
STATUTORY INSTRUMENTS

2016 No. 715

The Financial Services and Markets Act
2000 (Transparency of Securities Financing
Transactions and of Reuse) Regulations 2016

PART 3

Administration and enforcement

CHAPTER 4

Measures in relation to individuals

Temporary prohibition orders

11.—(1) The relevant regulator may make a temporary prohibition order where that regulator considers that a person (“A”) has been knowingly concerned in a contravention by a financial or non-financial counterparty of an SFTR requirement.

(2) A temporary prohibition order is an order prohibiting A, for the period specified in the order, from performing functions which require A to be responsible for managing one or more aspects of the affairs of—

- (a) a specified financial or non-financial counterparty; or
- (b) a financial or non-financial counterparty of a specified description.

(3) A prohibition imposed under this regulation may only be imposed for a limited period of time.

(4) A financial or non-financial counterparty must take reasonable care to ensure that none of the financial or non-financial counterparty’s functions is performed by a person who is prohibited from performing such a function by a temporary prohibition order.

(5) The relevant regulator may vary or revoke a temporary prohibition order on the application of A or otherwise.

(6) Where a relevant regulator who has imposed a temporary prohibition order on A considers that A has contravened that order it may—

- (a) publish a statement to that effect; or
- (b) impose on A a penalty, in respect of the contravention, of such amount as it considers appropriate.

(7) In this regulation “the relevant regulator” means—

- (a) where the counterparty referred to in paragraph (1) is a recognised central counterparty, the Bank;
- (b) where the counterparty referred to in paragraph (1) is any other financial or non-financial counterparty, the FCA.

Temporary prohibition orders: procedure

12.—(1) Section 57(1) (prohibition orders: procedure and right to refer to Tribunal) of the Act applies to a temporary prohibition order made under regulation 11 as it applies to a prohibition order made under section 56(2) of the Act (prohibition orders), but with—

- (a) the references to a regulator being read to refer to—
 - (i) the Bank, where the counterparty referred to in paragraph 11(1) is a recognised central counterparty; or
 - (ii) the FCA, where the counterparty referred to in paragraph 11(1) is any other financial or non-financial counterparty; and
- (b) subsections (6), (7) and (8) of section 57 omitted.

(2) Section 58(3) of the Act (applications relating to prohibitions: procedure and right to refer to Tribunal) applies to an application made under regulation 11(5) to the relevant regulator for the variation or revocation of a temporary prohibition order made under regulation 11 as it applies to an application for the variation or revocation of a prohibition order made to the appropriate regulator under section 56 of the Act.

Contravention of a temporary prohibition order by a recognised body

13. Section 312E (public censure), 312F (financial penalties), 312G (proposal to take disciplinary measures), 312H (decision notice) and 312I(4) (publication) of the Act apply in relation to the contravention by a recognised body of a requirement under regulation 11(4) as they apply in relation to the contravention by a recognised body of a relevant requirement, but with—

- (a) references to the appropriate regulator being read to refer to—
 - (i) the Bank, where the recognised body is a recognised central counterparty;
 - (ii) the FCA, where the recognised body is any other financial or non-financial counterparty;
- (b) in sub-paragraph (b) of section 312I, the reference to section 393(4) being read to refer to regulation 19.

(1) Section 57 was amended by the Financial Services Act 2012, section 13.

(2) Section 56 was amended by the Financial Services Act 2012, section 13.

(3) Section 58 was amended by the Financial Services Act 2012, Schedule 5, paragraph 2.

(4) Section 312E, 312F, 312G, 312H and 312I were inserted by the Financial Services Act 2012, section 33.