



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXII

#### AUDITORS AND ACTUARIES

##### Modifications etc. (not altering text)

- C1** Pt. 22 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011](#) (S.I. 2011/99), regs. 1(2)(b), 62, [Sch. 3 para. 5](#) (with reg. 3) (as amended (1.4.2013) by S.I. 2013/472, [Sch. 2 para. 196\(5\)\(e\)](#) and (18.9.2023) by S.I. 2023/790, regs. 1(2)(a), [2\(3\)\(b\)](#))

*[<sup>F1</sup>]<sup>F2</sup>General duties of regulator]*

##### Textual Amendments

- F1** S. 339A and cross-heading inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012](#) (c. 21), s. 122(3), [Sch. 13 para. 2](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F2** S. 339A cross-heading substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), [ss. 134\(3\)](#), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

#### **339A General duties of PRA in relation to auditors**

- (1) The arrangements maintained by the PRA under section 2K (supervision of PRA-  
authorised persons) must include arrangements for—
  - (a) the sharing with auditors of PRA-  
authorised persons of information that the  
PRA is not prevented from disclosing, and
  - (b) the exchange of opinions with auditors of PRA-  
authorised persons.
- (2) The PRA must issue and maintain a code of practice describing how it will comply  
with subsection (1).

*Status: Point in time view as at 03/01/2018.*

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- (3) The PRA may at any time alter or replace a code issued under this section.
- (4) If a code is altered or replaced, the PRA must issue the altered or replacement code.
- (5) When the PRA issues a code under this section the PRA must—
  - (a) give a copy of the code to the Treasury, and
  - (b) publish the code in such manner as the PRA thinks fit.
- (6) The Treasury must lay before Parliament a copy of the code.
- (7) “Auditor” means an auditor appointed under or as a result of a statutory provision.]

### [<sup>F3</sup>339B Duty to meet auditors of certain institutions

- (1) The FCA must make arrangements for meetings to take place at least once a year between—
  - (a) the FCA, and
  - (b) the auditor of any PRA-authorised person to which section 339C applies.
- (2) The PRA must make arrangements for meetings to take place at least once a year between—
  - (a) the PRA, and
  - (b) the auditor of any PRA-authorised person to which section 339C applies.
- (3) The annual report of each regulator must include the number of meetings that have taken place during the period to which the report relates between the regulator and auditors of PRA-authorised persons to which section 339C applies.
- (4) In subsection (3) “the annual report” means—
  - (a) in relation to the FCA, every report which it is required by paragraph 11 of Schedule 1ZA to make to the Treasury, and
  - (b) in relation to the PRA, every report which it is required by paragraph 19 of Schedule 1ZB to make to the Treasury.
- (5) In this section “auditor” means an auditor appointed under or as a result of a statutory provision.

#### Textual Amendments

**F3** Ss. 339B, 339C inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 134(2), 148(5)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

### 339C PRA-authorised persons to which this section applies

- (1) This section applies to a PRA-authorised person which—
  - (a) is a UK institution,
  - (b) meets condition A or B,
  - (c) is not an insurer or a credit union, and
  - (d) is, in the opinion of the PRA, important to the stability of the UK financial system.

*Status: Point in time view as at 03/01/2018.*

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- (2) Condition A is that the person has permission under Part 4A to carry on the regulated activity of accepting deposits.
- (3) Condition B is that—
- (a) the person is an investment firm that has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and
  - (b) when carried on by the person, that activity is a PRA-regulated activity.
- (4) In this section—
- (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
  - (b) “insurer” means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;
  - (c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.
- (5) Subsections (2), (3) and (4)(b) are to be read in accordance with Schedule 2, taken together with any order under section 22.]

#### Textual Amendments

**F3** Ss. 339B, 339C inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), ss. [134\(2\)](#), [148\(5\)](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

### *Appointment*

#### **340 Appointment.**

- (1) [<sup>F4</sup>The appropriate regulator may make rules requiring] an authorised person, or an authorised person falling within a specified class—
- (a) to appoint an auditor, or
  - (b) to appoint an actuary,
- if he is not already under an obligation to do so imposed by another enactment.
- (2) [<sup>F5</sup>The appropriate regulator may make rules requiring] an authorised person, or an authorised person falling within a specified class—
- (a) to produce periodic financial reports; and
  - (b) to have them reported on by an auditor or an actuary.

[<sup>F6</sup>(3A) The PRA—

- (a) must make rules imposing on auditors of PRA-authorised persons such duties as may be specified in relation to co-operation with the PRA in connection with the supervision by the PRA of PRA-authorised persons, and
- (b) may make rules—
  - (i) imposing such other duties on auditors of PRA-authorised persons as may be specified, and
  - (ii) imposing such duties on actuaries acting for PRA-authorised persons as may be specified.

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- (3B) The FCA may make rules imposing on auditors of, or actuaries acting for, authorised persons such duties as may be specified.]
- (4) Rules under subsection (1) may make provision—
- (a) specifying the manner in which and time within which an auditor or actuary is to be appointed;
  - (b) requiring the [F7regulator making the rules] to be notified of an appointment;
  - (c) enabling the [F7regulator making the rules] to make an appointment if no appointment has been made or notified;
  - (d) as to remuneration;
  - (e) as to the term of office, removal and resignation of an auditor or actuary.
- (5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by rules under subsection [F8(3A) or (3B)]—
- (a) must act in accordance with such provision as may be made by rules; and
  - (b) is to have such powers in connection with the discharge of his functions as may be provided by rules.
- [F9(5A) In subsections (1) and (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA;
  - (b) in any other case, the FCA.]
- (6) In subsections (1) to [F10(3B)] “auditor” or “actuary” means an auditor, or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.
- (7) “Specified” means specified in rules.
- [F11(8) The powers conferred by this section enable only the making of such rules as appear to the regulator making them to be necessary or expedient—
- (a) in the case of the FCA, for the purpose of advancing one or more of its operational objectives, or
  - (b) in the case of the PRA, for the purpose of advancing any of its objectives.]

#### Textual Amendments

- F4** Words in s. 340(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F5** Words in s. 340(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F6** S. 340(3A)(3B) substituted for s. 340(3) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F7** Words in s. 340(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F8** Words in s. 340(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(6\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F9** S. 340(5A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F10** Word in s. 340(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 3\(8\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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**F11** S. 340(8) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 13 para. 3\(9\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

### Information

#### 341 Access to books etc.

- (1) An appointed auditor of, or an appointed actuary acting for, an authorised person—
  - (a) has a right of access at all times to the authorised person’s books, accounts and vouchers; and
  - (b) is entitled to require from the authorised person’s officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary.
- (2) “Appointed” means appointed under or as a result of this Act.

#### Modifications etc. (not altering text)

**C2** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 4](#) (with [reg. 3](#))

#### 342 Information given by auditor or actuary to <sup>F12</sup>a regulator].

- (1) This section applies to a person who is, or has been, an auditor of an authorised person <sup>F13</sup>or recognised investment exchange,] appointed under or as a result of a statutory provision.
- (2) This section also applies to a person who is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision.
- (3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to <sup>F14</sup>a regulator]—
  - (a) information on a matter of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, the authorised person <sup>F15</sup>or recognised investment exchange], or
  - (b) his opinion on such a matter,if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of <sup>F16</sup>that regulator].
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the <sup>F17</sup>regulator].
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to <sup>F18</sup>a regulator] as mentioned in subsection (3).
- (6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to <sup>F18</sup>a regulator] in the circumstances prescribed by the regulations.

<sup>F19</sup>(6A) If the authorised person concerned is a credit institution or an investment firm, and an auditor or actuary communicates a matter to a regulator in accordance with the

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regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.]

- (7) The matters to be communicated to [<sup>F18</sup>a regulator] in accordance with the regulations may include matters relating to persons other than the authorised person [<sup>F20</sup>or recognised investment exchange] concerned.

[<sup>F21</sup>(8) In subsection (6A) “credit institution” and “investment firm” have the same meaning as in Article 4(1) of the capital requirements regulation.]

#### Textual Amendments

- F12** Words in s. 342 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(6\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F13** Words in s. 342(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 342(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F15** Words in s. 342(3) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F16** Words in s. 342(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(3\)\(c\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F17** Word in s. 342(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F18** Words in s. 342 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(6\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F19** S. 342(6A) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\), reg. 1\(2\), Sch. 2 para. 20\(2\)](#)
- F20** Words in s. 342(7) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 4\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F21** S. 342(8) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\), reg. 1\(2\), Sch. 2 para. 20\(3\)](#)

#### Modifications etc. (not altering text)

- C3** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\), regs. 1\(2\)\(c\), 95, Sch. 5 para. 4](#) (with reg. 3)
- C4** S. 342 applied (with modifications) (3.1.2018) by [The Data Reporting Services Regulations 2017 \(S.I. 2017/699\), regs. 1\(2\)\(b\), 34](#)

#### Commencement Information

- I1** S. 342 wholly in force at 1.12.2001; s. 342 not in force at Royal Assent see s. 431(2); s. 342(5) in force at 25.2.2001 by [S.I. 2001/516, art. 2\(a\), Sch. Pt. 1](#); s. 342 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

### 343 Information given by auditor or actuary to [<sup>F22</sup>a regulator]: persons with close links.

- (1) This section applies to a person who—
- is, or has been, an auditor of an authorised person [<sup>F23</sup>or recognised investment exchange,] appointed under or as a result of a statutory provision; and
  - is, or has been, an auditor of a person (“CL”) who has close links with the authorised person [<sup>F24</sup>or recognised investment exchange].

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- (2) This section also applies to a person who—
- (a) is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision; and
  - (b) is, or has been, an actuary acting for a person (“CL”) who has close links with the authorised person.
- (3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to [<sup>F25</sup>a regulator]—
- (a) information on a matter concerning the authorised person [<sup>F26</sup>or recognised investment exchange] of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, CL, or
  - (b) his opinion on such a matter,
- if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of [<sup>F27</sup>that regulator].
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the [<sup>F28</sup>regulator].
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to [<sup>F29</sup>a regulator] as mentioned in subsection (3).
- (6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to [<sup>F29</sup>a regulator] in the circumstances prescribed by the regulations.
- [<sup>F30</sup>(6A) If the authorised person concerned is a credit institution or an investment firm, and an auditor or actuary communicates a matter to a regulator in accordance with the regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.]
- (7) The matters to be communicated to [<sup>F29</sup>a regulator] in accordance with the regulations may include matters relating to persons other than the authorised person [<sup>F31</sup>or recognised investment exchange] concerned.
- (8) CL has close links with the authorised person [<sup>F32</sup>or recognised investment exchange] concerned (“A”) if CL is—
- (a) a parent undertaking of A;
  - (b) a subsidiary undertaking of A;
  - (c) a parent undertaking of a subsidiary undertaking of A; or
  - (d) a subsidiary undertaking of a parent undertaking of A.
- (9) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.
- [<sup>F33</sup>(10) In subsection (6A) “credit institution” and “investment firm” have the same meaning as in Article 4(1) of the capital requirements regulation.]

#### Textual Amendments

- F22** Words in s. 343 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 13 para. 5\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)



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- F23** Words in s. 343(1)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F24** Words in s. 343(1)(b) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F25** Words in s. 343(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F26** Words in s. 343(3) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F27** Words in s. 343(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(3)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F28** Word in s. 343(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F29** Words in s. 343 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(7)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F30** S. 343(6A) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 21(2)**
- F31** Words in s. 343(7) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F32** Words in s. 343(8) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 13 para. 5(6)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F33** S. 343(10) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 21(3)**

#### Modifications etc. (not altering text)

- C5** Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)
- C6** S. 343 applied (with modifications) (3.1.2018) by The Data Reporting Services Regulations 2017 (S.I. 2017/699), regs. 1(2)(b), **34**

#### Commencement Information

- I2** S. 343 wholly in force at 1.12.2001; s. 343 not in force at Royal Assent see s. 431(2); s. 343(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 343 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### 344 Duty of auditor or actuary resigning etc. to give notice.

- (1) This section applies to an auditor or actuary to whom section 342 applies.
- (2) He must without delay notify the [<sup>F34</sup>appropriate regulator] if he—
  - (a) is removed from office by an authorised person [<sup>F35</sup>or recognised investment exchange];
  - (b) resigns before the expiry of his term of office with such a person; or
  - (c) is not re-appointed by such a person.
- (3) If he ceases to be an auditor of, or actuary acting for, such a person, he must without delay notify the [<sup>F34</sup>appropriate regulator]—
  - (a) of any matter connected with his so ceasing which he thinks ought to be drawn to the [<sup>F36</sup>regulator's] attention; or
  - (b) that there is no such matter.

[<sup>F37</sup>(4) In this section “the appropriate regulator” means—



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- (a) in the case of an auditor of, or an actuary acting for, a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.]

#### Textual Amendments

- F34** Words in s. 344 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 6(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F35** Words in s. 344(2)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 6(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F36** Word in s. 344(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 6(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F37** S. 344(4) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 6(5)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C7** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 155(6)(d)** (with [Sch. 2 para. 156](#)))
- C8** S. 344 applied (with modifications) (3.1.2018) by [The Data Reporting Services Regulations 2017 \(S.I. 2017/699\)](#), regs. 1(2)(b), **34**

### <sup>F38</sup>Disciplinary measures

#### Textual Amendments

- F38** Ss. 345-345E and cross-heading substituted for s. 345 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 7(1)** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

### 345 Disciplinary measures: FCA

- (1) Subsection (2) applies if it appears to the FCA that an auditor or actuary to whom section 342 applies—
  - (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the FCA, or
  - (b) has failed to comply with a duty imposed under this Act to communicate information to the FCA.
- (2) The FCA may do one or more of the following—
  - (a) disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person;
  - (b) disqualify the auditor from being the auditor of any recognised investment exchange or any particular class of recognised investment exchange;
  - (c) publish a statement to the effect that it appears to the FCA that the auditor or (as the case may be) actuary has failed to comply with the duty;

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- (d) impose on the auditor or actuary a penalty, payable to the FCA, of such amount as the FCA considers appropriate.
- (3) If an auditor or actuary has been disqualified by the PRA under section 345A(4)(a), the FCA may disqualify the auditor or actuary, so long as the disqualification under that provision remains in force, from being the auditor of, or (as the case may be) from acting as an actuary for—
  - (a) any FCA-authorized person,
  - (b) any particular class of FCA-authorized person,
  - (c) any recognised investment exchange, or
  - (d) any particular class of recognised investment exchange.
- (4) In subsection (3) “FCA-authorized person” means an authorized person who is not a PRA-authorized person.
- (5) Where under subsection (2) or (3) the FCA disqualifies a person from being the auditor of an authorized person or recognised investment exchange or class of authorized person or recognised investment exchange and that authorized person or recognised investment exchange is also, or any person within that class is also, a recognised clearing house [<sup>F39</sup>or a recognised CSD], the FCA must —
  - (a) notify the Bank of England, and
  - (b) notify the disqualified person that it has made a notification under paragraph (a).
- (6) The FCA may remove any disqualification imposed under paragraph (a) or (b) of subsection (2) if satisfied that the disqualified person will in future comply with the duty in question.
- (7) The FCA may at any time remove any disqualification imposed under subsection (3).

#### Textual Amendments

**F39** Words in s. 345(5) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(35)** (with regs. 7(4), 9(1))

#### Modifications etc. (not altering text)

**C9** S. 345 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **14(4)**

### 345A Disciplinary measures: PRA

- (1) The following provisions of this section have effect only if the Treasury, by order made after consultation with the PRA, so provide.
- (2) Subsection (3) applies if it appears to the PRA that an auditor or actuary to whom section 342 applies—
  - (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the PRA, or
  - (b) has failed to comply with a duty imposed under this Act to communicate information to the PRA.
- (3) The PRA may exercise one or more of the specified powers.

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- (4) The specified powers are such one or more of the following as may be specified in the order under subsection (1)—
- (a) to disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any PRA-authorized person or any particular class of PRA-authorized person;
  - (b) to publish a statement to the effect that it appears to the PRA that the auditor or (as the case may be) actuary has failed to comply with the duty;
  - (c) to impose on the auditor or actuary a penalty, payable to the PRA, of such amount as the PRA considers appropriate.
- (5) Where the PRA disqualifies a person under subsection (4)(a) it must—
- (a) notify the FCA, and
  - (b) notify the person concerned that it has made a notification under paragraph (a).
- <sup>F40</sup>(6) .....
- (7) The PRA may remove any disqualification imposed under subsection (4)(a) if satisfied that the disqualified person will in future comply with the duty in question.

#### Textual Amendments

**F40** S. 345A(6) omitted (1.3.2017) by virtue of [Bank of England and Financial Services Act 2016 \(c. 14\)](#), s. 41(3), [Sch. 2 para. 44](#) (with [Sch. 3](#)); S.I. 2017/43, reg. 2(g)

### 345B Procedure and right to refer to Tribunal

- (1) If the FCA proposes to act under section 345(2) or the PRA proposes to act under section 345A(3), it must give the auditor or actuary to whom the action would relate 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.
- (4) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), the auditor or actuary concerned may refer the matter to the Tribunal.

### 345C Duty on publication of statement

After a statement under section 345(2)(c) or 345A(4)(b) is published, the regulator that published it must send a copy of the statement to—

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- (a) the auditor or actuary, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

#### **345D Imposition of penalties on auditors or actuaries: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 345(2)(d), and
  - (b) the amount of penalties under that provision.
- (2) If by virtue of an order under section 345A(1), the PRA has power to impose penalties under section 345A(4)(c), the PRA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 345A(4)(c), and
  - (b) the amount of penalties under that provision.
- (3) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention, and
  - (b) the extent to which the contravention was deliberate or reckless.
- (4) A regulator may at any time alter or replace a statement issued under this section.
- (5) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (7) A statement issued under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (8) In deciding whether to exercise a power under section 345(2)(d) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (9) In deciding whether to exercise a power under section 345A(4)(c) in the case of any particular contravention, the PRA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (10) A regulator may charge a reasonable fee for providing a person with a copy of the statement.

#### **345E Statements of policy: procedure**

- (1) Before a regulator issues a statement under section 345D, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.

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- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.]

### *Offence*

#### **346 Provision of false or misleading information to auditor or actuary.**

- (1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.
- (3) “Appointed” means appointed under or as a result of this Act.

#### **Modifications etc. (not altering text)**

**C10** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 4](#) (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 155\(6\)\(d\)](#) (with Sch. 2 para. 156))

**Status:**

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**Changes to legislation:**

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