
STATUTORY INSTRUMENTS

2019 No. 926

FINANCIAL SERVICES AND MARKETS

The Proxy Advisors (Shareholders' Rights) Regulations 2019

<i>Made</i>	- - - -	<i>13th May 2019</i>
<i>Laid before Parliament</i>		<i>14th May 2019</i>
<i>Coming into force</i>	- -	<i>10th June 2019</i>

The Treasury are a government department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Proxy Advisors (Shareholders' Rights) Regulations 2019, and come into force on 10th June 2019.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(3);

“the FCA” means the Financial Conduct Authority;

“proxy advisor” means a person who—

(1) [S.I. 2012/1759](#).

(2) [1972 c. 68](#). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 ([c. 51](#)), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006. The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(3) [2000 c. 8](#).

- (a) is a proxy advisor within the meaning given by point (g) of Article 2 of the Shareholder Rights Directive⁽⁴⁾;
- (b) provides proxy advisor services to a shareholder with respect to the shares of any company where—
 - (i) the company’s registered office is situated in the United Kingdom or another EEA State, or in Gibraltar; and
 - (ii) the shares are admitted to trading on a regulated market situated or operating within the United Kingdom or another EEA State, or in Gibraltar; and
- (c) either—
 - (i) has its registered office (or if it does not have a registered office, its head office) in the United Kingdom; or
 - (ii) has its registered office or head office in any country or territory other than the United Kingdom or any other EEA State or Gibraltar, and provides proxy advisor services through an establishment located in the United Kingdom; and

“proxy advisor services” means services provided by a person acting in the capacity of a proxy advisor within the meaning given by point (g) of Article 2 of the Shareholder Rights Directive.

(2) In paragraph (1)—

- (a) “Shareholder Rights Directive” means [Directive 2007/36/EC](#) of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies⁽⁵⁾; and
- (b) in the definition of “proxy advisor”, in paragraph (b) the expressions “shareholder” and “regulated market” have the meaning given in Article 2 of that directive.

PART 2

Transparency requirements in relation to proxy advisors

Code of conduct of proxy advisors

3.—(1) Where a proxy advisor (“P”) provides proxy advisor services in accordance with or by reference to a code of conduct, P must disclose to the public—

- (a) a reference to the code of conduct, by means of which any person may readily view it;
- (b) a report on the manner in which P has applied the code of conduct; and
- (c) where P’s practice is to depart from any of the recommendations contained in the code of conduct, a statement which specifies the recommendations concerned, explains the reason for departing from them, and indicates any measures adopted instead of them.

(2) Where P, in the provision of proxy advisor services, does not provide those services in accordance with or by reference to a code of conduct, P must provide a clear and reasoned explanation of P’s reasons for not doing so.

(3) All information which P is required to disclose under paragraphs (1) and (2) must be—

- (a) made available free of charge;

⁽⁴⁾ Point (g) was added by Article 1(2)(b) of Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending [Directive 2007/36/EC](#) as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1).

⁽⁵⁾ OJ L 184, 14.7.2007, p 17. Relevant amendments of the Shareholder Rights Directive were made by Directive (EU) 2017/828, Article 1(1)(a) and (d), (2)(a) and (b) and (3).

- (b) published on P's website; and
- (c) published for the first time no later than 21st June 2019.
- (4) All information published by P in accordance with paragraph (3) must be updated—
 - (a) for the first time, no later than the end of P's first financial year starting after 10th June 2019; and
 - (b) subsequently, at intervals of no more than twelve months beginning with the date on which it was last updated.

Information giving assurance about the accuracy and reliability of advice

4.—(1) With the object of giving the clients of a proxy advisor ("P") assurance about the accuracy and reliability of P's proxy advisor services, P must disclose to the public the following information relating to P's preparation of research, advice and voting recommendations—

- (a) the essential features of the methodologies and models applied for the provision of those services;
- (b) the main sources of information used for the provision of those services;
- (c) the procedures put in place to ensure that P's research, advice and voting recommendations are of an adequate quality and are prepared by staff who are suitably qualified to prepare them;
- (d) whether P takes account of national market, legal, regulatory and company-specific conditions, and if P does so, how P takes account of those matters;
- (e) the essential features of the voting policies applied for each market;
- (f) whether P has a dialogue with the company which is the object of P's research, advice or voting recommendations, or with persons who have a stake in that company, and if P does so, the extent and nature of the dialogue; and
- (g) P's policy regarding the prevention and management of potential conflicts of interest.

(2) This regulation does not have effect in relation to any information of a kind specified in paragraph (1) if, or so far as, that information is disclosed to the public in compliance with regulation 3.

- (3) All information which P is required to disclose under paragraph (1) must be—
 - (a) disclosed by publication on P's website;
 - (b) published for the first time no later than the end of P's first financial year starting after 10th June 2019; and
 - (c) made available free of charge for a period of at least three years beginning with the date on which it is published for the first time.
- (4) All information published by P in accordance with paragraph (3) must be updated—
 - (a) for the first time no later than the end of the period of twelve months beginning with the date on which it was first published; and
 - (b) subsequently, at intervals of no more than twelve months beginning with the date on which it was last updated.

Conflicts of interest

- 5.—(1) A proxy advisor ("P") must take all appropriate steps to ensure—
 - (a) that P identifies any actual or potential conflict of interest or any business relationship that may influence P in the preparation of research, advice or voting recommendations; and

- (b) that such a conflict of interest or business relationship is identified without delay after the time at which it arises.
- (2) Where P has identified an actual or potential conflict of interest or a business relationship of the kind specified in paragraph (1), P must, without delay—
 - (a) disclose that fact to P’s clients together with particulars of the conflict of interest or business relationship concerned; and
 - (b) give P’s clients a statement of the action P has undertaken to eliminate, mitigate or manage the conflict of interest or business relationship concerned.

Obligation to collect and update information

6. A proxy advisor must collect and keep up to date all information required to enable it to comply with its obligations relating to the disclosure of information under this Part.

PART 3

Functions of the FCA in relation to proxy advisors

Interpretation of Part

- 7.—(1) In this Part, except in regulations 9 and 10, “relevant requirement” means—
- (a) a requirement imposed by Part 2 of these Regulations;
 - (b) a requirement imposed by regulation 9; or
 - (c) a requirement to give notice under or in accordance with regulation 31 or 32.
- (2) In regulations 9 and 10 “relevant requirement” means—
- (a) a requirement imposed by Part 2 of these Regulations; or
 - (b) a requirement to give notice under or in accordance with regulation 31 or 32.
- (3) In this Part, in relation to a requirement to give notice under or in accordance with regulation 32, a reference to a proxy advisor is a reference to a person who is required to comply with that requirement.

Functions of the FCA

8. The FCA, in discharging the functions conferred on it by this Part or by any provision of the Act applied by Part 4 of these Regulations (as so applied), must have regard to the need to use its resources in the most efficient and economic way.

Notice of inability or failure to comply with a relevant requirement

- 9.—(1) If, at any time, a proxy advisor considers that it is unable to comply with a relevant requirement, it must as soon as reasonably practicable notify the FCA of that fact and of the reasons why it is unable to comply.
- (2) A proxy advisor must immediately notify the FCA of any contravention of a relevant requirement of which the proxy advisor becomes aware.

Complaints

10. The FCA must maintain arrangements designed to enable any person to submit to it a complaint that a proxy advisor has contravened a relevant requirement.

Public censure

11. Where the FCA considers that a proxy advisor has contravened a relevant requirement, the FCA may publish a statement to that effect.

Financial penalties

12.—(1) Where the FCA considers that a proxy advisor has contravened a relevant requirement, the FCA may impose a penalty of such amount as it considers appropriate on the proxy advisor.

(2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

Warning notice

13.—(1) Where the FCA proposes to—

- (a) publish a statement in respect of a proxy advisor under regulation 11, or
- (b) impose a penalty on a proxy advisor under regulation 12,

it must give the proxy advisor a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

Decision notice

14.—(1) Where, having considered any representations made in response to the warning notice, the FCA decides to—

- (a) publish a statement under regulation 11 (whether or not in the terms proposed), or
- (b) impose a penalty under regulation 12 (whether or not of the amount proposed),

it must without delay give the proxy advisor concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) Where the FCA decides to—

- (a) publish a statement in respect of a proxy advisor under regulation 11, or
- (b) impose a penalty on a proxy advisor under regulation 12,

the proxy advisor may refer the matter to the Tribunal.

(5) After a statement under regulation 11 is published, the FCA must send a copy of it to—

- (a) the proxy advisor concerned; and
- (b) any person to whom a copy of the decision notice was given under section 393(4) of the Act (third party rights) as applied by section 392 of the Act (application of section 393).

(6) In paragraph (5)(b) the reference to section 392 is a reference to that section as read with the modification made by regulation 26(6).

Matters to which FCA must have regard in relation to imposition of penalties

15. In determining whether to impose a penalty under regulation 12 and the amount of a penalty under that regulation, the FCA must have regard to—

- (a) the gravity and duration of the contravention, including how serious it is in relation to the nature of the requirement contravened;
- (b) the extent to which the contravention was deliberate or reckless;
- (c) the financial strength of the proxy advisor;
- (d) the amount of profit gained or of loss avoided as a result of the contravention, so far as this can be determined;
- (e) the amount of loss sustained as a result of the contravention by any other person, so far as this can be determined;
- (f) the level of co-operation with the FCA given by the proxy advisor (without prejudice to the need to ensure that the proxy advisor accounts for or makes good any profit gained or loss avoided as a result of the contravention);
- (g) any previous contravention by the proxy advisor for which a penalty was, or could have been, imposed under regulation 12; and
- (h) any measures taken by the proxy advisor to prevent a repetition of the contravention.

Statement of policy on imposition of penalties

16.—(1) The FCA may prepare and issue a statement of policy with respect to the imposition and amount of penalties under regulation 12.

(2) A statement of policy must require the FCA, in determining whether to impose a penalty under regulation 12 and the amount of a penalty under that regulation, to have regard to the matters referred to in regulation 15.

(3) The FCA may, at any time, alter or replace a statement of policy issued under this regulation.

(4) Where a statement of policy is altered or replaced, the FCA must issue the altered statement or the statement by which it is replaced.

(5) The FCA must, without delay, give the Treasury a copy of each statement of policy issued under this regulation and publish that statement, as the statement currently in force, in a manner which appears to the FCA to be best calculated to bring it to the attention of the public.

(6) The FCA may charge a reasonable fee for providing a person with a copy of any statement of policy issued under this regulation.

(7) If the FCA issues a statement of policy under this regulation, paragraph (8) applies in relation to the FCA's exercise, or decision whether to exercise, its power to impose a penalty for the contravention of a relevant requirement, and its determination of the amount of a penalty to be imposed for the contravention.

(8) The FCA must have regard to the statement of policy which was in force at the time of the contravention.

Statement of policy on imposition of penalties: procedure

17.—(1) The FCA must, before issuing a statement under regulation 16 (including an altered statement or a statement by which the statement currently in force is to be replaced), publish a draft of the statement in a manner which appears to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft statement must be published with a notice that representations about the draft may be made to the FCA within a specified time.

(3) The FCA must, in preparing the statement for issue, have regard to any representations made about the draft published under paragraph (2).

(4) On issuing the statement, the FCA must publish an account, in general terms, of any representations made about the draft statement and the FCA's response to those representations.

(5) Where the statement issued differs from the draft statement in any respect which, in the opinion of the FCA, is significant, the FCA must also publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of the draft statement published under paragraph (1).

Misleading the FCA

18.—(1) 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 used for the purpose of providing information to, the FCA in connection with the discharge of any of its functions under these Regulations or under the Act as applied by these Regulations.

(2) A person who contravenes paragraph (1) is guilty of an offence.

(3) A person who is guilty of an offence under this regulation is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Restriction on penalties

19.—(1) A proxy advisor who is convicted of an offence under section 398(1) of the Act as applied by these Regulations is not subsequently liable to a penalty under regulation 12 in respect of any act or omission that constituted, in whole or in part, the offence.

(2) A proxy advisor on whom a penalty has been imposed under regulation 12 is not subsequently liable for an offence under section 398(1) of the Act as applied by these Regulations in respect of the contravention for which the penalty was imposed.

PART 4

Application of provisions of the Act for the purposes of Part 3

General provision

20. For the purposes of this Part—

- (a) in a provision of the Act applied by this Part, a reference to a section or other provision of the Act which is also applied by this Part is a reference to that section or other provision as so applied; and
- (b) where a provision of the Act applied by this Part refers to a section or other provision of the Act which is not so applied, that section or other provision is to be read as if it were applied for the purposes only of the provision in which the reference appears.

Hearings and appeals

21.—(1) Sections 133 (proceedings before Tribunal: general provision), 133A (proceedings before Tribunal: decision notices, etc) and 133B (offences) of the Act⁽⁶⁾ apply with respect to proceedings pursuant to references to the Tribunal under regulation 14(4) as they apply with respect to proceedings pursuant to references to the Tribunal under the Act, and have effect for those purposes with the following modifications.

(2) In section 133—

- (a) in subsection (1) the reference to any other Act includes a reference to regulation 14(4); and
- (b) subsection (7A)⁽⁷⁾ is to be read as if after paragraph (o)⁽⁸⁾ there were inserted—
 - “(p) a decision to publish a statement under regulation 11 of the Proxy Advisors (Shareholders’ Rights) Regulations 2019 (public censure) or impose a penalty under regulation 12 of those Regulations (financial penalties).”.

(3) Section 133A is to be read as if—

- (a) for subsection (1) there were substituted—
 - “(1) In determining in accordance with section 133(5) a reference made as a result of a decision by the FCA of a kind specified in section 133(7A)(p), the Tribunal may not direct the FCA to take action which it would not have had power to take under the Proxy Advisors (Shareholders’ Rights) Regulations 2019 at the time of making the decision.”;
- (b) in subsection (4)(a) the reference to any other Act included a reference to regulation 14(4); and
- (c) for subsection (5) there were substituted—
 - “(5) The Tribunal may, on determining a reference of a kind specified in subsection (1), make recommendations as to the FCA’s regulating provisions or procedures.”.

(4) In section 133B(1)(a) the reference to a decision of the FCA includes a decision by the FCA of a kind specified in paragraph (p) of section 133(7A)⁽⁹⁾.

Application of Part 11 of the Act

22.—(1) Part 11 of the Act (information gathering and investigations) applies with respect to the discharge by the FCA of its functions under Part 3 of these Regulations as it applies with respect to the discharge by the FCA of its functions under the Act, and has effect for those purposes with the following modifications.

(2) A reference to the Act or to Part 11 of the Act includes a reference to these Regulations and to the Act or Part 11 as applied by these Regulations.

(3) Except in section 165(11)(d), a reference to an authorised person includes a reference to a proxy advisor.

(4) Except in section 169 (in the expression “overseas regulator”), a reference to a regulator is a reference to the FCA and a reference to each or either regulator is a reference to the FCA only.

(5) In section 165 (regulators’ power to require information: authorised persons etc) ignore subsections (4)(b) and (8A)⁽¹⁰⁾.

⁽⁶⁾ Section 133, together with sections 133A and 133B, was substituted by [S.I. 2010/22](#).

⁽⁷⁾ Subsection 7A was inserted by the Financial Services Act 2012 (c. 21), section 23(1) and (2)(c).

⁽⁸⁾ Paragraph (o) was inserted by [S.I. 2014/3329](#).

⁽⁹⁾ For paragraph (p) see paragraph (2)(b) of this regulation (modification of section 133(7A) of the Act).

⁽¹⁰⁾ Subsections (4)(b) and (8A) were inserted by the Bank of England and Financial Services Act 2016 (c. 14), section 16 and Schedule 2, paragraphs 26 and 36.

(6) Ignore sections 165A(11) (PRA's power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)).

(7) Section 166A(12) (appointment of skilled person to collect and update information) is to be read as if—

(a) for subsection (1) there were substituted—

“(1) This section applies if the FCA considers that a proxy advisor (within the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (interpretation)) has contravened regulation 6 of those Regulations (obligation to collect and update information).”; and

(b) subsection (10) were omitted.

(8) Section 167(13) (appointment of persons to carry out general investigations) is to be read as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of a proxy advisor;

(b) a particular aspect of the business of a proxy advisor; or

(c) the ownership or control of a proxy advisor.”;

(b) subsection (3A)(14) were omitted;

(c) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person (“P”) who has ceased to be a proxy advisor, but only in relation to—

(a) business carried on by P when P was a proxy advisor;

(b) the ownership or control of P at any time when P was a proxy advisor.”;

(d) for subsection (5A)(15) there were substituted—

“(5A) “Proxy advisor” has the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019.”;

(e) subsection (6) were omitted.

(9) Section 168 (appointment of persons to carry out investigations in particular cases) is to be read as if—

(a) for subsection (1) there were substituted—

“(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that—

(a) a proxy advisor has contravened—

(i) a requirement imposed by Part 2 of the Proxy Advisors (Shareholders' Rights) Regulations 2019;

(ii) a requirement to give notice under or in accordance with regulation 31 or 32 of those Regulations; or

(11) Sections 165A, 165B and 165C were inserted by the Financial Services Act 2010 (c. 28), section 18(1) and (2).

(12) Section 166A was inserted by the Financial Services Act 2012, section 41 and Schedule 12, paragraph 6.

(13) Section 167 was amended by the Financial Services Act 2012, section 41 and Schedule 12, paragraph 7, and by S.I. 2007/126 and 2015/575. There are other amendments, but they are not relevant.

(14) Subsection (3A) was inserted by S.I. 2015/575.

(15) Subsection (5A) was inserted by the Financial Services Act 2012, section 41 and Schedule 12, paragraph 7(1) and (3).

- (iii) a requirement imposed by or under this Act as applied by those Regulations;
- (b) a member of the board of management of the proxy advisor is responsible for a contravention of a requirement of a kind referred to in paragraph (a); or
- (c) any person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;
- (b) in subsection (3) for “investigating authority” there were substituted “FCA”;
- (c) subsections (2), (4) and (5) were omitted; and
- (d) for subsection (6) there were substituted—
 - “(6) “Proxy advisor” has the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders’ Rights) Regulations 2019.”.
- (10) Section 169 (investigations etc in support of overseas regulator) is to be read as if—
 - (a) subsection (2A)(**16**) were omitted; and
 - (b) for subsection (13) there were substituted—
 - “(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the Proxy Advisors (Shareholders’ Rights) Regulations 2019.”.
- (11) Ignore section 169A(**17**) (support of overseas regulator with respect to financial stability).
- (12) Section 170 (investigations: general) is to be read as if—
 - (a) a reference to the investigating authority were a reference to the FCA;
 - (b) in subsection (1) “or (5)” were omitted;
 - (c) in subsection (3)—
 - (i) in paragraph (a) “or (4)” were omitted;
 - (ii) paragraph (b) were omitted; and
 - (d) subsection (10) were omitted.
- (13) In section 172 (additional power of persons appointed as a result of section 168(1) or (4)), in subsection (4) and in the heading ignore the reference to subsection (4) of section 168.
- (14) Section 174 (admissibility of statements made to investigators) is to be read as if—
 - (a) in subsection (3) after paragraph (d) there were inserted—
 - “(e) under regulation 18 of the Proxy Advisors (Shareholders’ Rights) Regulations 2019 (misleading the FCA).”; and
 - (b) in subsection (4) the words from “or (5)” to the end were omitted.
- (15) In section 175 (information and documents: supplemental provisions), in subsection (8) ignore the reference to subsection (5) of section 168.
- (16) Section 176 (entry of premises under warrant) is to be read as if—
 - (a) in subsection (1) “the Secretary of State,” were omitted;
 - (b) in subsection (3)(a) “or an appointed representative” were omitted;
 - (c) in subsection (10) “or (5)” were omitted; and
 - (d) in subsection (11)(a) “87C, 87J,” and “, 165A, 169A”(18) were omitted.

(16) Subsection (2A) was inserted by [S.I. 2016/680](#).

(17) Section 169A was inserted by the Financial Services Act 2010, section 18(1) and (3).

(18) A reference to sections 87C and 87J was inserted by [S.I. 2005/1433](#) and a reference to sections 165A and 169A was inserted by the Financial Services Act 2010, section 24(1) and (2) and Schedule 2, paragraphs 1 and 17.

Information given by an auditor

23.—(1) Sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: persons with close links) and 344 (duty of auditor or actuary resigning etc to give notice) of the Act apply with respect to the auditor of a proxy advisor, and have effect for those purposes with the following modifications.

- (2) A reference to an authorised person is a reference to a proxy advisor.
- (3) A reference to a regulator or to the appropriate regulator is a reference to the FCA.
- (4) Ignore references to an actuary.
- (5) Section 342 is to be read as if—

- (a) subsection (2) were omitted; and
- (b) after subsection (3) there were inserted—

“(3A) Subsection (3B) applies in the case of an auditor (“A”) to whom this section applies by virtue of regulation 23(1) of the Proxy Advisors (Shareholders’ Rights) Regulations 2019 (“the 2019 Regulations”).

(3B) For the purposes of subsection (3) a matter on which any information or opinion is to be given by A must arise from, or be connected with, non-compliance or the manner of compliance by the person for whom A is, or has been, the auditor with a requirement imposed by Part 2 of the 2019 Regulations.”.

- (6) Section 343 is to be read as if—

- (a) subsection (2) were omitted; and
- (b) after subsection (3) there were inserted—

“(3A) Subsection (3B) applies in the case of an auditor (“A”) to whom this section applies by virtue of regulation 23(1) of the Proxy Advisors (Shareholders’ Rights) Regulations 2019 (“the 2019 Regulations”).

(3B) For the purposes of subsection (3) a matter on which any information or opinion is to be given by A must arise from, or be connected with, non-compliance or the manner of compliance by the person with whom CL has close links with a requirement imposed by Part 2 of the 2019 Regulations.”.

- (7) In section 344 ignore subsection (4).

Restrictions on disclosure of information

24. Sections 348 (restrictions on disclosure of confidential information) FCA, PRA etc), 349 (exceptions from section 348) and 352 (offences) of the Act apply with respect to information received under these Regulations or under the Act as applied by these Regulations, and have effect for those purposes with the following modifications—

- (a) a reference to the Act includes a reference to these Regulations and to the Act as applied by these Regulations;
- (b) in section 348—
 - (i) in subsection (2) the reference to this Part of the Act (public record, disclosure of information and co-operation) is a reference to sections 348, 349 and 352 as applied by these Regulations;
 - (ii) in subsection (6)(b) the reference to Part 11 of the Act is a reference to that Part as applied by these Regulations; and
- (c) section 352 is to be read as if—
 - (i) in subsection (1) “or 350(5)” were omitted;

- (ii) subsection (4) were omitted;
- (iii) in subsection (5) “or (4)” were omitted; and
- (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

Application of Part 25 of the Act

25.—(1) Part 25 of the Act (injunctions and restitution) applies for the purposes of these Regulations and of the Act as applied by these Regulations, and has effect for those purposes with the following modifications.

(2) A reference to a regulator, to the regulator concerned or to the appropriate regulator is a reference to the FCA.

(3) Ignore any reference to the Secretary of State.

(4) A reference to a relevant requirement is a reference to—

- (a) a requirement imposed by Part 2 of these Regulations;
- (b) a requirement to give notice under or in accordance with regulation 31 or 32; or
- (c) a requirement imposed by or under the Act as applied by these Regulations.

(5) In section 380 (injunctions) ignore subsections (6) to (12).

(6) Ignore sections 381 (injunctions in cases of market abuse) and 383 (restitution orders in cases of market abuse).

(7) In section 382 (restitution orders) ignore subsections (9) to (15).

(8) Section 384 (power of FCA or PRA to require restitution) is to be read as if—

- (a) in subsection (1)—
 - (i) the reference to an authorised person were a reference to a proxy advisor;
 - (ii) “or recognised investment exchange” were omitted;
- (b) subsections (2) and (3) were omitted;
- (c) in subsection (5) for “regulator exercising the power (“the regulator concerned”)” there were substituted “FCA”;
- (d) in subsections (5) and (6) each reference to subsection (2) and to subsection (3) were omitted; and
- (e) subsections (7) to (13) were omitted.

Application of Part 26 of the Act

26.—(1) Part 26 of the Act (notices) applies with respect to the giving of notices under these Regulations, or under the Act as applied by these Regulations, as it applies with respect to the giving of notices under the Act, and has effect for those purposes with the following modifications.

(2) A reference to a regulator, to the regulator concerned or to the regulator giving a notice is a reference to the FCA.

(3) Section 387 (warning notices) is to be read as if—

- (a) in subsection (1)(a) (“the regulator concerned”) were omitted; and
- (b) subsections (1A) and (3A)(19) were omitted.

(19) Subsections (1A) and (3A) were inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 26.

- (4) Section 388 (decision notices) is to be read as if—
- (a) in subsection (1)—
 - (i) in paragraph (b) (“the regulator concerned”) were omitted; and
 - (ii) in paragraph (e)(i) the reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations; and
 - (b) subsections (1A)(20) and (2) were omitted.
- (5) Section 391 (publication) is to be read as if—
- (a) in subsection (1) for “falling within subsection (1ZB)” there were substituted “given under regulation 13 of the Proxy Advisors (Shareholders’ Rights) Regulations 2019”; and
 - (b) subsections (1ZA), (1ZB)(21), (4A)(22), (5), (5A)(23), (6A)(24) and (7A) to (8F)(25) were omitted.
- (6) Section 392 (application of sections 393 and 394) is to be read as if for paragraphs (a) and (b) there were substituted—
- “(a) a warning notice given in accordance with—
 - (i) regulation 13 of the Proxy Advisors (Shareholders’ Rights) Regulations 2019; or
 - (ii) section 385 as applied by those Regulations; and
 - (b) a decision notice given in accordance with—
 - (i) regulation 14 of the Proxy Advisors (Shareholders’ Rights) Regulations 2019; or
 - (ii) section 386 as applied by those Regulations.”.
- (7) Section 395 (the FCA’s and PRA’s procedures) is to be read as if—
- (a) for subsection (1) there were substituted—
 - “(1) The FCA must determine the procedure that it proposes to follow in relation to—
 - (a) a decision which gives rise to an obligation for it to give a warning notice or decision notice to a proxy advisor; or
 - (b) a decision under section 391(1)(c) to publish information about the matter to which a warning notice given to a proxy advisor relates.”;
 - (b) in subsection (2)—
 - (i) in paragraph (a) for “any of paragraphs (a) to (c)” there were substituted “paragraph (a)”;
 - (ii) in paragraph (b) for “(d)” there were substituted “(b)”;
 - (iii) in paragraph (c) for “(d)” there were substituted “(b)” and for “(b) or (c)” there were substituted “(a)”;
 - (c) subsections (3) and (4) were omitted;
 - (d) in subsection (5) for “Each regulator” there were substituted “The FCA”;

(20) Subsection (1A) was inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 27.
(21) Subsections (1ZA) and (1ZB) were substituted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 30(1) and (2).
(22) Subsection (4A) was inserted by [S.I. 2013/3115](#).
(23) Subsection (5A) was inserted by the Financial Services Act 2012, section 24(2).
(24) Subsection (6A) was substituted (with subsection (6) by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 30(1) and (6).
(25) Subsections (7A) and (7B) were inserted by [S.I. 2012/916](#). Subsection (8A) was inserted by [S.I. 2014/2879](#). Subsection (8B) was inserted by [S.I. 2016/680](#). Subsection (8C) was inserted by [S.I. 2016/715](#). Subsection (8D) was inserted by [S.I. 2017/1127](#). Subsection (8E) was inserted by [S.I. 2018/135](#). Subsection (8F) was inserted by [S.I. 2018/1288](#).

- (e) in subsection (9) for the words from “supervisory notice” to “subsection (1)(b)(ii)” there were substituted “warning notice or decision notice”; and
- (f) subsection (9A)(26) were omitted.

Application of Part 27 of the Act

27.—(1) Part 27 of the Act (offences) applies with respect to offences under these Regulations, or under the Act as applied by these Regulations, as it applies with respect to offences under the Act, and has effect for those purposes with the following modifications.

(2) A reference to an offence under the Act includes a reference to an offence under these Regulations or under the Act as applied by these Regulations.

(3) In section 398 (misleading FCA or PRA: residual cases)—

- (a) in subsection (1), in relation to a requirement falling within subsection (1A)(a)(27) (as read with the modification in sub-paragraph (b)), the reference to a regulator is a reference to the FCA; and
- (b) in subsections (1A)(a) and (2) the reference to the Act includes a reference to these Regulations and to the Act as applied by these Regulations.

(4) In section 400 (offences by bodies corporate etc) ignore subsection (6A)(28).

(5) In section 401 (proceedings for offences) is to be read as if—

- (a) in subsection (1) paragraphs (b) and (c) were omitted; and
- (b) in subsections (2)(a) and (3)(a) the reference to the Secretary of State were omitted.

(6) Ignore section 402 (power of FCA to institute proceedings for certain other offences).

(7) In section 403 (jurisdiction and procedure in respect of offences) subsection (7) is to be read as if the words from “or an offence” to the end were omitted.

Application of Schedule 1ZA to the Act: penalties, fees and exemption from liability in damages

28.—(1) Paragraphs 19 to 22 (penalties), paragraph 23 (fees) and paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act(29) (the FCA) apply with respect to the discharge by the FCA of its functions under these Regulations or under the Act as applied by these Regulations, and have effect for those purposes with the following modifications.

(2) A reference to penalties imposed, or to be imposed, under the Act includes a reference to penalties imposed, or to be imposed, under these Regulations or under the Act as applied by these Regulations.

(3) In paragraph 19 the reference to the FCA’s functions(30) includes a reference to the functions of the FCA under these Regulations or under the Act as applied by these Regulations.

(4) Paragraph 20 is to be read as if—

- (a) in sub-paragraph (4) after paragraph (f) there were inserted—
 - “(g) its powers under the Proxy Advisors (Shareholders’ Rights) Regulations 2019 and under this Act as applied by those Regulations.”; and

(26) Subsection (9A) was inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 34(1) and (10).

(27) Subsection (1A) was inserted by [S.I. 2013/1773](#).

(28) Subsection (6A) was inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 37.

(29) Schedule 1ZA was substituted by the Financial Services Act 2012, section 6(2) and Schedule 3.

(30) “Functions”, in relation to the FCA, means functions conferred on the FCA by or under any provision of the Act (see paragraph 1 of Schedule 1ZA).

- (b) in sub-paragraph (5)(a) the reference to offences under the Act included a reference to offences under these Regulations or under the Act as applied by these Regulations.
- (5) In paragraph 21(2)(a) the reference to authorised persons includes a reference to proxy advisors.
- (6) Paragraph 23 is to be read as if—
 - (a) in sub-paragraph (1)(a) for “functions, other than its excepted functions” there were substituted “qualifying functions”; and
 - (b) for sub-paragraph (2) there were substituted—
 - “(2) The “qualifying functions” of the FCA are its functions under the Proxy Advisors (Shareholders’ Rights) Regulations 2019 or under this Act as applied by those Regulations.”;
 - (c) sub-paragraphs (2ZA) and (2A)(31) were omitted;
 - (d) in sub-paragraph (3)—
 - (i) in the definition of “relevant borrowing” for “its assumption of functions under this Act” there were substituted “the assumption of its qualifying functions”;
 - (ii) in the definition of “relevant commencement expenses” for “functions by the FCA under this Act” there were substituted “its qualifying functions”;
 - (e) sub-paragraph (4) were omitted;
 - (f) in sub-paragraph (5)—
 - (i) for “money,” there were substituted “money or”;
 - (ii) the words from “or the assumption of functions” to the end were omitted; and
 - (g) in sub-paragraph (8) for “any provision made by or under the Act” there were substituted “rules made under sub-paragraph (1)”.
- (7) In paragraph 25—
 - (a) in sub-paragraphs (1) and (2) the reference to the FCA’s functions includes a reference to the functions of the FCA under these Regulations or under the Act as applied by these Regulations; and
 - (b) in sub-paragraph (2) the reference to sections 166 to 169 of the Act includes a reference to those sections as applied by regulation 22.

PART 5

Application of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

Permitted disclosure of confidential information

29.—(1) The following provisions of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(32) (“the 2001 Regulations”) apply with respect to information received under these Regulations or under the Act as applied by these Regulations—

(31) Sub-paragraph (2ZA) was inserted by the Pension Schemes Act 2015 (c. 8), section 47 and Schedule 3, paragraphs 1 and 16; and sub-paragraph (2A) was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 129 and Schedule 8, paragraph 7(1) and (3).

(32) S.I. 2001/2188, as amended by S.I. 2013/472. There are other amendments, but they are not relevant.

- (a) regulation 2 (interpretation) so far as necessary for the interpretation of the other provisions applied by this paragraph⁽³³⁾;
 - (b) Part 2 (disclosure of confidential information generally);
 - (c) Part 4 (disclosure of confidential information not subject to single market restrictions);
 - (d) Schedule 1 (disclosure of confidential information whether or not subject to single market restrictions) so far as it has effect for the purposes of Part 4;
 - (e) Schedule 2 (disclosure of confidential information not subject to single market restrictions) so far as it has effect for the purposes of Part 4; and
 - (f) Schedule 3 (prescribed disciplinary proceedings).
- (2) For the purposes of paragraph (1), Part 1 of Schedule 1 to the 2001 Regulations has effect with the following modifications—
- (a) the entry for the FCA is to be read as if the reference in the second column to the functions conferred on it by or under the Act included a reference to the functions conferred on it by these Regulations or by or under the Act as applied by these Regulations; and
 - (b) the entry for the Comptroller and Auditor General is to be read as if the reference in the second column to the FCA's functions included a reference to its functions under these Regulations or under the Act as applied by these Regulations.

PART 6

Public list of proxy advisors

Interpretation

30. In this Part “relevant proxy advisor services” means proxy advisor services provided to a shareholder with respect to the shares of any company where—

- (a) the company's registered office is situated in the United Kingdom or another EEA State, or in Gibraltar; and
- (b) the shares are admitted to trading on a regulated market situated or operating within the United Kingdom or another EEA State, or in Gibraltar.

Public list of proxy advisors

- 31.**—(1) The FCA must maintain a public list of proxy advisors.
- (2) The FCA must publish the list in such manner and at such times as it may determine.
- (3) Any person (“P”) who is a proxy advisor must notify the FCA that P is providing relevant proxy advisor services and apply for admission to the public list in such manner as the FCA may direct.
- (4) A person who is a proxy advisor on 10th June 2019 or becomes a proxy advisor at any time before 25th March 2020 must give notice under paragraph (3) no later than 1st April 2020.
- (5) A person (“P”) who becomes a proxy advisor on or after 25th March 2020 must give notice under paragraph (3) no later than the end of the period of 7 days beginning with the date on which P becomes a proxy advisor.
- (6) The FCA must admit to the public list every proxy advisor who gives notice under paragraph (3).

⁽³³⁾ See definitions of “the Act”, “disciplinary proceedings authority”, “prescribed disciplinary proceedings” and “regulators”.

Removal of a proxy advisor from the public list

32.—(1) Where a person (“P”) who has been admitted to the public list ceases to be a proxy advisor, P must notify the FCA that P has ceased to be a proxy advisor, and upon receipt of P’s notice the FCA must remove P from the list.

(2) The FCA may remove P from the public list if it is satisfied that P has ceased to be a proxy advisor and has failed to give notice under paragraph (1).

(3) Where P ceases to be a proxy advisor by reason of ceasing to provide proxy advisor services, P must give notice under paragraph (1) no later than the end of the period of 7 days beginning with the date on which it ceases to provide those services.

(4) Where P is no longer providing relevant proxy advisor services (but has not ceased to provide other proxy advisor services), P must give notice under paragraph (1) no later than the end of the period of twelve months beginning with the date on which it was last engaged in the provision of relevant proxy advisor services.

(5) Where P ceases to be a proxy advisor by reason of ceasing to have its registered office or head office in the United Kingdom, P must give notice under paragraph (1) on the date on which it ceases to have its registered office or head office in the United Kingdom.

(6) Where P ceases to be a proxy advisor by reason of ceasing to have an establishment located in the United Kingdom through which it provides relevant proxy advisor services, P must give notice under paragraph (1) on the date on which it ceases to have such an establishment in the United Kingdom.

Rebecca Harris

Mike Freer

Two of the Lords Commissioners of Her
Majesty’s Treasury

13th May 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the obligations of a Member State laid down in Article 3(j) of [Directive 2007/36/EC](#) of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p 17). Article 3j of [Directive 2007/36/EC](#) was inserted, together with Chapter 1a and the rest of Chapter 1b, by Article 1(3) of Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending [Directive 2007/36/EC](#) as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1).

Part 1 of these Regulations (general provision) includes provision for the interpretation of the expression “proxy advisor”. In Directive (EU) 2007/36 a proxy advisor is a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights.

Part 2 of these Regulations (transparency requirements in relation to proxy advisors) makes provision in relation to the transparency of proxy advisors, meeting the requirements laid down in Article 3j of [Directive 2007/36/EC](#).

Part 3 of these Regulations (functions of the FCA in relation to proxy advisors) gives functions to the FCA in relation to proxy advisors, including powers relating to the provision of information, financial penalties, warning and decision notices and references to the Tribunal.

Part 4 of these Regulations (application of provisions of the Act for the purposes of Part 3) applies provisions of the Financial Services and Markets Act 2000 (c. 8) in relation to proxy advisors to give the FCA functions under that Act in connection with the exercise of its functions under Part 3.

Part 5 of these Regulations applies in relation to proxy advisors the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188).

Part 6 of these Regulations makes provision for the maintenance of a public list of proxy advisors.

An impact assessment of the effect that this instrument will have on the costs of business and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.