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SCHEDULES

SCHEDULE 13

AUDITORS AND ACTUARIES

7 (1) For section 345 (disqualification of auditor or actuary) and the italic heading before it substitute—

"Disciplinary measures

345 Disciplinary measures: FCA

(1) Subsection (2) applies if it appears to the FCA that an auditor or actuary to whom section 342 applies—
  (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the FCA, or
  (b) has failed to comply with a duty imposed under this Act to communicate information to the FCA.

(2) The FCA may do one or more of the following—
  (a) disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person;
  (b) disqualify the auditor from being the auditor of any recognised investment exchange or any particular class of recognised investment exchange;
  (c) publish a statement to the effect that it appears to the FCA that the auditor or (as the case may be) actuary has failed to comply with the duty;
  (d) impose on the auditor or actuary a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(3) If an auditor or actuary has been disqualified by the PRA under section 345A(4)(a), the FCA may disqualify the auditor or actuary, so long as the disqualification under that provision remains in force, from being the auditor of, or (as the case may be) from acting as an actuary for—
  (a) any FCA-authorised person,
  (b) any particular class of FCA-authorised person,
  (c) any recognised investment exchange, or
  (d) any particular class of recognised investment exchange.

(4) In subsection (3) "FCA-authorised person" means an authorised person who is not a PRA-authorised person.

(5) Where under subsection (2) or (3) the FCA disqualifies a person from being the auditor of an authorised person or recognised investment exchange

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or class of authorised person or recognised investment exchange and that authorised person or recognised investment exchange is also, or any person within that class is also, a recognised clearing house, the FCA must —

(a) notify the Bank of England, and

(b) notify the disqualified person that it has made a notification under paragraph (a).

(6) The FCA may remove any disqualification imposed under paragraph (a) or (b) of subsection (2) if satisfied that the disqualified person will in future comply with the duty in question.

(7) The FCA may at any time remove any disqualification imposed under subsection (3).

345A Disciplinary measures: PRA

(1) The following provisions of this section have effect only if the Treasury, by order made after consultation with the PRA, so provide.

(2) Subsection (3) applies if it appears to the PRA that an auditor or actuary to whom section 342 applies—

(a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the PRA, or

(b) has failed to comply with a duty imposed under this Act to communicate information to the PRA.

(3) The PRA may exercise one or more of the specified powers.

(4) The specified powers are such one or more of the following as may be specified in the order under subsection (1)—

(a) to disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any PRA-authorised person or any particular class of PRA-authorised person;

(b) to publish a statement to the effect that it appears to the PRA that the auditor or (as the case may be) actuary has failed to comply with the duty;

(c) to impose on the auditor or actuary a penalty, payable to the PRA, of such amount as the PRA considers appropriate.

(5) Where the PRA disqualifies a person under subsection (4)(a) it must—

(a) notify the FCA, and

(b) notify the person concerned that it has made a notification under paragraph (a).

(6) Where the PRA disqualifies a person from being the auditor of a PRA-authorised person or class of PRA-authorised person, and that PRA-authorised person is also, or any person within that class is also, a recognised clearing house, the PRA must, in addition to complying with subsection (5) —

(a) notify the Bank of England, and

(b) notify the disqualified person that it has made a notification under paragraph (a).

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(7) The PRA may remove any disqualification imposed under subsection (4)(a) if satisfied that the disqualified person will in future comply with the duty in question.

345B Procedure and right to refer to Tribunal

(1) If the FCA proposes to act under section 345(2) or the PRA proposes to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a warning notice.

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

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

(4) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), the auditor or actuary concerned may refer the matter to the Tribunal.

345C Duty on publication of statement

After a statement under section 345(2)(c) or 345A(4)(b) is published, the regulator that published it must send a copy of the statement to—

(a) the auditor or actuary, and

(b) any person to whom a copy of the decision notice was given under section 393(4).

345D Imposition of penalties on auditors or actuaries: statement of policy

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

(a) the imposition of penalties under section 345(2)(d), and

(b) the amount of penalties under that provision.

(2) If by virtue of an order under section 345A(1), the PRA has power to impose penalties under section 345A(4)(c), the PRA must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 345A(4)(c), and

(b) the amount of penalties under that provision.

(3) A regulator's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention, and

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(b) the extent to which the contravention was deliberate or reckless.

(4) A regulator may at any time alter or replace a statement issued under this section.

(5) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(7) A statement issued 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.

(8) In deciding whether to exercise a power under section 345(2)(d) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.

(9) In deciding whether to exercise a power under section 345A(4)(c) in the case of any particular contravention, the PRA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.

(10) A regulator may charge a reasonable fee for providing a person with a copy of the statement.

345E Statements of policy: procedure

(1) Before a regulator issues a statement under section 345D, the 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.

(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) A regulator may charge a reasonable fee for providing a person with a copy of a draft under subsection (1).

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

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Commencement Information

I1 Sch. 13 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I2 Sch. 13 para. 7 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)