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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Credit Rating Agencies (Amendment,  
etc.) (EU Exit) Regulations 2019**

**PART 3**

Enforcement

CHAPTER 1

Penalties

**Financial penalties**

7.—(1) If the FCA considers that a credit rating agency has contravened a requirement imposed by or under these Regulations, or by or under the CRA Regulation, it may impose a penalty on the credit rating agency of such amount as it considers appropriate.

(2) A penalty imposed under this regulation—

- (a) is payable to the FCA, and
- (b) may be recovered as a debt due to the FCA.

(3) In imposing, or deciding whether to impose, a penalty under this regulation, the FCA must have regard to a statement of policy published under regulation 8 and in force at the time when the contravention occurred.

**Statement of policy**

8.—(1) The FCA must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under regulation 7, and
- (b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

- (a) the seriousness of the contravention (in relation to the nature of the requirement contravened), and
- (b) the extent to which the contravention is deliberate or reckless.

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

(4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a credit rating agency with a copy of the statement.

**Statement of policy: procedure**

9.—(1) Before the FCA issues a statement under regulation 8, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that specifies the time within which representations about the proposal may be made to the FCA.

(3) Before issuing the proposed statement the FCA must have regard to any representations made in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

- (a) any representations made to it in accordance with paragraph (2), and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a credit rating agency with a copy of a draft published by it under paragraph (1).

(7) This regulation also applies to a proposal to alter or replace a statement.

CHAPTER 2

Public censure

**Public censure**

10. If the FCA considers that a credit rating agency has contravened a requirement imposed by or under these Regulations, or by or under the CRA Regulation, the FCA may publish a statement to that effect.

CHAPTER 3

Financial penalties and public censure: procedure

**Warning notice**

11.—(1) If the FCA proposes to—

- (a) impose a penalty on a credit rating agency under regulation 7, or
- (b) publish a statement in respect of a credit rating agency under regulation 10,

it must give the credit rating agency a warning notice.

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

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

### Decision notice

12.—(1) If, having considered any representations made in response to a warning notice,(1) the FCA decides to—

- (a) impose a penalty under regulation 7 (whether or not of the amount proposed), or
- (b) publish a statement under regulation 10 (whether or not in the terms proposed),

it must without delay give the credit rating agency concerned a decision notice.

- (2) In the case of a penalty, the decision notice must state the amount of the penalty.
- (3) In the case of a statement, the decision notice must set out the terms of the statement.

### Duty on publication of statement

13. After a statement under regulation 10 is published, the FCA must send a copy of the statement to—

- (a) the person in respect of whom it is made, and
- (b) any person to whom a copy of the decision notice is given under section 393(4) of the Act (third party rights)(2) (as applied by regulation 19).

## CHAPTER 4

### Financial penalties: supplemental

### Deduction of enforcement costs, etc.

14.—(1) For the purposes of a penalty imposed under—

- (a) regulation 7, or
- (b) the CRA Regulation,

Part 3 of Schedule 1ZA to the Act (Financial Conduct Authority: penalties)(3), is modified as follows.

(2) Paragraph 19 has effect as if, after “this Act,” there were inserted “regulation 7 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 and Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies,”.

(3) Paragraph 20 has effect as if—

- (a) in subparagraph (2), after “this Act” there were inserted “, regulation 7 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 and Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies”;
- (b) after subparagraph (4)(a) there were inserted—
  - “(aa) its powers under any of the provisions mentioned in section 133(7A) as applied by regulation 16 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019,”;
- (c) after subparagraph (5)(a) there were inserted—
  - “(aa) offences under—

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(1) See regulation 19, which applies to these Regulations with modifications provisions of the Financial Services and Markets Act 2000 (c. 8) relating to the provision of notices generally.

(2) Subsection (4) is amended by paragraph 32(4) of Schedule 9 to the Financial Services Act 2012 (c. 21).

(3) Inserted by Schedule 3 to the Financial Services Act 2012 (c. 21). Paragraph 20 is amended by paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c. 33). Paragraph 21 is amended by paragraph 15 of Schedule 3 to the Pension Schemes Act 2015 (c. 8) and paragraph 21(4) of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10).

- (i) section 177 of that Act, as applied by regulation 18 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019,
  - (ii) section 398 of this Act, as applied by regulations 21 and 45 of those Regulations, and
  - (iii) section 400 of this Act, as applied by regulations 22 and 46 of those Regulations.”
- (4) Paragraph 21 has effect as if, after subparagraph (2)(a), there were inserted—
- “(aa) credit rating agencies registered under Chapter 1 of Title 3 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies,”.