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STATUTORY INSTRUMENTS

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**2017 No. 1301**

**The Oversight of Professional Body Anti-Money Laundering  
and Counter Terrorist Financing Supervision Regulations 2017**

**PART 4**

**Enforcement and appeals**

**Interpretation**

**15.** In this Part—

“censuring statement” means a statement published in accordance with regulation 16;

“recommendation for removal” means a recommendation made in accordance with regulation 17.

**Public censure**

**16.—**(1) If the FCA considers that a self-regulatory organisation has failed to comply with—

- (a) a supervision requirement,
- (b) a requirement under regulation 7 (power to require information), regulation 12 (disclosure), or regulation 13 (report by a skilled person),
- (c) a direction given under regulation 14, or
- (d) a requirement under regulation 27 (costs of supervision),

the FCA may publish a statement censuring the self-regulatory organisation.

(2) The FCA may publish a statement censuring a self-regulatory organisation which, in purported compliance with a supervision requirement or a requirement imposed on the self-regulatory organisation by or under these Regulations, provides information to the FCA which is false or misleading in a material particular and—

- (a) knows that the information is false or misleading, or
- (b) is reckless as to whether the information is false or misleading.

(3) The FCA must not censure a self-regulatory organisation under this regulation for failure to comply with a requirement listed in paragraph (1) if the FCA is satisfied that the self-regulatory organisation took all reasonable steps and exercised all due diligence to ensure that such a requirement would be complied with.

(4) In deciding whether a self-regulatory organisation has failed to comply with a supervision requirement, the FCA must consider whether at the time the self-regulatory organisation followed—

- (a) any relevant guidance which was at the time issued by the FCA;
- (b) any relevant guidelines issued by a European Supervisory Authority in accordance with Articles 17, 18(4) or 48(10) of the fourth money laundering directive.

## **Recommendation for removal from Schedule 1 to the MLR**

17.—(1) If the FCA is satisfied that a self-regulatory organisation has failed to comply with—

- (a) a supervision requirement,
- (b) a requirement under regulation 7, regulation 12 or regulation 13,
- (c) a direction given under regulation 14, or
- (d) a requirement under regulation 27,

the FCA may make a recommendation to the Treasury that the self-regulatory organisation is removed from Schedule 1 to the MLR.

(2) The FCA may make a recommendation for removal if, in purported compliance with a supervision requirement or a requirement imposed on the self-regulatory organisation by or under these Regulations, it provides information to the FCA which is false or misleading in a material particular and—

- (a) knows that the information is false or misleading, or
- (b) is reckless as to whether the information is false or misleading.

(3) The FCA must not make a recommendation for removal for failure to comply with a requirement listed in paragraph (1) if the FCA is satisfied that the self-regulatory organisation took all reasonable steps and exercised all due diligence to ensure that such a requirement would be complied with.

(4) In deciding whether a self-regulatory organisation has failed to comply with a supervision requirement, the FCA must consider whether at the time the self-regulatory organisation followed—

- (a) any relevant guidance which was at the time issued by the FCA;
- (b) any relevant guidelines issued by a European Supervisory Authority in accordance with Articles 17, 18(4) or 48(10) of the fourth money laundering directive.

(5) The Treasury must take the FCA's recommendation for removal into account when deciding whether to make regulations removing a self-regulatory organisation from Schedule 1 to the MLR.

## **Application of one or more measures**

18. One or both of the measures in regulations 16 and 17 may be exercised in relation to the same contravention.

## **Procedure for disciplinary measures**

19.—(1) If the FCA proposes to publish a censuring statement or make a recommendation for removal, it must give the self-regulatory organisation concerned a warning notice.

(2) Section 387 of FSMA(1) applies in relation to a notice given under paragraph (1) as it applies in relation to a warning notice given by the FCA under FSMA, subject to paragraph (3).

(3) In complying with section 387(1)(a), a warning notice must—

- (a) if it is about a proposal to publish a censuring statement, set out the terms of the proposed statement;
- (b) if it is about a proposal to make a recommendation for removal, set out the reasons for the proposal.

(4) If the FCA decides to publish a censuring statement or make a recommendation for removal, it must, without undue delay, give a decision notice to the self-regulatory organisation concerned.

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(1) 2000 c.8. Section 387 was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012 and paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(5) If the decision is to publish a censuring statement, the decision notice must set out the terms of the statement.

(6) If the decision is to make a recommendation for removal, the decision notice must set out the reasons for the decision.

(7) Section 388 (decision notices) of FSMA(2) applies in relation to a decision notice given under paragraph (4) as it applies in relation to a decision notice given by the FCA under FSMA.

### **Procedure (general)**

**20.**—(1) Section 389 (notices of discontinuance) of FSMA(3) applies in relation to a warning notice given under regulation 19(1) and a decision notice given under regulation 19(4) as it applies in relation to warning notices or decision notices given under FSMA.

(2) Section 390 (final notices) of FSMA applies to a decision notice given under regulation 19(4) in relation to public censure as it applies in relation to decision notices given under FSMA, except with subsections (4) to (10) being omitted.

### **Publication**

**21.**—(1) Where a warning notice is given by the FCA under regulation 19(1), neither the FCA nor any person to whom it is given or copied may publish the notice or any details concerning it.

(2) Where a decision notice is given by the FCA under regulation 19(4) relating to a recommendation for removal, neither the FCA nor any person to whom it is given or copied may publish the notice or any details concerning it.

(3) Where the FCA gives a decision notice under regulation 19(4) relating to public censure the FCA must, without undue delay, publish on its official website—

- (a) information on the type and nature of the breach, and on the identity of the self-regulatory organisation on whom the measure is imposed; and
- (b) such other information about the matter to which the notice relates as it considers appropriate,

subject to paragraphs (4) to (6).

(4) Where the FCA publishes information under paragraph (3) and the self-regulatory organisation concerned refers the matter to the Upper Tribunal (see regulation 22), the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(5) This paragraph applies where, in the FCA's opinion, publication of any information under paragraph (3) would—

- (a) jeopardise the stability of the financial markets or an ongoing investigation; or
- (b) cause disproportionate damage to the persons involved.

(6) Where paragraph (5) applies, the FCA must defer publication of the information concerned until such time as paragraph (5) ceases to apply, except that—

- (a) if paragraph (5) continues to apply five years after the decision notice, that information must not be published; and
- (b) in the meantime, the FCA must publish such other information under paragraph (3) as would not have the effect mentioned in paragraph (5)(a) or (b).

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(2) Section 388 has been amended (and subsection (1A) inserted) by paragraph 27 of Schedule 9 to the Financial Services Act 2012 and paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(3) Section 389 has been amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012.

(7) Where the FCA publishes information in accordance with paragraphs (3) to (6), the FCA must ensure that the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998(4) requires the information to be retained for a different period.

(8) For the purposes of this regulation “personal data” has the meaning given in section 1 of the Data Protection Act 1998(5).

### **Appeals against decisions of the FCA**

**22.**—(1) A self-regulatory organisation may appeal to the Upper Tribunal from a decision by the FCA to publish a censuring statement.

(2) The provisions of Part 9 of FSMA (hearings and appeals) apply, subject to the modifications set out in paragraph (3), in respect of appeals to the Upper Tribunal made under this regulation as they apply in respect of references made to that Tribunal under FSMA.

(3) Part 9 of FSMA has effect as if—

(a) in section 133 (proceedings before Tribunal: general provision), in subsection (7A)(6), after paragraph (o) there were inserted—

“(p) a decision to take action under regulation 16 of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017.”; and

(b) for section 133A(7) there were substituted—

#### **“Proceedings before Tribunal: decision notices**

**133A.**—(1) The action specified in a decision notice given in relation to regulation 16 under regulation 19(4) of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 must not be taken—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal under the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017; and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

(2) The Tribunal may, on determining a reference under these Regulations in respect of a decision of the FCA, make recommendations as to its regulating provisions or its procedures.”.

### **Offences**

**23.**—(1) If a person fails to comply with a requirement imposed on that person under regulation 7 or regulation 13, the FCA may certify that fact in writing to the court.

(2) If the court is satisfied that the person failed without reasonable excuse to comply with the requirement, it may deal with the person as if that person were in contempt.

(3) A person commits an offence if that person discloses information in contravention of regulation 11 or 12, or publishes information in contravention of regulation 21.

(4) 1998 c.29.

(5) Section 1 was amended by section 68 of, and Part 3 of Schedule 8 to, the Freedom of Information Act 2000 (c.36) and by S.I. 2004/3089.

(6) 2000 (c.8). Subsection (7A) was inserted by section 23 of the Financial Services Act 2012 and amended by section 4(2) of the Financial Services (Banking Reform) Act 2013 and by S.I. 2013/1388; 2014/3329.

(7) Section 133A was inserted by S.I. 2010/22 and amended by section 23 of the Financial Services Act 2012.

- (4) A person guilty of an offence under paragraph (3) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) It is a defence for a person charged with an offence under paragraph (3) of disclosing or publishing information to prove that they reasonably believed—
- (a) that the disclosure or publication was lawful; or
  - (b) that the information had already and lawfully been made available to the public.
- (6) In this regulation, “court” means—
- (a) the High Court;
  - (b) in Scotland, the Court of Session.

### **Proceedings**

- 24.** Proceedings for an offence under these Regulations may be instituted—
- (a) in England and Wales, by the Director of Public Prosecutions; or
  - (b) in Northern Ireland, by the Director of Public Prosecutions for Northern Ireland.

### **Prescribed regulations**

**25.** These Regulations are prescribed for the purposes of sections 168(4)(b) (appointment of persons to carry out investigations in particular cases) and 402(1)(b) (power of the FCA to institute proceedings for certain other offences) of FSMA<sup>(8)</sup>.

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(8) 2000 c.8. Section 168(4)(b) was amended by Part 1 of Schedule 12 to the Financial Services Act 2012 (c.21); and section 402(1) was amended by Parts 1 and 7 of Schedule 9 to the Financial Services Act 2012.