

## SCHEDULE

Regulation 5

Reporting of actual or potential contraventions of the market abuse regulation to the FCA

### Interpretation

1. In this Schedule—

“dedicated communication channels” has the meaning given by paragraph 5;

“FCA dedicated staff members” has the meaning given by paragraph 2;

“reported person” means a person who is accused of having committed, or of intending to commit, a contravention of the market abuse regulation by a reporting person;

“reporting person” means a person reporting an actual or potential contravention of the market abuse regulation to the FCA; and

“report of a contravention” means a report submitted by the reporting person to the FCA regarding an actual or potential contravention of the market abuse regulation <sup>M1</sup>.

#### Marginal Citations

M1 OJ No L 173, 14.04.2014, p31.

### FCA dedicated staff members

2.—(1) The FCA must have staff members dedicated to handling reports of contraventions (“FCA dedicated staff members”).

(2) FCA dedicated staff members must be trained for the purposes of handling reports of contraventions.

(3) FCA dedicated staff members must exercise the following functions—

- (a) providing any interested person with information on the procedures for making reports of contraventions;
- (b) receiving and following up reports of contraventions; and
- (c) where the reporting person has provided contact details, maintaining contact with that person except where the reporting person has explicitly requested otherwise or the FCA reasonably believes that maintaining contact would jeopardise the protection of the reporting person's identity.

### Information regarding the receipt of reports of contraventions and their follow up

3.—(1) The FCA must publish on its website in a separate, easily identifiable and accessible section the information regarding the receipt of reports of contraventions set out in sub-paragraph (2).

(2) The information is—

- (a) the dedicated communication channels established by the FCA for the purposes of paragraph 5, including—
  - (i) the telephone numbers, indicating whether conversations are recorded or unrecorded when using those telephone lines; and
  - (ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact FCA dedicated staff members;
- (b) the procedures applicable to reports of contraventions referred to in paragraph 4;

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- (c) the confidentiality regime applicable to reports of contraventions in accordance with the procedures applicable to reports of contraventions referred to in paragraph 4;
- (d) the procedures for the protection of persons working under a contract of employment; and
- (e) a statement clearly explaining that persons making information available to the FCA in accordance with the market abuse regulation are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and do not incur liability of any kind related to such disclosure.

### Procedures applicable to reports of contraventions

4.—(1) The procedures applicable to reports of contraventions referred to in paragraph 3(2)(b) (information regarding the receipt of reports of contraventions and their follow up) must clearly indicate all of the following information—

- (a) that reports of contraventions can be submitted anonymously;
- (b) the manner in which the FCA may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person;
- (c) the type, content and timeframe of the response about the outcome of the report of the contravention that the reporting person can expect after the reporting;
- (d) the confidentiality regime applicable to reports of contraventions, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed in accordance with Articles 27 (professional secrecy), 28 (data protection) and 29 (disclosure of personal data to third countries) of the market abuse regulation.

(2) The detailed description referred to in sub-paragraph (1)(d) must set out the exceptional cases in which confidentiality of data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required by <sup>F1</sup>... the law of the United Kingdom—

- (a) in the context of investigations or subsequent judicial proceedings; or
- (b) to safeguard the freedoms of others, including the right of defence of the reported person; in each case subject to appropriate safeguards under such laws.

#### Textual Amendments

**F1** Words in Sch. para. 4(2) omitted (31.12.2020) by virtue of [The Market Abuse \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/310\)](#), regs. 1(3), 7(7)(a); 2020 c. 1, Sch. 5 para. 1(1)

### Dedicated communication channels

5.—(1) The FCA must establish independent and autonomous communication channels, which are both secure and ensure confidentiality, for receiving and following up reports of contraventions of the market abuse regulation (“dedicated communication channels”).

(2) Dedicated communication channels are considered independent and autonomous provided that they meet all the following criteria—

- (a) they are separated from general communication channels of the FCA, including those through which the FCA communicates internally and with third parties in its ordinary course of business;

- (b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access by non-authorised staff members of the FCA; and
  - (c) they enable the storage of durable information in accordance with paragraph 6 to allow for further investigations.
- (3) The dedicated communication channels must allow a report of a contravention to be made in one or more of the following ways—
- (a) a written report of a contravention in electronic or paper format;
  - (b) an oral report of a contravention through telephone lines, whether recorded or unrecorded; or
  - (c) physical meeting with FCA dedicated staff members.
- (4) The FCA must provide the information referred to in paragraph 3(2) to the reporting person before or immediately on receipt of the report of a contravention, unless the FCA reasonably believes that providing that information would jeopardise the protection of the reporting person's identity.
- (5) The FCA must ensure that a report of a contravention received by means other than dedicated communication channels is promptly forwarded without modification to FCA dedicated staff members using the dedicated communication channels.

#### **Record-keeping of reports received**

- 6.—(1) The FCA must keep records of every report of a contravention received.
- (2) The FCA must promptly acknowledge the receipt of a written report of a contravention to the postal or electronic address indicated by the reporting person, unless the reporting person has explicitly requested otherwise, or the FCA reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.
- (3) Where a recorded telephone line is used to make a report of a contravention, the FCA may document the oral reporting in the form of—
- (a) an audio recording of the conversation in a durable and retrievable form; or
  - (b) a complete and accurate transcript of the conversation prepared by FCA dedicated staff members.
- (4) If the FCA prepares a transcript of a report of a contravention for the purposes of sub-paragraph (3)(b) and the reporting person has disclosed his or her identity to the FCA, the FCA must give the reporting person the opportunity to check, rectify and agree the transcript by signing it.
- (5) Where an unrecorded telephone line is used to make a report of a contravention, the FCA may document the oral reporting in the form of accurate minutes of the conversation prepared by FCA dedicated staff members.
- (6) If the FCA prepares minutes of a report of a contravention for the purposes of sub-paragraph (5) and the reporting person has disclosed his or her identity to the FCA, the FCA must give the reporting person the opportunity to check, rectify and agree the minutes of the call by signing them.
- (7) Where a person requests a physical meeting with FCA dedicated staff members to make a report of a contravention under paragraph 5(3)(c) the FCA must ensure that complete and accurate records of the meeting are kept in a durable and retrievable form.
- (8) The FCA may document the records of the physical meeting referred to in sub-paragraph (7) in the form of—
- (a) an audio recording of the conversation in a durable and retrievable form; or
  - (b) accurate minutes of the meeting prepared by the FCA dedicated staff members.

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(9) If the FCA prepares minutes of a report of a contravention for the purposes of paragraph (8)(b) and the reporting person has disclosed his or her identity to the FCA, the FCA must give the reporting person the opportunity to check, rectify and agree the minutes of the meeting by signing them.

### **Protection of persons working under a contract of employment**

7.—(1) The FCA must provide reporting persons with access to comprehensive information and advice on the remedies and procedures available under the law of the United Kingdom to protect them against unfair treatment.

(2) The information and advice referred to in sub-paragraph (1) must include information and advice on any relevant procedures under the law of the United Kingdom to claim damages or compensation for unfair treatment.

### **Review of the procedures by FCA**

8.—(1) The FCA must review its procedures for receiving and following up reports of contraventions regularly, and in any event at least once every two years.

(2) In reviewing its procedures the FCA must take account of its experience <sup>F2</sup>... and adapt its procedures accordingly and in line with market and technological developments.

#### **Textual Amendments**

**F2** Words in Sch. para. 8(2) omitted (31.12.2020) by virtue of [The Market Abuse \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/310\)](#), regs. 1(3), [7\(7\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

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