

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 1

Interpretation

Meaning of “non-authorised counterparty”

4. In this Part a “non-authorised counterparty” is a financial or non-financial counterparty which is not—

- (a) an authorised person;
- (b) a recognised investment exchange; ^{F1}...
- (c) a recognised central counterparty [^{F2}; or
- (d) a recognised CSD.]

F1 Word in reg. 4(b) omitted (28.11.2017) by virtue of [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, [Sch. para. 43\(4\)\(a\)](#) (with regs. 7(4), 9(1))

F2 Reg. 4(d) and word inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, [Sch. para. 43\(4\)\(b\)](#) (with regs. 7(4), 9(1))

CHAPTER 2

Information gathering

Power of the FCA to require information

5.—(1) This regulation applies where—

- (a) it is necessary for the FCA to determine whether a person is subject to an SFTR requirement; or
- (b) the FCA requires information or documents from a non-authorised counterparty in connection with the exercise of its functions under the SFT regulation or these Regulations.

(2) The FCA may, by notice in writing, require a non-authorised counterparty or any other person—

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

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- (3) 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.
- (4) The FCA may require any information provided under this regulation to be provided in such a form as it may reasonably require.
- (5) The FCA may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such a manner; or
 - (b) any document produced to be authenticated in such a manner,
- as it may reasonably require.
- (6) In this regulation “specified” means specified in the notice.

Reports by skilled persons

6.—(1) Section 166^{M1} of the Act (reports by skilled persons) applies where the FCA has required or could require a non-authorised counterparty to provide information or produce a document under regulation 5 as it applies where the FCA has required or could require a person to provide information or produce a document under the Act with the following modifications.

(2) In section 166(1) the reference to any matter is to be read as a reference to any matter related to the exercise of the FCA's functions under the SFT regulation.

(3) In section 166(2)(a) the reference to an authorised person is to be read as a reference to a non-authorised counterparty.

Marginal Citations

M1 Section 166 was amended by the Financial Services Act 2012, Schedule 12, paragraph 5.

Information and documents: supplemental provisions

7.—(1) Section 175^{M2} of the Act (information and documents: supplemental provisions) applies where the FCA has the power under regulation 5 to require a non-authorised counterparty or any other person to produce a document as it applies where the FCA has a power to require a person to produce a document under Part 11 of the Act with the following modifications.

(2) In subsection (1) and (3) of section 175 the reference to an investigator is to be ignored.

(3) Section 175(8) is to be ignored.

Marginal Citations

M2 Section 175 was amended by the Financial Services Act 2012, Schedule 12, paragraph 13.

CHAPTER 3

Supervisory measures

Guidance

8.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) an SFTR requirement;
 - (b) any matter relating to the functions of the FCA under these Regulations; or
 - (c) any other matter about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.
- (2) The FCA may—
- (a) publish its guidance;
 - (b) offer copies of its published guidance for sale at a reasonable price; or
 - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Directions

- 9.—(1) The FCA may direct a non-authorised counterparty to take, or refrain from taking, specified action where—
- (a) it appears to the FCA that the non-authorised counterparty has contravened an SFTR requirement; and
 - (b) the FCA considers the action necessary to—
 - (i) end any conduct which is contributing to a continuing contravention of an SFTR requirement; or
 - (ii) prevent a further contravention of an SFTR requirement.
- (2) The direction may specify the time for compliance with the direction.
- (3) The direction is enforceable, on the application of the FCA, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988 ^{M3}.
- (4) The FCA may revoke a direction given under this regulation.

Marginal Citations

M3 1988 c.36.

Directions: procedure

- 10.—(1) Before giving a direction under regulation 9 the FCA must give written notice of its intention to do so to the non-authorised counterparty concerned.
- (2) A notice under paragraph (1) must—
- (a) state why the FCA intends to give the direction; and
 - (b) state a period of time during which representations may be made to the FCA about the proposed direction.
- (3) Before the end of the period for making representations, the non-authorised counterparty may make representations to the FCA.
- (4) The period for making representations may, in any particular case, be extended by the FCA.
- (5) In deciding whether to give a direction, the FCA must have regard to any representations made in accordance with paragraph (3).
- (6) When the FCA has decided whether to give a direction under regulation 9, it must give the non-authorised counterparty written notice of its decision.
- (7) If the FCA considers it necessary to do so, it may give a direction under regulation 9—

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- (a) without following the procedure set out in this regulation; or
 - (b) if the FCA has begun to follow that procedure, regardless of whether the period for making representations has expired.
- (8) If the FCA gives a direction in reliance on paragraph (7) it must, within a reasonable time of giving the direction, give the non-authorised counterparty a statement of its reasons—
- (a) for giving the direction; and
 - (b) for relying on paragraph (7).
- (9) If the FCA gives a non-authorised counterparty a direction under regulation 9, the non-authorised counterparty may refer the matter to the Tribunal.
- (10) If the FCA has, in relation to a particular matter, followed the procedure set out in paragraphs (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under paragraph (1).

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 [^{F3}or a recognised CSD], the Bank;
 - (b) where the counterparty referred to in paragraph (1) is any other financial or non-financial counterparty, the FCA.

<p>F3 Words in reg. 11(7)(a) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, Sch. para. 43(5) (with regs. 7(4), 9(1))</p>

Temporary prohibition orders: procedure

12.—(1) Section 57^{M4} (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^{M5} 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 [^{F4}or a recognised CSD]; 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^{M6} 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.

F4 Words in reg. 12(1)(a)(i) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, [Sch. para. 43\(6\)](#) (with regs. 7(4), 9(1))

Marginal Citations

M4 Section 57 was amended by the Financial Services Act 2012, section 13.

M5 Section 56 was amended by the Financial Services Act 2012, section 13.

M6 Section 58 was amended by the Financial Services Act 2012, Schedule 5, paragraph 2.

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^{M7} (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 [^{F5}or a recognised CSD];
 - (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.

F5 Words in reg. 13(a)(i) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, [Sch. para. 43\(7\)](#) (with regs. 7(4), 9(1))

Marginal Citations

M7 Section 312E, 312F, 312G, 312H and 312I were inserted by the Financial Services Act 2012, section 33.

CHAPTER 5

Disciplinary measures

Public censure

14. If the FCA considers that—

- (a) a non-authorised counterparty has contravened—
 - (i) an SFTR requirement; or
 - (ii) a requirement imposed by or under this Part;
- (b) a person has contravened a requirement imposed under regulation 5 for the purpose of determining whether the person is subject to an SFTR requirement; or
- (c) an authorised person has contravened a requirement imposed by regulation 11(4),

the FCA may publish a statement to that effect.

Financial penalties

15. If the FCA considers that—

- (a) a non-authorised counterparty has contravened—
 - (i) an SFTR requirement; or
 - (ii) a requirement imposed by or under this Part;
- (b) a person has contravened a requirement imposed under regulation 5 for the purpose of determining whether the person is subject to an SFTR requirement; or
- (c) an authorised person has contravened a requirement imposed by regulation 11(4),

the FCA may impose a penalty of such amount as it considers appropriate on the non-authorised counterparty or person.

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—

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- (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^{M8} 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.

- (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)^{M9} 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.

Marginal Citations

M8 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 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](#).

M9 Subsection (8C) is inserted by paragraph 1(4) of Schedule 1 to these Regulations.

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](#)^{M10}.

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Marginal Citations

M10 [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](#).

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.

The Tribunal

22.—(1) Part 9^{M11} 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.

Marginal Citations

M11 [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](#).

CHAPTER 7

Injunctions

Injunctions

23.—(1) If, on the application of the relevant regulator, the court is satisfied—

- (a) that there is a reasonable likelihood that a person will contravene a requirement imposed by or under this Part; or
 - (b) that a person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,
- the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.
- (2) If, on the application of the relevant regulator, the court is satisfied that—
 - (a) a person has contravened a requirement imposed by or under this Part; and
 - (b) there are steps which could be taken for remedying the contravention,the court may make an order requiring the person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.
 - (3) If, on the application of the relevant regulator, the court is satisfied that a person may have—
 - (a) contravened a requirement imposed by or under this Part; or
 - (b) been knowingly concerned in the contravention of such a requirement,it may make an order restraining (or in Scotland an interdict prohibiting) the person from disposing of, or otherwise dealing with, any of the person's assets which the court is satisfied the person is reasonably likely to dispose of or otherwise deal with.
 - (4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.
 - (5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.
 - (6) The Bank is the “relevant regulator” in the case of a contravention of—
 - (a) a requirement that is imposed by the Bank under regulation 11; or
 - (b) a requirement imposed by regulation 11(4) where the financial counterparty is a recognised central counterparty [^{F6}or a recognised CSD].
 - (7) The FCA is the “relevant regulator” in the case of a contravention of any other requirement.

F6 Words in [reg. 23\(6\)\(b\)](#) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017](#) (S.I. 2017/1064), [reg. 1](#), [Sch. para. 43\(8\)](#) (with [regs. 7\(4\), 9\(1\)](#))

CHAPTER 8

Offences

Misleading the FCA

- 24.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement under this Part, knowingly or recklessly give the FCA information which is false or misleading in a material particular.
- (2) A person must not provide information to another person—
 - (a) knowing or being reckless as to whether the information is false or misleading in a material particular; and
 - (b) knowing that the information is to be provided to, or to be used for the purposes of providing information to, the FCA in connection with the discharge of its functions under these Regulations.
 - (3) A person who contravenes paragraph (1) or (2) is guilty of an offence.
 - (4) A person guilty of an offence under this regulation is liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Restriction on penalties

25.—(1) A person who is convicted of an offence under these Regulations is not subsequently liable to a penalty under regulation 15 in respect of the same acts or omissions that constituted the offence.

(2) Where the FCA imposes a penalty on a person under regulation 15 the person may not subsequently be convicted of an offence under these Regulations in respect of the same acts or omissions that constituted the contravention for which the penalty was imposed.

Proceedings for offences

26. Proceedings for an offence under this Part may be instituted—

- (a) in England and Wales only by the FCA or by or with the consent of the Director of Public Prosecutions; or
- (b) in Northern Ireland only by the FCA or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Proceedings against unincorporated bodies

27.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in that of any of its members).

(2) A fine imposed on a partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if a partnership or association were a body corporate.

(4) In proceedings for an offence brought against a partnership or association—

- (a) section 33^{M12} (procedure on charge of offence against corporation) of the Criminal Justice Act 1925 and section 46 (corporations) of and Schedule 3^{M13} to the Magistrates' Courts Act 1980 apply as they do in relation to a body corporate;
- (b) section 70 and 143^{M14} (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995 apply; and
- (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945^{M15} and section 166 (corporations) of and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981^{M16} apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under regulation 24 may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business; and
- (b) against an individual at any place where that individual is for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

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Marginal Citations

- M12** 1925 c.86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), **section 132** and Schedule 6, the Courts Act 1971 (c.23), **Schedule 8**, and the Courts Act 2003 (c.39), **Schedule 8**, paragraph 71 and Schedule 10.
- M13** 1980 c.43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), **section 25(2)** and Schedule 13, and the Criminal Justice Act 2003 (c.44), **Schedule 3**, paragraph 51 and Schedule 37, Part 4.
- M14** 1995 c.46. Section 70 was amended by section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13. Section 143 is amended by section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, **section 17** of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6 and S.S.I. 2001/128.
- M15** 1945 c.15.
- M16** S.I. 1981/1675.

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)