
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 6

Notices and appeals

Meaning of “regulator”

16. In this Chapter “regulator” means the FCA or the Bank.

Warning notices

17.—(1) If a regulator proposes to take action against a person under regulation 11(6), 14 or 15 it must give the person a warning notice.

(2) A warning notice about—

- (a) a proposal to publish a statement must set out the terms of the proposed statement;
- (b) a proposal to impose a penalty must state the amount of the penalty;
- (c) a proposal to vary a temporary prohibition order must set out the terms of the variation.

Decision notices

18.—(1) If a regulator decides to take action against a person under regulation 11(6), 14 or 15 it must give the person a decision notice without delay.

(2) A decision notice about—

- (a) the publication of a statement must set out the terms of the statement;
- (b) the imposition of a penalty must state the amount of the penalty;
- (c) the variation of a temporary prohibition order must set out the terms of the variation.

Application of Part 26 of the Act

19.—(1) Part 26(1) of the Act (notices) applies in respect of notices given under this Part by a regulator as it applies in respect of notices given by the FCA under the Act, but with the following modifications.

(1) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), section 1268 of the Companies Act 2006 (c.46), section 13 and 24 of and paragraph 28 and 29 of Schedule 2 to the Financial Services Act

- (2) In section 388 (decision notices)—
- (a) in sub-paragraph (i) of paragraph (e) of subsection (1), the reference to the Act is to be read as if it is a reference to this Part;
 - (b) subsection (2) is to be ignored.
- (3) In section 390 (notices given in accordance with a court direction)—
- (a) in paragraph (a) of subsection (2A), references to section 133(6)(b) and 133(6) apply as if they are references to those provisions as applied by regulation 22;
 - (b) subsection (6) and (10) are to be ignored.
- (4) Section 391 (publication of warning notices) applies as if—
- (a) a notice given under regulation 10 is a supervisory notice;
 - (b) in subsection (6) the reference to the FCA is to be read as if it is a reference to a regulator;
 - (c) in subsection (8C)(2) the reference to the Act is to be read as if it is a reference to this Part.
- (5) Section 392 is to be ignored.
- (6) Section 393 (third party rights) and 394 (access to FCA or PRA material) apply to a warning notice or decision notice given in accordance with regulation 12(1), 17 or 18.
- (7) Section 395 (the FCA and PRA's procedures) and 396 (statements under section 395: consultation) do not apply.

Service of notices

20. A notice given under this Part is a “relevant document” for the purposes of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(3).

Appeals

21.—(1) A non-authorised counterparty who is aggrieved by a direction given to the non-authorised counterparty by the FCA under regulation 9 may refer the matter to the Tribunal.

(2) If a regulator decides to—

- (a) publish a statement in respect of a person under regulation 11(6)(a);
- (b) impose a penalty on a person under regulation 11(6)(b),

the person may refer the matter to the Tribunal.

(3) If the FCA decides to—

- (a) publish a statement in respect of a non-authorised counterparty, authorised person or any other person under regulation 14;
- (b) impose a penalty on a non-authorised counterparty, authorised person or any other person under regulation 15,

the non-authorised counterparty, authorised person or other person may refer the matter to the Tribunal.

2010, section 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2005/381, S.I. 2005/1433, S.I. 2007/126, S.I. 2007/1973, S.I. 2009/119, S.I. 2009/534, S.I. 2010/22, S.I. 2010/747, S.I. 2012/916, S.I. 2012/1538, S.I. 2013/1388, S.I. 2013/3115, S.I. 2014/2879, S.I. 2015/1755 and S.I. 2016/225.

(2) Subsection (8C) is inserted by paragraph 1(4) of Schedule 1 to these Regulations.

(3) S.I. 2001/1420, amended by section 11, 18 and 24 of the Financial Services Act 2012 (c.21), S.I. 2005/274, S.I. 2010/1193, S.I. 2013/472 and S.I. 2014/549.

The Tribunal

22.—(1) Part 9(4) of the Act (hearings and appeals) applies in the case of a reference to the Tribunal under these Regulations as it applies to a reference to the Tribunal under the Act with the following modifications.

(2) Section 133(7A) (proceedings before the Tribunal: general provision) applies as if after paragraph (o) there were references to—

(a) a decision to publish a statement under regulation 11(6)(a) or 14 of these Regulations;

(b) a decision to impose a penalty under regulation 11(6)(b) or 15 of these Regulations.

(3) Section 133A(1) (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if the reference to section 388(2) (decision notices) is read to be a reference to these Regulations.

(4) Section 134 (legal assistance scheme), 135 (provisions of the legal assistance scheme) and 136 (funding of the legal assistance scheme) are to be ignored.

(4) Part 9 was amended by section 23 of the Financial Services Act 2012, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22 and S.I. 2013/1388.