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STATUTORY INSTRUMENTS

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**2017 No. 692**

The Money Laundering, Terrorist Financing and Transfer  
of Funds (Information on the Payer) Regulations 2017

PART 6

Money Laundering and Terrorist Financing: Supervision and Registration

CHAPTER 1

Duties of supervisory authorities

**Duties of supervisory authorities**

**46.**—(1) A supervisory authority must effectively monitor the relevant persons for which it is the supervisory authority (“its own sector”) and take necessary measures for the purpose of securing compliance by such persons with the requirements of these Regulations.

(2) Each supervisory authority must—

- (a) adopt a risk-based approach to the exercise of its supervisory functions, informed by the risk assessments carried out by the authority under regulation 17;
- (b) ensure that its employees and officers have access both at its offices and elsewhere to relevant information on the domestic and international risks of money laundering and terrorist financing which affect its own sector;
- (c) base the frequency and intensity of its on-site and off-site supervision on the risk profiles prepared under regulation 17(4);
- (d) keep a record in writing of the actions it has taken in the course of its supervision, and of its reasons for deciding not to act in a particular case;
- (e) take effective measures to encourage its own sector to report breaches of the provisions of these Regulations to it.

(3) In determining its approach to the exercise of its supervisory functions the supervisory authority must—

- (a) take account of any guidelines issued by the European Supervisory Authorities under Articles 17, 18.4 and 48.10 of the fourth money laundering directive;
- (b) take account of the degree of discretion permitted to relevant persons in taking measures to counter money laundering and terrorist financing.

(4) In accordance with its risk-based approach, the supervisory authority must take appropriate measures to review—

- (a) the risk assessments carried out by relevant persons under regulation 18;
- (b) the adequacy of the policies, controls and procedures adopted by relevant persons under regulation 19 to 21 and 24, and the way in which those policies, controls and procedures have been implemented.

(5) A supervisory authority which, in the course of carrying out any of its supervisory functions or otherwise, knows or suspects, or has reasonable grounds for knowing or suspecting, that a person is or has engaged in money laundering or terrorist financing must as soon as practicable inform the NCA.

(6) A disclosure made under paragraph (5) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(7) Where a disclosure under paragraph (5) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

(8) The FCA, when carrying out its supervisory functions in relation to an auction platform—

(a) must effectively monitor the auction platform’s compliance with—

(i) the customer due diligence requirements of Articles 19 and 20.6 of the emission allowance auctioning regulation;

(ii) the monitoring and record-keeping requirements of Article 54 of that regulation; and

(iii) the notification requirements of Article 55.2 and 55.3 of that regulation; and

(b) may monitor the auction platform’s compliance with regulations 18 to 21 and 24 of these Regulations.

(9) The functions of the FCA under these Regulations shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1ZA to FSMA(1) (the Financial Conduct Authority) as functions conferred on the FCA under that Act.

#### **Duties of supervisory authorities: information**

**47.—**(1) A supervisory authority must, in any way it considers appropriate, make up-to-date information on money laundering and terrorist financing available to those relevant persons which it supervises (“its own sector”).

(2) The information referred to in paragraph (1) must include the following—

(a) information on the money laundering and terrorist financing practices considered by the supervisory authority to apply to its own sector;

(b) a description of indications which may suggest that a transfer of criminal funds is taking place in its own sector;

(c) a description of the circumstances in which the supervisory authority considers that there is a high risk of money laundering or terrorist financing.

(3) The information referred to in paragraph (1) must also include information from the following sources which the supervisory authority considers is relevant to its own sector—

(a) reports drawn up by the European Commission under Article 6.1 of the fourth money laundering directive;

(b) recommendations made by the European Commission under Article 6.4 of that directive (unless the Treasury and the Home Office notify the supervisory authority that a recommendation will not be followed);

(c) joint opinions issued by the European Supervisory Authorities under Article 6.5 of that directive;

(d) high-risk third countries identified in delegated acts adopted by the European Commission under Article 9.2 of the fourth money laundering directive;

(1) 2000 c 8. Schedule 1ZA was substituted, with Schedule 1ZB, for Schedule 1 to the Financial Services and Markets Act by section 6(2) of the Financial Services Act 2012 (c.21), and amended by paragraphs 14 and 16 of Schedule 3 and paragraph 7 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33), paragraph 13 of Schedule 3 to the Pension Scheme Act 2015 (c.8), section 18 of the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2013/1388.

- (e) guidelines issued by the European Supervisory Authorities under Articles 17, 18.4, or 48.10 of that directive;
- (f) the report prepared by the Treasury and the Home Office under regulation 16(6);
- (g) any relevant information made available by the Treasury and the Home Office under regulation 16(8);
- (h) any relevant information published by the Director General of the NCA under section 4(9) (operations) or 6 (duty to publish information) of the Crime and Courts Act 2013(2).

### **Duties of the FCA: guidance on politically exposed persons**

**48.**—(1) The FCA must give guidance under section 139A of FSMA (power of the FCA to give guidance)(3) to relevant persons, who are subject to rules made by the FCA, in relation to the enhanced customer due diligence measures required under regulation 35 in respect of politically exposed persons (“PEPs”), their family members and known close associates (within the meanings given in regulation 35(12)).

(2) The guidance referred to in paragraph (1) must include guidance on the following matters—

- (a) taking into account regulation 35(14), what functions are, and are not, to be taken to be “prominent public functions” for the purposes of determining whether an individual is a PEP;
- (b) which persons should be treated as coming within the definitions of—
  - (i) a family member of a PEP; or
  - (ii) a known close associate of a PEP;
- (c) what constitutes “appropriate risk-management systems and procedures” for the purposes of regulation 35(1);
- (d) what account is to be taken of the jurisdiction in which the prominent public function arises (taking into consideration the controls against money-laundering and terrorist financing in different jurisdictions);
- (e) how the level of risk associated with a particular individual is to be assessed for the purposes of regulation 35(3), and what approach is to be taken in relation to a PEP, or a family member or known close associate of a PEP, if the PEP, family member or close associate is assessed as presenting a low level of risk;
- (f) who should be treated as coming within the meaning of “senior management” for the purposes of regulation 35(5) and (8);
- (g) the situations in which it would be appropriate for the senior management approval mentioned in regulation 35(5) to be given by an individual who is not a member of the board of directors (or, if there is no such board, a member of the equivalent management body) of a business;
- (h) what constitutes “adequate measures” and “reasonable measures” for the purposes of paragraphs (5) and (6) respectively of regulation 35;
- (i) the extent to which information on public registers may be taken into account for the purposes of regulation 35(5) and (6);
- (j) what sort of monitoring and scrutiny is required for the purposes of regulation 35(5) and (8);

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(2) 2013 c.22.

(3) 2000 c.8. Section 139A was substituted (together with the rest of Part 9A of FSMA) for the original Part 10 by section 24 of the Financial Services Act 2012 (c.21).

- (k) what measures are required in relation to persons who have ceased to be PEPs to comply with regulation 35(9); and
- (l) how to address risks of money laundering or terrorist financing where a PEP, a family member of a PEP or a known close associate of a PEP, is—
  - (i) the beneficial owner of a customer;
  - (ii) a beneficiary of a contract of long-term insurance;
  - (iii) the beneficial owner of a beneficiary of a contract of long-term insurance.

### **Duties of self-regulatory organisations**

- 49.**—(1) Self-regulatory organisations must make arrangements to ensure that—
- (a) their supervisory functions are exercised independently of any of their other functions which do not relate to disciplinary matters;
  - (b) sensitive information relating to the supervisory functions is appropriately handled within the organisation;
  - (c) they employ only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions;
  - (d) contravention of a relevant requirement by a relevant person they are responsible for supervising renders that person liable to effective, proportionate and dissuasive disciplinary measures under their rules.
- (2) Self-regulatory organisations must—
- (a) provide adequate resources to carry out the supervisory functions;
  - (b) appoint a person to monitor and manage the organisation’s compliance with its duties under these Regulations.
- (3) The person appointed under paragraph (2)(b) is to be responsible—
- (a) for liaison with—
    - (i) another supervisory authority or a registering authority (within the meaning of regulation 53);
    - (ii) any law enforcement authority; and
    - (iii) any overseas authority (within the meaning of regulation 50(4))
  - (b) for ensuring that the self-regulatory organisation responds fully and rapidly to any request from an authority referred to in paragraph (a)(i) or (ii) for information about any person it supervises, whether that request concerns an application by that person for registration or any other matter.

### **Duty to co-operate**

- 50.**—(1) A supervisory authority must take such steps as it considers appropriate—
- (a) to co-operate with other supervisory authorities, the Treasury and law enforcement authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing;
  - (b) to co-ordinate activities to counter money laundering and terrorist financing with other supervisory authorities and law enforcement authorities;
  - (c) to co-operate with overseas authorities to ensure the effective supervision of a relevant person to which paragraph (2) applies.
- (2) This paragraph applies to a relevant person established—

- (a) in the United Kingdom, which has its head office in another country; or
  - (b) in another country but which has its head office in the United Kingdom.
- (3) Co-operation may include the sharing of information which the supervisory authority is not prevented from disclosing.
- (4) For the purposes of this regulation “overseas authority” means—
- (a) an authority responsible for any of the functions provided for in the fourth money laundering directive in an EEA state other than the United Kingdom in which the relevant person is established or has its head office; and
  - (b) where the relevant person is established or has its head office in a country which is not an EEA state, an authority in that country which has equivalent functions to any of the functions provided for in the fourth money laundering directive.
- (5) A supervisory authority must on request provide a European Supervisory Authority with information reasonably required by the Authority to enable it to carry out its duties under the fourth money laundering directive.

### **Regulatory information**

- 51.**—(1) A supervisory authority within regulation 7 must collect such information as it considers necessary for the purpose of performing its supervisory functions, including the information specified in Schedule 4.
- (2) A supervisory authority within regulation 7 must on request provide the Treasury with such information collected under paragraph (1) as may be specified by the Treasury, for the purpose of enabling the Treasury to comply with its obligations under Article 6, 7 or 44 of the fourth money laundering directive.
- (3) The Treasury must publish an annual consolidated review of the information provided by the supervisory authorities under paragraph (2).
- (4) A disclosure made under paragraph (2) is not to be taken to breach any restriction, however imposed, on the disclosure of information.
- (5) Where a disclosure under paragraph (2) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

### **Disclosure by supervisory authorities**

- 52.**—(1) A supervisory authority may disclose to a relevant authority information it holds relevant to its supervisory functions, provided the disclosure is made for purposes connected with the effective exercise of—
- (a) the functions of the relevant authority under these Regulations;
  - (b) the functions of the law enforcement authority; or
  - (c) in the case of an overseas authority, the functions provided for in the fourth money laundering directive, or equivalent functions.
- (2) Information disclosed to a relevant authority under paragraph (1) may not be further disclosed by that authority, except—
- (a) in accordance with paragraph (1);
  - (b) by the FCA to the PRA, where the information concerns a PRA-authorised person or a person who has a qualifying relationship with a PRA-authorised person;

- (c) in the case of an overseas authority, in accordance with any conditions imposed on further disclosure of that information by the supervisory authority which disclosed that information to the overseas authority;
  - (d) with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings; or
  - (e) as otherwise required by law.
- (3) A disclosure made under paragraph (1) is not to be taken to breach any restriction, however imposed, on the disclosure of information.
- (4) Where a disclosure under paragraph (1) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.
- (5) For the purposes of this regulation, “relevant authority” means—
- (a) another supervisory authority;
  - (b) the Treasury;
  - (c) any law enforcement authority;
  - (d) an overseas authority, within the meaning of regulation 50(4).