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## STATUTORY INSTRUMENTS

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# 2017 No. 699

## The Data Reporting Services Regulations 2017

### PART 4

#### Administration and enforcement

#### CHAPTER 1

#### The FCA

#### *Functions of the FCA*

#### Functions of the FCA

17.—(1) The FCA is the competent authority for the purposes of [<sup>F1</sup>these Regulations].

(2) The FCA has the functions conferred on it by these Regulations.

(3) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and giving general guidance under these Regulations, the FCA must, so far as is reasonably possible, act in a way which—

(a) is compatible with its strategic objective as defined in section 1B(2) of the Act <sup>F2</sup> (the FCA's general duties); and

(b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

(4) For the purposes of section 1B as applied by paragraph (3), section 1F of the Act must be read as if “relevant markets” includes the market for data reporting services.

**F1** Words in [reg. 17\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), [22](#); 2020 c. 1, Sch. 5 para. 1(1)

**F2** [2000 c.8](#); [sections 1B](#) and 1F were inserted by section 6 of the [Financial Services Act 2012 \(c.21\)](#). Section 1B was amended by paragraph 3 of Schedule 3 to the [Pension Schemes Act 2015 \(c.8\)](#).

#### Monitoring and enforcement

18.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under these Regulations are complying with them.

(2) The FCA must also maintain arrangements for enforcing the provisions of these Regulations.

#### Co-operation and consultation

19.—(1) The FCA must take such steps as it considers appropriate to co-operate with persons who have functions similar to the functions of the FCA under these Regulations.

(2) The FCA must consult the Bank of England before—

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- (a) authorising a recognised clearing house or a recognised CSD to provide a data reporting service;
- (b) varying or cancelling a recognised clearing house's or a recognised CSD's authorisation to provide a data reporting service;
- (c) imposing, varying or withdrawing a restriction on a recognised clearing house's or a recognised CSD's authorisation to provide a data reporting service under regulation 22;
- (d) publishing a statement under regulation 23 in relation to a contravention by a recognised clearing house or a recognised CSD;
- (e) imposing a penalty under regulation 24 in relation to a contravention by a recognised clearing house or a recognised CSD;
- (f) appointing a person to prepare a report under section 166(3)(b) of the Act <sup>F3</sup> (reports by skilled persons) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (g) exercising a power under section 166A(2) of the Act <sup>F4</sup> (appointment of skilled person to collect and update information) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (h) appointing a person to carry out an investigation under section 167(1) of the Act <sup>F5</sup> (appointment of persons to carry out general investigations) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (i) appointing a person to carry out an investigation under section 168(3) of the Act (appointment of persons to carry out investigations in particular cases) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (j) appointing a person to carry out an investigation under section 169(1)(b) of the Act <sup>F6</sup> (investigations etc. in support of overseas regulator) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD.

**F3** [Section 166](#) was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

**F4** [Section 166A](#) was inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012.

**F5** [Section 167\(1\)](#) was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and [S.I. 2007/126](#).

**F6** [Section 169\(1\)](#) was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

## Guidance

**20.—**(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of these Regulations;
  - (b) any matters relating to the functions of the FCA under these Regulations; or
  - (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.
- (2) The FCA may—
- (a) publish its guidance;
  - (b) offer copies of its published guidance for sale at a reasonable price; and
  - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(3) Section 139B of the Act<sup>F7</sup> (notification of FCA guidance to the Treasury) applies with respect to guidance given by the FCA under this regulation as it applies with respect to guidance given by the FCA under section 139A of the Act (power of the FCA to give guidance) as if—

(a) for subsection (5) there were substituted—

“(5) “general guidance” means guidance given by the FCA under the Data Reporting Services Regulations 2017 which is—

(a) given to persons generally or to data reporting services providers generally,

(b) intended to have continuing effect, and

(c) given in writing or other legible form.”;

(b) subsection (6) were omitted.

**F7** Sections 139A and 139B were inserted by section 24 of the Financial Services Act 2012. There are amendments to section 139A but none is relevant.

## Reporting requirements

**21.**—(1) A data reporting service provider must provide the FCA with such information in respect of its compliance or non-compliance with any requirement imposed by or under these Regulations as the FCA may direct.

(2) The information required to be given under this regulation must be provided at such times, in such form, and verified in such manner, as the FCA may direct.

(3) If at any time a data reporting service provider considers that it is unable to comply with a requirement imposed by or under these Regulations, it must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

### *Restrictions on authorisation*

## Restrictions on authorisation to carry on data reporting services

**22.**—(1) If the FCA considers that a data reporting service provider (“P”) has contravened a requirement imposed by or under these Regulations, it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(2) If the FCA considers that there are objective and demonstrable grounds for believing that a change or proposed change to the management of P poses a threat to the sound and prudent management of P, to the adequate consideration of the interests of its clients or to the integrity of the market, it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(3) A restriction may, in particular, be imposed so as to require P to take, or refrain from taking, specified action.

(4) The FCA may—

(a) withdraw a restriction; or

(b) vary a restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(5) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the data reporting services that P carries on.

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(6) Where the FCA proposes to impose a restriction under this regulation, section 55Y of the Act<sup>F8</sup> (exercise of own-initiative power: procedure) applies as if—

- (a) each reference to either regulator's own-initiative variation power or own-initiative requirement power were a reference to the FCA's power to impose a restriction under this regulation;
- (b) each reference to the regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only;
- (c) each reference to an authorised person were a reference to P;
- (d) each reference to a variation of permission, or the imposition or variation of a requirement, were a reference to a restriction imposed on an authorisation granted under these Regulations to P; and
- (e) the reference in subsection (12) to section 391(8) were a reference to section 391(8) as applied by these Regulations.

**F8** Section 55Y was inserted by section 11 of the Financial Services Act 2012.

### *Administrative sanctions*

#### **Public censure**

**23.—**(1) If the FCA considers that—

- (a) a relevant person has contravened a requirement imposed by or under these Regulations,
- (b) a member of the management body of a relevant person is responsible for the contravention by the relevant person of a requirement imposed by or under these Regulations, or
- (c) another member of the senior management of a relevant person is responsible for the contravention by the relevant person of a requirement imposed by or under these Regulations,

the FCA may publish a statement to that effect.

(2) In this regulation, “relevant person” means—

- (a) a data reporting service provider,
- (b) an authorised person who is not a data reporting service provider,
- (c) a recognised body which is not a data reporting service provider, or
- (d) a recognised CSD which is not a data reporting service provider.

#### **Financial penalties**

**24.—**(1) If the FCA considers that a relevant person has contravened a requirement imposed by or under these Regulations, it may impose a penalty of such amount as it considers appropriate on—

- (a) the relevant person;
- (b) a member of the management body of the relevant person if the FCA considers the member is responsible for the contravention;
- (c) another member of the senior management of the relevant person if the FCA considers the member is responsible for the contravention.

(2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

- (3) In this regulation, “relevant person” means—
- (a) a data reporting service provider,
  - (b) an authorised person who is not a data reporting service provider,
  - (c) a recognised body which is not a data reporting service provider, or
  - (d) a recognised CSD which is not a data reporting service provider.

### Warning notice

- 25.**—(1) If the FCA proposes to—
- (a) publish a statement in respect of a person under regulation 23; or
  - (b) impose a penalty on a person under regulation 24,

it must give the person a warning notice.

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

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

### Decision notice

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

- (a) publish a statement under regulation 23 (whether or not in the terms proposed); or
- (b) impose a penalty under regulation 24 (whether or not of the amount proposed),

it must without delay give the person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the FCA decides to—

- (a) publish a statement in respect of a person under regulation 23; or
- (b) impose a penalty on a person under regulation 24,

the person may refer the matter to the Tribunal.

(5) After a statement under regulation 23 is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the Act <sup>F9</sup> (third party rights) (as applied by regulation 37).

**F9** [Section 393\(4\)](#) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

### Statements of policy

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

- (a) the imposition of penalties under regulation 24; and
- (b) the amount of penalties under that regulation.

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

- (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;

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- (b) the extent to which that contravention was deliberate or reckless; and
- (c) whether the person against whom action is to be taken is an individual.
- (3) The FCA may at any time alter or replace a statement issued by it under this regulation.
- (4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.
- (5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.
- (6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under regulation 24 in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

### **Statements of policy: procedure**

- 28.**—(1) Before the FCA issues a statement under regulation 27, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by a notice that representations about the proposal may be made to the regulator within a specified time.
  - (3) Before issuing the proposed statement the FCA must have regard to any representations made to it in accordance with paragraph (2).
  - (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
    - (a) the representations made to in accordance with paragraph (2); and
    - (b) its response to them.
  - (5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.
  - (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).
  - (7) This regulation also applies to a proposal to alter or replace a statement.

### *Offences*

#### **Misleading the FCA**

- 29.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations knowingly or recklessly give the FCA information which is false or misleading in a material particular.
- (2) A person must not provide information to another person—
    - (a) knowing; or
    - (b) being reckless as to whether,
 the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, the FCA in connection with the discharge of its functions under these Regulations.

- (3) A person who contravenes paragraph (1) or (2) is guilty of an offence.
- (4) A person guilty of an offence under this regulation is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

### **Breach of the prohibition on provision of data reporting service**

**30.**—(1) Unless paragraph (2) applies, a person who breaches regulation 5(1) is guilty of an offence.

- (2) This regulation does not apply to—
  - (a) an authorised person;
  - (b) a recognised body;
  - (c) a recognised CSD.
- (3) A person guilty of an offence under this regulation is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

**31.**—(1) A person who is convicted of an offence under these Regulations or under the Act as applied by these Regulations is not subsequently liable to a penalty under regulation 24 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under regulation 24 is not subsequently liable for an offence under these Regulations in respect of the same acts or omissions that constituted the contravention of a requirement imposed by or under these Regulations for the purposes of that penalty.

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**Changes and effects yet to be applied to :**

- Regulations power to amend conferred by [2021 c. 22 s. 23](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)