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SCHEDULES

SCHEDULE 2

PRUDENTIAL REGULATION OF FCA INVESTMENT FIRMS

PART 1

NEW PART 9C OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

1 In the Financial Services and Markets Act 2000, after Part 9B insert—

“PART 9C

PRUDENTIAL REGULATION OF FCA INVESTMENT FIRMS

Interpretation

FCA investment firms

143A) In this Part, “FCA investment firm” means an investment firm that—

- (a) is an authorised person within the meaning of section 31(1)(a),
- (b) is not for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556), and
- (c) has its registered office or, if it has no registered office, its head office in the United Kingdom.

(2) But the following are not FCA investment firms—

- (a) a person excluded from the definition of “investment firm” in Article 3(1) of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) by paragraph (a) or (b) of that definition;
- (b) an investment firm which has a Part 4A permission to carry on regulated activities as an exempt investment firm within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701).

Other terms used in this Part

143B) In this Part—

“authorised parent undertaking” means a parent undertaking that—

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- (a) is incorporated in the United Kingdom or has its principal place of business in the United Kingdom, and
 - (b) is an authorised person;
 - “on a consolidated basis” means as if all members of an FCA investment firm's group are a single FCA investment firm;
 - “Directive 2013/36/EU UK law” means the law of the United Kingdom which was relied on immediately before IP completion day to implement the capital requirements directive and its implementing measures as it has effect—
 - (a) on IP completion day, in the case of rules made by the FCA or the PRA under this Act, and
 - (b) as amended from time to time, in all other cases;
 - “EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018;
 - “governance arrangements” includes organisational structure, lines of responsibility and internal control mechanisms;
 - “integrity”, in relation to the UK financial system, has the meaning given in section 1D;
 - “investment firm” has the meaning given in Article 4(1)(2) of the capital requirements regulation;
 - “non-authorised parent undertaking” means a parent undertaking that—
 - (a) is incorporated in the United Kingdom or has its principal place of business in the United Kingdom, and
 - (b) is not an authorised person.
- (2) The Treasury may by regulations make provision about the meaning of the following terms for the purposes of this Part—
- “on a consolidated basis”;
 - “group”;
 - “parent undertaking”;
 - “subsidiary undertaking”.
- (3) Regulations under subsection (2) may, among other things, amend, repeal or otherwise modify provisions of this Act.
- (4) In this Part, references to instruments made under the capital requirements regulation include EU tertiary legislation made under that regulation which forms part of retained EU law.

Rules

Duty to make rules applying to FCA investment firms

143(Q) In the exercise of its power to make general rules, the FCA must make rules applying to FCA investment firms which impose the following types of prudential requirements—

- (a) requirements relating to the types and amounts of capital and liquid assets that such firms must hold in order to manage the risks specified in or under subsection (2);

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- (b) requirements relating to the management of risks arising from the strength or extent of such firms' relationships with, or direct exposure to, a single client or group of connected clients;
 - (c) reporting requirements related to requirements described in paragraph (a) or (b);
 - (d) public disclosure requirements related to requirements described in paragraph (a) or (b);
 - (e) requirements in respect of governance arrangements related to the risks specified in or under subsection (2);
 - (f) requirements in respect of remuneration policies and practices related to the risks specified in or under subsection (2).
- (2) The risks referred to in subsection (1)(a), (e) and (f) are—
- (a) the risks to consumers (as defined in section 1G) arising from FCA investment firms,
 - (b) the risks to the integrity of the UK financial system arising from FCA investment firms,
 - (c) the risks to which FCA investment firms are exposed, and
 - (d) any other risks specified by the Treasury by regulations.
- (3) General rules made for the purpose of subsection (1) may, among other things—
- (a) impose requirements to be satisfied on an individual basis or on a consolidated basis;
 - (b) impose requirements relating to the processes for consolidation;
 - (c) make provision relating to transactions between an FCA investment firm and a member of its group, including provision requiring the disclosure of information;
 - (d) provide for exceptions from requirements;
 - (e) make provision by reference to the capital requirements regulation, to an instrument made under the capital requirements regulation or to Directive 2013/36/EU UK law, as amended from time to time.
- (4) General rules made for the purpose of subsection (1) may, despite section 137A(6), include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke a provision of that regulation or such an instrument).

Duty to make rules applying to parent undertakings

- 143D) In the exercise of its power to make general rules, the FCA must make rules applying to authorised parent undertakings of FCA investment firms which impose the following types of prudential requirements—
- (a) requirements relating to the types and amounts of capital and liquid assets that such undertakings must hold in order to manage the risks specified in or under subsection (2);
 - (b) requirements relating to the management of risks arising from the strength or extent of such undertakings' relationships with, or direct exposure to, a single client or group of connected clients;
 - (c) reporting requirements related to requirements described in paragraph (a) or (b);

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- (d) public disclosure requirements related to requirements described in paragraph (a) or (b);
 - (e) requirements in respect of governance arrangements related to the risks specified in or under subsection (2);
 - (f) requirements in respect of remuneration policies and practices related to the risks specified in or under subsection (2).
- (2) The risks referred to in subsection (1)(a), (e) and (f) are—
- (a) the risks to consumers (as defined in section 1G) arising from FCA investment firms, from parent undertakings of FCA investment firms and from FCA investment firms belonging to groups,
 - (b) the risks to the integrity of the UK financial system arising from FCA investment firms, from parent undertakings of FCA investment firms and from FCA investment firms belonging to groups,
 - (c) the risks to which FCA investment firms are exposed by virtue of their relationship with their parent undertaking, and
 - (d) any other risks specified by the Treasury by regulations.
- (3) The FCA must make rules applying to non-authorised parent undertakings of FCA investment firms which impose requirements described in subsection (1), where such rules appear to it to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (4) Rules made for the purpose of subsection (1) or under subsection (3) may, among other things—
- (a) impose requirements to be satisfied on an individual basis or on a consolidated basis;
 - (b) impose requirements relating to the processes for consolidation;
 - (c) make provision relating to transactions between a parent undertaking of an FCA investment firm and a member of its group, including provision requiring the disclosure of information;
 - (d) provide for exceptions from requirements;
 - (e) make provision by reference to the capital requirements regulation, to an instrument made under the capital requirements regulation or to Directive 2013/36/EU UK law, as amended from time to time.
- (5) Section 137A(6) and (7) (restriction on modifying etc retained direct EU legislation) apply to rules made by the FCA under subsection (3) as they apply to general rules made by the FCA.
- (6) Rules made for the purpose of subsection (1) or under subsection (3) may, despite section 137A(6), include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke a provision of that regulation or such an instrument).
- (7) Section 137H (rules about remuneration) applies where the FCA makes rules under subsection (3) prohibiting persons, or persons of a specified description, from being remunerated in a specified way as it applies where the FCA makes general rules imposing such a prohibition.
- (8) Section 137I (Treasury direction to consider compliance with remuneration policies) applies where the FCA makes rules under subsection (3) requiring

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non-authorised parent undertakings, or non-authorised parent undertakings of a specified description, to act in accordance with a remuneration policy as it applies where the FCA makes general rules imposing such requirements on authorised persons, but as if—

- (a) the references in that section to authorised persons were references to non-authorised parent undertakings of FCA investment firms, and
 - (b) subsection (7) of that section were omitted.
- (9) Section 141A (power to make consequential amendments of references to rules etc) applies to the exercise by the FCA of its power to make, alter or revoke rules under subsection (3) as it applies in relation to the exercise by the FCA of its power to make, alter or revoke rules under Part 9A.
- (10) This section is subject to section 143E.

Powers to make rules applying to parent undertakings

143E) Subsections (1) and (3) of section 143D do not require the FCA to make rules applying to parent undertakings of FCA investment firms which belong to a group which includes a relevant body, but the FCA may make rules described in those subsections applying to such parent undertakings.

- (2) In subsection (1), “relevant body” means—
- (a) an undertaking (as defined in section 1161(1) of the Companies Act 2006) that has its head office in the United Kingdom and that has permission under Part 4A to accept deposits, other than—
 - (i) an undertaking that also has permission under Part 4A to effect or carry out contracts of insurance, or
 - (ii) a credit union within the meaning of section 1 of the Credit Unions Act 1979;
 - (b) an investment firm that is for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556).
- (3) The FCA may make rules applying to parent undertakings of FCA investment firms which impose requirements for the disclosure of information about such undertakings' branches and subsidiary undertakings outside the United Kingdom.
- (4) The FCA's powers to make rules under subsections (1) and (3) are powers to do so—
- (a) in relation to authorised parent undertakings, in exercise of its power to make general rules, and
 - (b) in relation to non-authorised parent undertakings, where such rules appear to it to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (5) Section 143D(4) and (6) apply in relation to rules made by the FCA in exercise of the powers conferred by, or described in, this section as they apply in relation to rules made in the performance of the FCA's duties under that section.

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- (6) Section 143D(5), (7), (8) and (9) apply in relation to rules made under this section applying to non-authorised parent undertakings as they apply in relation to rules made under section 143D(3).

Part 9C rules

- 143(F) In this Act, “Part 9C rules” means rules made, or to be made, by the FCA—
- (a) in the performance of its duties under section 143C or 143D, or
 - (b) in exercise of the powers conferred by, or described in, section 143E.
- (2) The FCA must publish a list of all Part 9C rules in force in the way appearing to the FCA to be best calculated to bring it to the attention of people likely to be affected by the rules.
- (3) The FCA's opinion as to whether a rule is a Part 9C rule is conclusive for all purposes.

Matters to consider when making Part 9C rules

- 143(G) When making Part 9C rules, the FCA must, among other things, have regard to—
- (a) any relevant standards set by an international standard-setting body,
 - (b) the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active investment firms to be based or to carry on activities,
 - (c) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and
 - (d) any other matter specified by the Treasury by regulations.
- (2) For the purposes of subsection (1)(b), the FCA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active investment firms are most likely to choose to be based or carry on activities.
- (3) When making Part 9C rules, the FCA must consider, and consult the Treasury about, the likely effect of the rules on relevant equivalence decisions.
- (4) For the purpose of this section, an equivalence decision is “relevant” if the Treasury have, by notice in writing, informed the FCA that it is relevant for that purpose.
- (5) In this section—
- “equivalence decision” means a decision as to whether the law and practice of one country or territory is equivalent to the law and practice of another country or territory, either generally or as it relates to a particular matter;
- “territory” includes the European Union and any other international organisation or authority comprising countries or territories.
- (6) This section is subject to section 143I.

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Explanation to accompany consultation on rules

- 143H) A draft of proposed Part 9C rules published in accordance with section 138I(1)(b) must be accompanied by—
- (a) an explanation of the provision that the FCA has considered it appropriate to include in the rules given the risks specified in or under section 143C(2) or 143D(2), and
 - (b) an explanation of the ways in which having regard to the matters specified in or under section 143G(1) has affected the proposed rules,
- (as well as being accompanied by the information listed in section 138I(2)).
- (2) If the FCA makes the proposed Part 9C rules, it must publish—
- (a) a summary of the purpose of the proposed rules, and
 - (b) explanations complying with subsection (1),
- (as well as the information required by section 138I(4) and (5)).
- (3) This section is subject to section 143I.

Exceptions from sections 143G and 143H

- 143I) Sections 143G and 143H do not apply where the FCA makes Part 9C rules—
- (a) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
 - (b) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the FCA's functions).
- (2) Section 143H does not apply in relation to Part 9C rules if the FCA considers that the delay involved in complying with that section would be prejudicial to the interests of consumers (as defined in section 425A).
- (3) If the FCA proposes Part 9C rules that change existing Part 9C rules and the changes consist of or include changes which, in the FCA's opinion, are not material—
- (a) the explanations described in section 143H(1) are not required in relation to the rules to the extent that they make those changes, but
 - (b) the draft of the rules must be accompanied by a statement of the FCA's opinion.
- (4) If the FCA makes Part 9C rules that change existing Part 9C rules and the changes consist of or include changes which, in the FCA's opinion, are not material—
- (a) the summary and explanations described in section 143H(2) are not required in relation to the rules to the extent that they make those changes, but
 - (b) the FCA must publish a statement of its opinion.
- (5) For the purposes of this section, whether a change to Part 9C rules is material is to be determined by the FCA by reference to, among other things, the risks

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specified in or under section 143C(2) or 143D(2) and the matters specified in or under section 143G(1).

Requirement to have UK parent undertaking

Requirement to have UK parent undertaking

143J) This section applies where—

- (a) two or more FCA investment firms are subsidiary undertakings of the same parent undertaking,
- (b) the parent undertaking's head office is in a country or territory outside the United Kingdom, and
- (c) in the FCA's opinion, the law and practice in the other country or territory does not impose requirements on the parent undertaking which have equivalent effect to requirements imposed by Part 9C rules.

- (2) Where this section applies, the FCA may exercise its power under section 55L(3) to impose a requirement on the FCA investment firms to secure that a parent undertaking with its head office in the United Kingdom is established.

Imposition of requirements on non-authorised parent undertakings

Imposition of requirements on non-authorised parent undertakings

143K) The FCA may, on the application of a non-authorised parent undertaking of an FCA investment firm—

- (a) impose a requirement on the parent undertaking,
- (b) vary a requirement imposed on the parent undertaking under this section, or
- (c) cancel such a requirement.

- (2) The FCA may exercise its power under subsection (3) in relation to a non-authorised parent undertaking of an FCA investment firm if it appears to the FCA that—

- (a) it is necessary or expedient to do so in order to manage risks specified in or under section 143D(2), and
- (b) it is desirable to do so in order to advance one or more of its operational objectives.

- (3) The FCA's power under this subsection is a power—

- (a) to impose a requirement,
- (b) to vary a requirement imposed under this section, or
- (c) to cancel such a requirement.

- (4) The FCA may refuse an application under subsection (1) if it appears to the FCA that it is desirable to do so in order to advance one or more of the FCA's operational objectives.

- (5) A requirement may, in particular, be imposed under this section—

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- (a) so as to require the parent undertaking to take specified action, or
 - (b) so as to require the parent undertaking to refrain from taking specified action.
- (6) A requirement may be imposed by reference to the parent undertaking's relationship with—
- (a) its group, or
 - (b) other members of its group.
- (7) A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).
- (8) A requirement may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the FCA's power to impose a new requirement.
- (9) A requirement ceases to be in force if the person on whom it is imposed ceases to be a non-authorised parent undertaking of an FCA investment firm.
- (10) For the purposes of a provision of this section which refers to the FCA's operational objectives, in relation to the exercise of a power in relation to a particular parent undertaking, it does not matter whether there is a relationship between the parent undertaking and the persons whose interests will be protected by the exercise of the power.

Applications under section 143K

- 143L) An application under section 143K(1) for the imposition or variation of a requirement must contain a statement of the desired requirement or variation.
- (2) An application under section 143K(1)—
- (a) must be made in such manner as the FCA may direct, and
 - (b) must contain, or be accompanied by, such other information as the FCA may reasonably require.
- (3) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as the FCA reasonably considers necessary to enable it to determine the application.
- (4) The FCA may require an applicant to provide information which the applicant is required to provide the FCA under this section in such form, or to verify it in such a way, as the FCA may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Determination of applications under section 143K

- 143M) The FCA must determine an application under section 143K(1)—
- (a) if the application is complete, before the end of the period of six months beginning with the day on which the FCA received the application, or

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- (b) if the application is incomplete, before the end of the period of 12 months beginning with the day on which the FCA received the application.
- (2) The applicant may withdraw the application, by giving the FCA a written notice, at any time before the FCA determines it.
- (3) If the FCA grants an application under section 143K(1), it must give the applicant a written notice.
- (4) The notice must state the date from which the requirement or variation has effect.

Refusal of applications under section 143K

- 143N) If the FCA proposes to refuse an application under section 143K(1), it must give the applicant a warning notice.
- (2) If the FCA decides to refuse an application under section 143K(1), it must give the applicant a decision notice.

Exercise of own-initiative power under section 143K

- 143O) The imposition or variation of a requirement by the FCA under section 143K(2) takes effect—
 - (a) immediately, if the notice given under subsection (3) states that is the case,
 - (b) on such date as may be specified in the notice, or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (2) The imposition or variation of the requirement may be expressed to take effect immediately, or on a specified date, only if the FCA reasonably considers that it is necessary for it to take effect immediately or on that date, having regard to the ground on which it is exercising its power under section 143K(2).
- (3) If the FCA—
 - (a) proposes to exercise its power under section 143K(2) so as to impose a requirement on a parent undertaking or to vary a requirement imposed on a parent undertaking, or
 - (b) exercises that power so as to impose a requirement on a parent undertaking, or to vary a requirement imposed on a parent undertaking, with immediate effect,
 it must give the parent undertaking a written notice.
- (4) The notice must—
 - (a) give details of the requirement or its variation,
 - (b) state the FCA's reasons for imposing or varying the requirement,
 - (c) inform the parent undertaking that it may make representations to the FCA within the period specified in the notice (whether or not the parent undertaking has referred the matter to the Tribunal),

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- (d) inform the parent undertaking of when the imposition or variation of the requirement takes effect, and
 - (e) inform the parent undertaking of its right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the parent undertaking, the FCA decides—
 - (a) to impose the requirement or vary the requirement in the way proposed, or
 - (b) if the requirement has been imposed or varied, not to rescind its imposition or variation,it must give the parent undertaking a written notice.
- (7) A notice under subsection (6) must inform the parent undertaking of its right to refer the matter to the Tribunal.
- (8) If, having considered any representations made by the parent undertaking, the FCA decides—
 - (a) not to impose the requirement or vary the requirement in the way proposed,
 - (b) to impose a different requirement or vary the requirement in a different way, or
 - (c) to rescind a requirement or variation which has effect,it must give the parent undertaking a written notice.
- (9) A notice under subsection (8)(b) must comply with subsection (4).
- (10) If a notice under this section informs a person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure for such a reference.
- (11) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Right to refer matters to the Tribunal

- 143(P) An applicant who is aggrieved by the determination of an application under section 143K(1) may refer the matter to the Tribunal.
- (2) A parent undertaking aggrieved by the exercise by the FCA of its power under section 143K(2) to impose a requirement on the parent undertaking, or vary a requirement imposed on the parent undertaking, may refer the matter to the Tribunal.

Assets requirements

- 143(Q) This section makes provision about a requirement imposed on a non-authorised parent undertaking of an FCA investment firm (“N”) under section 143K—

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- (a) prohibiting the disposal of, or other dealing with, any of N's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
 - (b) requiring that some or all of N's assets, or some or all assets belonging to consumers (as defined in section 1G) but held by N or to N's order, must be transferred to and held by a trustee approved by the FCA.
- (2) If the FCA—
- (a) imposes a requirement described in subsection (1)(a), and
 - (b) gives notice of the requirement to an institution with whom N keeps an account,
- the notice has the effects set out in subsection (3).
- (3) Those effects are that—
- (a) the institution does not act in breach of a contract with N if, having been instructed by N (or on N's behalf) to transfer a sum or otherwise make a payment out of N's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
 - (b) if the institution complies with such an instruction, it is liable to pay to the FCA an amount equal to the amount transferred from, or otherwise paid out of, N's account in contravention of the requirement.
- (4) If the FCA imposes a requirement described in subsection (1)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the FCA.
- (5) If, while a requirement described in subsection (1)(b) is in force, N creates a charge over any assets of N held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and N's creditors.
- (6) Assets held by a person as trustee are to be taken to be held by the trustee in accordance with a requirement mentioned in subsection (1)(b) only if—
- (a) N has given the trustee a written notice that those assets are to be held by the trustee in accordance with the requirement, or
 - (b) they are assets into which assets to which paragraph (a) applies have been transposed by the trustee on the instruction of N.
- (7) A person who contravenes subsection (4) commits an offence and is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (8) In this section, references to imposing a requirement (however expressed) include imposing a requirement by varying an existing requirement.
- (9) In this paragraph, “charge” includes a mortgage (or, in Scotland, a security over property).

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- (10) Subsections (4) and (6) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement described in subsection (1)(b).

Control of managers etc of non-authorised parent undertakings

Managers of non-authorised parent undertakings

- 143R A non-authorised parent undertaking of an FCA investment firm must take reasonable care to ensure that members of its management body—
- (a) are of sufficiently good repute, and
 - (b) possess sufficient knowledge, skills and experience to perform their duties effectively.

Part 9C prohibition orders

- 143S(1) Subsection (2) applies where it appears to the FCA that an individual—
- (a) is not of sufficiently good repute, or
 - (b) does not possess sufficient knowledge, skills and experience,
- to perform a function in relation to an activity carried on by a non-authorised parent undertaking of an FCA investment firm.
- (2) The FCA may make an order (“a Part 9C prohibition order”) prohibiting the individual from performing the function.
- (3) A Part 9C prohibition order may relate to—
- (a) all functions in relation to an activity carried on by a non-authorised parent undertaking of an FCA investment firm, or
 - (b) a function specified in the order or of a description specified in the order.
- (4) A Part 9C prohibition order may relate to—
- (a) all activities of a non-authorised parent undertaking of an FCA investment firm, or
 - (b) an activity specified in the order or of a description specified in the order.
- (5) A Part 9C prohibition order may relate to—
- (a) all non-authorised parent undertakings of FCA investment firms, or
 - (b) an undertaking specified, or within a description specified, in the order.
- (6) A non-authorised parent undertaking of an FCA investment firm must take reasonable care to ensure that none of its functions is performed by a person who is prohibited from performing that function by a Part 9C prohibition order.

Procedure for making a Part 9C prohibition order

- 143T(1) If the FCA proposes to make a Part 9C prohibition order it must give the individual to whom the order would apply a warning notice.

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- (2) The warning notice must set out the terms of the prohibition.
- (3) If the FCA decides to make a Part 9C prohibition order it must give the individual to whom the order applies a decision notice.
- (4) The decision notice must—
 - (a) name the individual to whom the Part 9C prohibition order applies, and
 - (b) set out the terms of the order.
- (5) If the FCA decides to make a Part 9C prohibition order, the individual to whom the order applies may refer the matter to the Tribunal.

Varying and withdrawing a Part 9C prohibition order

- 143U) The FCA may vary or revoke a Part 9C prohibition order on the application of the individual named in the order.
- (2) On an application for the variation or revocation of a Part 9C prohibition order—
 - (a) if the FCA decides to grant the application, it must give the applicant written notice of its decision,
 - (b) if the FCA proposes to refuse the application, it must give the applicant a warning notice, and
 - (c) if the FCA decides to refuse the application, it must give the applicant a decision notice.
 - (3) If the FCA gives the applicant a decision notice under subsection (2)(c), the applicant may refer the matter to the Tribunal.

Offence of breaching a Part 9C prohibition order

- 143V) An individual who performs a function, or agrees to perform a function, in breach of a Part 9C prohibition order commits an offence.
- (2) An individual who commits an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine, and
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
 - (3) In proceedings for an offence under this section, it is a defence for the individual to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Disciplinary measures for non-authorised parent undertakings

Disciplinary measures

- 143W) This section applies if the FCA is satisfied that a non-authorised parent undertaking of an FCA investment firm has contravened—
- (a) a provision of Part 9C rules,
 - (b) a requirement imposed under section 143K,

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- (c) section 143R, or
 - (d) section 143S(6).
- (2) The FCA may impose a penalty of such amount as it considers appropriate on any of the following—
 - (a) the non-authorised parent undertaking;
 - (b) a person who was knowingly concerned in the contravention.
- (3) The FCA may (instead of or in addition to imposing a penalty under subsection (2)) publish a statement to the effect that the person has contravened, or been knowingly concerned in a contravention of, a provision of Part 9C rules.
- (4) Subsection (5) applies to—
 - (a) a member of the management body of the non-authorised parent undertaking, or
 - (b) a person not falling within paragraph (a) who is an employee of the non-authorised parent undertaking,who was, at any time, knowingly concerned in the contravention.
- (5) The FCA may impose, for such period as it considers appropriate, restrictions (including a ban) on the exercise by the person of functions of an FCA investment firm or a parent undertaking of an FCA investment firm.
- (6) The FCA may—
 - (a) vary a restriction imposed under subsection (5) so as to reduce the period for which it has effect or otherwise to limit its effect, or
 - (b) cancel the restriction.
- (7) The FCA may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 143X.
- (8) In subsection (7), “the limitation period” means the period of six years beginning with the first day on which the FCA knew of the contravention.
- (9) For the purpose of subsection (8), the FCA is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.
- (10) In this section, “management body” means the board of directors or, if there is no such board, the equivalent body responsible for the management of the undertaking concerned.
- (11) The reference in subsection (4) to an employee of a person (“P”) includes a person who—
 - (a) personally provides, or is under an obligation personally to provide, services to P under an arrangement made between P and the person providing the services or another person, and
 - (b) is subject to (or to the right of) supervision, direction or control by P as to the manner in which those services are provided.

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Procedure for disciplinary measures

- 143~~X~~1) If the FCA proposes to take action against a person under section 143W(2), (3) or (5) it must give the person 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) A warning notice about a proposal to impose a restriction under section 143W(5) must state—
 - (a) the terms of the restriction, and
 - (b) the period for which the restriction is to have effect.
 - (5) If the FCA decides to take action against a person under section 143W(2), (3) or (5) it must give the person a decision notice.
 - (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
 - (7) A decision notice about the publication of a statement must state the terms of the statement.
 - (8) After the statement 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 was given under section 393(4).
 - (9) A decision notice about the imposition of a restriction under section 143W(5) must state—
 - (a) the terms of the restriction, and
 - (b) the period for which the restriction is to have effect.
 - (10) If the FCA decides to take action against a person under section 143W(2), (3) or (5), the person may refer the matter to the Tribunal.
 - (11) If the FCA decides to vary or cancel a restriction under section 143W(6), it must give written notice of its decision to the applicant.

Statement of policy for penalties under section 143W

- 143~~X~~1) The FCA must prepare and issue a statement of policy with respect to—
- (a) the imposition of penalties under section 143W, and
 - (b) the amount of penalties under that section.
- (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,
 - (b) the extent to which the contravention was deliberate or reckless, and
 - (c) whether the person on whom the penalty is to be imposed is an individual.

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- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, a power under section 143W(2) in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.
- (6) A statement under this section 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 must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) The FCA may charge a reasonable fee for providing a person with a copy of a statement published under this section.

Procedure for statement of policy

- 143~~Z~~1) Before issuing a statement of policy under section 143Y, 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 notice that representations about the proposal may be made to the FCA within a specified time.
 - (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
 - (4) If the FCA 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 FCA's opinion, significant, the FCA must publish details of the difference (in addition to complying with subsection (4)).
 - (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
 - (7) This section also applies to a proposal to alter or replace a statement.”

Commencement Information

II Sch. 2 para. 1 in force at 1.7.2021 by S.I. 2021/671, reg. 4(b)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)