 40, 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,
 - (b) the extent to which that contravention was deliberate or reckless, and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The FCA may at any time alter or replace its policy statement.
- (4) If its policy statement is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under regulation 40 in the case of any particular contravention, the FCA must have regard to any policy statement published under this regulation and in force at the time when the contravention in question occurred.
- (6) The FCA must publish a statement issued under this regulation 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) The FCA must, without delay, give the Treasury a copy of any policy statement which it publishes under this regulation.

Statements of policy: procedure

- 43.**—(1) Before issuing a statement under regulation 42, 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 notice that representations about the proposal 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 under paragraph (1).
- (7) This regulation also applies to a proposal to alter or replace a statement.

Appointment by FCA of persons to carry out investigations

44.—(1) Paragraph (3) applies if it appears to the FCA that there are circumstances suggesting that—

- (a) there may have been a contravention of an applicable provision, or
- (b) a person who was at the material time a relevant officer of a person to whom an applicable provision has applied has been knowingly concerned in a contravention by that person of an applicable provision.

(2) “Relevant officer” of a person means—

- (a) a director or other similar officer of the person, or
- (b) if the affairs of the person are managed by its members, a member of the person.

(3) The FCA may appoint one or more competent persons to conduct an investigation on its behalf.

(4) Part 11 of FSMA 2000 applies in relation to an investigation under paragraph (3) as if—

- (a) the investigator were appointed under section 167(1) of that Act;
- (b) references to the investigating authority in relation to the investigator were references to the FCA;
- (c) references to the offences mentioned in section 168 of that Act were to the offence under section 85 of that Act;
- (d) references to an authorised person were references to the person under investigation.

(5) In this regulation “an applicable provision” means—

- (a) a provision of these Regulations, or
- (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17.

Reporting of infringements

45.—(1) This regulation applies to an employer who—

- (a) provides regulated financial services,
- (b) carries on regulated activities in reliance on the exemption in section 327 of FSMA 2000 (exemption from the general prohibition), or
- (c) is a recognised investment exchange, a recognised clearing house, a recognised CSD or a third country central counterparty⁽³⁾.

(2) The employer must have in place appropriate internal procedures for their employees to report, through an independent channel, contraventions or potential contraventions of an applicable provision.

(3) In this regulation—

- “an applicable provision” has the same meaning as in regulation 44;
- “employer” and “employee” each has the meaning given in section 230 of the Employment Rights Act 1996⁽⁴⁾;

(3) Section 417(1) of the Financial Services and Markets Act 2000 contains definitions of “recognised investment exchange”, “recognised clearing house” and “recognised CSD” for the purposes of that Act. Section 285(1)(d) of that Act defines “third country central counterparty” for the purposes of that Act.

(4) 1996 c. 18. There are amendments that are not relevant to these definitions.

“regulated financial services” has the meaning given in section 1H(2) of FSMA 2000⁽⁵⁾.

(5) Section 1H was inserted by section 6(1) of the Financial Services Act 2012. Subsection (2) was repealed in part by [S.I. 2013/1881](#) and amended by section 27 of the Financial Guidance and Claims Act 2018 and by [S.I. 2019/632](#).