

## SCHEDULE 5

### Civil sanctions

## PART 4

### Enforcement undertakings

#### **Enforcement undertakings**

**19.** The market surveillance authority may accept a written undertaking (an “enforcement undertaking”) given by a person to the market surveillance authority to take such action as may be specified in the undertaking within such period as may be specified where the market surveillance authority has reasonable grounds to suspect that the person has committed an offence under regulation 14(1).

#### **Contents of an enforcement undertaking**

**20.—**(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the offence does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed; or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking;
- (c) information as to how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

#### **Acceptance of an enforcement undertaking**

**21.** If the market surveillance authority has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
- (b) the market surveillance authority may not impose on that person a compliance notice, stop notice or variable monetary penalty in respect of that act or omission.

#### **Discharge of an enforcement undertaking**

**22.—**(1) If the market surveillance authority is satisfied that an enforcement undertaking has been complied with it must issue a certificate to that effect.

(2) The market surveillance authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

*Status: This is the original version (as it was originally made).*

- (3) The person who gave the undertaking may at any time apply for such a certificate.
- (4) The market surveillance authority must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.
- (5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—
  - (a) was based on an error of fact;
  - (b) was wrong in law;
  - (c) was unfair or unreasonable;
  - (d) was wrong for any other reason.

#### **Inaccurate, incomplete or misleading information**

- 23.**—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.
- (2) The market surveillance authority may by notice in writing revoke a certificate issued under paragraph 22 if it was issued on the basis of inaccurate, incomplete or misleading information.

#### **Non-compliance with an enforcement undertaking**

- 24.**—(1) If a person does not comply with an enforcement undertaking the market surveillance authority may in the case of an offence committed under regulation 14(1)—
  - (a) serve a compliance notice, non-compliance penalty, stop notice or variable monetary penalty; or
  - (b) bring criminal proceedings.
- (2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.
- (3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the market surveillance authority notifies the person that they have failed to comply with that undertaking.