

SCHEDULE 1

Regulation 49

Administration and enforcement of Parts 3, 4, and 5

PART 1

Interpretation

Interpretation of Schedule 1

1. In this Schedule—

“the EMIR regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁽¹⁾;

“management body” in relation to a person (“P”) means—

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of P; and
- (b) any other person who effectively directs the business of P;

“non-authorised counterparty” means—

- (a) a financial counterparty (within the meaning of Article 2.8 of the EMIR regulation) who is neither an authorised person nor a recognised body; or
- (b) a non-financial counterparty (within the meaning of Article 2.9 of the EMIR regulation) who meets the conditions in Article 10.1.b of that regulation;

“PRA-authorised person” has the meaning given in section 2B(5) of the Act⁽²⁾;

“recognised body” has the meaning given in section 313(1) of the Act;

“senior management” has the meaning given by Article 4.1.37 of the markets in financial instruments directive.

Directly applicable EU regulations

2.—(1) In this Schedule, any reference to a requirement imposed by or under Part 3 or 4 of these Regulations includes a reference to a requirement imposed on a person to whom Part 3 or 4 of these Regulations applies under—

- (a) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation; and
- (b) the markets in financial instruments regulation.

(2) In this Schedule, any reference to Article 28 of the markets in financial instruments regulation includes a reference to any directly applicable EU regulation made under that Article.

(1) OJ No L173, 12/6/2014, p84.

(2) Section 2B was inserted by section 6 of the Financial Services Act 2012 (c.21).

PART 2

The FCA and the PRA

Functions of the FCA and the PRA

Functions of the FCA

3.—(1) The FCA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and in 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⁽³⁾ (the FCA's general duties); and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

Functions of the PRA

4.—(1) The PRA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, the PRA must, so far as is reasonably possible, act in a way which is compatible with its general objective as defined in section 2B(2) of the Act⁽⁴⁾ (the PRA's general duties).

(3) Section 2H(1) of the Act⁽⁵⁾ (secondary competition objective) applies to the exercise by the PRA of its functions under these Regulations.

Supervision

Monitoring and enforcement

5.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 3, 4 or 5 of these Regulations or non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation are complying with them.

(2) The PRA must maintain arrangements designed to enable it to determine whether PRA-authorised persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The FCA must maintain arrangements for enforcing the provisions of—

- (a) Parts 3, 4 and 5 of these Regulations, and
- (b) Article 28 of the markets in financial instruments regulation as respects non-authorised counterparties.

(4) The PRA must maintain arrangements for enforcing the provisions of Part 5 of these Regulations as respects PRA-authorised persons.

(3) Sections 1B and 1F were inserted by section 6 of the Financial Services Act 2012.

(4) Section 2B was inserted by section 6 of the Financial Services Act 2012 and amended by section 1 of the Financial Services (Banking Reform) Act 2013 (c.33).

(5) Section 2H was substituted by section 130 of the Financial Services (Banking Reform) Act 2013.

Co-operation

6.—(1) In exercising its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation, the FCA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the FCA under these Regulations;
- (b) persons who have functions similar to the functions of the FCA with respect to Article 28 of the markets in financial instruments regulation; and
- (c) other persons mentioned in Article 79 of the markets in financial instruments directive.

(2) In exercising its functions under Part 5 of these Regulations, the PRA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the PRA under these Regulations; and
- (b) other persons mentioned in Article 79 of the markets in financial instruments directive.

(3) The duty under section 3D of the Act⁽⁶⁾ (duty of FCA and PRA to ensure co-ordinated exercise of functions) applies to the exercise of the functions of the FCA and PRA under these Regulations, and in the case of the FCA its functions with respect to Article 28 of the markets in financial instruments regulation, as it applies to the exercise of their functions under the Act.

Guidance

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

- (a) the operation of Parts 3, 4, and 5 of these Regulations;
- (b) any matters relating to the functions of the FCA under these Regulations or with respect to Article 28 of the markets in financial instruments regulation; 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⁽⁷⁾ (notification of FCA guidance to the Treasury) applies with respect to guidance given by the FCA under this paragraph 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 paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 which is—

- (a) given to persons generally, to persons to whom those Regulations apply generally or to a class of persons to whom those Regulations apply,
- (b) intended to have continuing effect, and

⁽⁶⁾ Section 3D was inserted by section 6 of the Financial Services Act 2012.

⁽⁷⁾ 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.

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- (c) given in writing or other legible form.”;
- (b) subsection (6) were omitted.

Reporting requirements

8.—(1) A person (“P”) must provide the appropriate regulator with such information in respect of P’s compliance or non-compliance with any requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to P as the appropriate regulator may direct.

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

(3) If at any time P considers that it is unable to comply with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to it, P must as soon as reasonably practicable notify the appropriate regulator of that fact, including the reasons why it is unable to comply.

(4) In this paragraph, “appropriate regulator” means—

- (a) in relation to a requirement imposed by the PRA on a PRA-authorized person under Part 5 of these Regulations, the PRA, and
- (b) in any other case, the FCA.

PART 3

Administrative sanctions and offences

Administrative sanctions

Interpretation of Part 3

9.—(1) In this Part, “regulator” means the FCA or the PRA.

(2) In paragraphs 10 and 11, “appropriate regulator” means—

- (a) in relation to a contravention of a requirement imposed by the PRA on a PRA-authorized person under Part 5 of these Regulations, the PRA; and
- (b) in relation to any other contravention of these Regulations or of Article 28 of the markets in financial instruments regulation, the FCA.

Public censure

10. If the appropriate regulator considers that—

- (a) a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation,
- (b) a member of the management body of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation, or
- (c) another member of the senior management of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation,

the appropriate regulator may publish a statement to that effect.

Financial penalties

11.—(1) If the appropriate regulator considers that a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation, it may impose a penalty of such amount as it considers appropriate on—

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

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

Warning notice

12.—(1) If a regulator proposes to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

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

13.—(1) If, having considered any representations made in response to the warning notice, a regulator decides to—

- (a) publish a statement under paragraph 10 (whether or not in the terms proposed); or
- (b) impose a penalty under paragraph 11 (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 a regulator decides to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

the person may refer the matter to the Tribunal.

(5) After a statement under paragraph 10 is published, the regulator concerned 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⁽⁸⁾ (third party rights) (as applied by paragraph 22).

Statements of policy

14.—(1) Each regulator must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under paragraph 11; and
- (b) the amount of penalties under that paragraph.

⁽⁸⁾ Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

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- (2) 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 in question in relation to the nature of the requirement contravened;
 - (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) A regulator may at any time alter or replace a statement issued by it under this paragraph.
- (4) If a statement issued under this paragraph is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
- (5) A regulator must, without delay, give the Treasury a copy of any statement which it issues under this paragraph.
- (6) A statement issued under this paragraph by a regulator 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.
- (7) The regulator 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 paragraph 11 in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this paragraph and in force at the time when the contravention in question occurred.

Statements of policy: procedure

- 15.**—(1) Before a regulator issues a statement under paragraph 14, 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 a notice that representations about the proposal may be made to the regulator within a specified time.
 - (3) Before issuing the proposed statement the regulator must have regard to any representations made to it in accordance with sub-paragraph (2).
 - (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to in accordance with sub-paragraph (2); and
 - (b) its response to them.
 - (5) If the statement differs from the draft published under sub-paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with sub-paragraph (4)) publish details of the difference.
 - (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under sub-paragraph (1).
 - (7) This paragraph also applies to a proposal to alter or replace a statement.

Offences

Misleading the FCA or PRA

- 16.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation knowingly or recklessly give a regulator 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, a regulator in connection with the discharge of its functions under these Regulations or with respect to Article 28 of the markets in financial instruments regulation.

- (3) A person who contravenes sub-paragraph (1) or (2) is guilty of an offence.
- (4) A person guilty of an offence under this paragraph 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

17.—(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 paragraph 11 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under paragraph 11 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.

PART 4

Application of the Act for the purposes of the Regulations

Application of Part 9 of the Act (hearings and appeals)

18.—(1) Part 9 of the Act⁽⁹⁾ (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations and under the Act as applied by these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

- (2) Section 133 of the Act (proceedings before the Tribunal: general provision) applies as if—
 - (a) in subsection (1)—
 - (i) “(whether made under this or any other Act)” were omitted;
 - (ii) paragraphs (b) and (c) were omitted;
 - (b) in subsection (2), “, (b) or (c)” were omitted;
 - (c) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;
 - (d) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of either of the following decisions—

(9) Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22, 2013/1388, 2014/3329 and 2016/680.

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- (a) a decision to publish a statement under paragraph 10 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
 - (b) a decision to impose a penalty under paragraph 11 of Schedule 1 to those Regulations.”.
- (3) Section 133A of the Act (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if for subsection (1) there were substituted—
- “(1) In determining in accordance with section 133(5) (as applied by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017) a reference made as a result of a decision notice given by the FCA or the PRA, the Tribunal may not direct the FCA or the PRA (as the case may be) to take action which it would not, under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, have had power to take when giving the notice.”.
- (4) Section 133B of the Act (offences) applies as if subsection (1)(b) and (c) were omitted.

Application of Part 11 of the Act (information gathering and investigations)

19.—(1) Part 11 of the Act⁽¹⁰⁾ (information gathering and investigations) applies with respect to the discharge by the regulators of their functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as it applies with respect to the discharge by the regulators of their functions under the Act, with the following modifications.

- (2) In this paragraph, “regulator” means the FCA or the PRA.
- (3) Part 11 of the Act applies as if—
 - (a) each reference to the Act included a reference to these Regulations and Article 28 of the markets in financial instruments regulation;
 - (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
 - (c) each reference to an authorised person were a reference to a person in respect of whom a requirement is imposed by or under these Regulations or to a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation.
- (4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) of the Act do not apply.
- (5) Section 166A of the Act (appointment of skilled person to collect and update information) applies as if—
 - (a) for subsection (1) there were substituted—

“(1) This section applies if either regulator considers that a person has contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 to collect, and keep up to date, information of a description specified in those Regulations.”;
 - (b) subsection (10) were omitted.

⁽¹⁰⁾ Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c.25), S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575 and 2016/680. There are other amendments but none is relevant.

(6) Section 167 of the Act (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to an investigating authority that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (“a person subject to the 2017 Regulations”) or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation (“a non-authorised counterparty”);

(b) a particular aspect of that business; or

(c) the ownership or control of a person subject to the 2017 Regulations or a non-authorised counterparty.”;

(b) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty but only in relation to—

(a) business carried on when the person was a person subject to the 2017 Regulations or a non-authorised counterparty; or

(b) the ownership or control of a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty at any time when the person was a person subject to the 2017 Regulations or a non-authorised counterparty.”;

(c) in subsection (5A) for paragraphs (b) and (c) there were substituted—

“(b) in relation to any other person subject to the 2017 Regulations, the FCA or the PRA;

(c) in relation to a non-authorised counterparty, the FCA.”;

(d) subsection (6) were omitted.

(7) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if—

(a) for subsection (1) there were substituted—

“(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) a person may have contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation;

(b) a member of the management body of a person referred to in paragraph (a) or another member of the senior management of such a person may be responsible for the contravention of a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation; or

(c) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;

(b) subsections (2), (4) and (5) were omitted;

(c) for subsection (6) there were substituted—

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“(6) “Investigating authority” means the FCA or the PRA.”

(8) Section 169 of the Act (investigations etc. in support of overseas regulator) applies as if—

- (a) subsection (2A) were omitted;
- (b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA or the PRA under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or with respect to Article 28 of the markets in financial instruments regulation.”

(9) Section 169A of the Act (support of overseas regulator with respect to financial stability) does not apply.

(10) Section 170 of the Act (investigations: general) applies as if—

- (a) in subsection (1) “or (5)” were omitted;
- (b) for subsection (3) there were substituted—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;

- (c) subsection (10)(b) were omitted.

(11) Section 172 of the Act (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(12) Section 173 of the Act (powers of persons appointed as a result of section 168(2)) applies as if—

- (a) in the heading for “as a result of section 168(2)” there were substituted “in relation to a recognised investment exchange”;
- (b) in subsection (5) for “subsection (3) of section 168 (as a result of subsection (2) of that section)” there were substituted “section 167 in relation to a recognised investment exchange”.

(13) Section 174 of the Act (admissibility of statements made to investigators) applies as if—

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
- (b) in subsection (3)(a) for “398” substitute “paragraph 16 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (c) subsection (3A) were omitted;
- (d) in subsection (4) the words from “or (5),” to the end were omitted.

(14) Section 175 of the Act (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.

(15) Section 176 of the Act (entry of premises under warrant) applies as if—

- (a) in subsection (1) “the Secretary of State,” were omitted;
- (b) in subsection (3)(a) for “an authorised person or an appointed representative” there were substituted “a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation”;
- (c) in subsection (10) “or (5)” were omitted;

- (d) in subsection (11)(a) “87C, 87J,” and “,165A, 169A” were omitted.

Restrictions on disclosure of information

20. Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of the Act⁽¹¹⁾ apply with respect to information received under these Regulations as they apply with respect to information received under the Act as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (d) in section 352—
 - (i) in subsection (1) “or 350(5)” were omitted;
 - (ii) subsection (4) were omitted;
 - (iii) in subsection (5) “or (4)” were omitted;
 - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

Application of Part 25 of the Act (injunctions and restitution)

21.—(1) Part 25 of the Act⁽¹²⁾ (injunctions and restitution) applies for the purposes of these Regulations, Article 28 of the markets in financial instruments regulation, and the Act as applied by these Regulations, with the following modifications.

- (2) Part 25 of the Act applies as if—
- (a) each reference to the Act included a reference to these Regulations and to Article 28 of the markets in financial instruments regulation;
 - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
 - (c) references to the Secretary of State were omitted;
 - (d) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, Article 28 of the markets in financial instruments regulation or the Act as applied by these Regulations.
- (3) Section 380 of the Act (injunctions) applies as if—
- (a) subsections (6) and (7) were omitted;
 - (b) in subsection (8) paragraphs (b) and (c) were omitted;
 - (c) subsection (9) were omitted.

⁽¹¹⁾ Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093 and 2011/1043. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

⁽¹²⁾ Part 25 was amended by paragraphs 19, 21, 23, 24 and 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

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- (4) Section 381 of the Act (injunctions in cases of market abuse) does not apply.
- (5) Section 382 of the Act (restitution orders) applies as if—
 - (a) subsections (9) and (10) were omitted;
 - (b) in subsection (11) paragraphs (b) and (c) were omitted;
 - (c) subsection (12) were omitted.
- (6) Section 383 of the Act (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 of the Act (power of FCA or PRA to require restitution) applies as if—
 - (a) subsections (2) and (3) and references to those subsections were omitted;
 - (b) subsection (7) were omitted;
 - (c) in subsection (9) paragraphs (b) and (c) were omitted;
 - (d) subsection (10) were omitted.

Application of Part 26 of the Act (notices)

22.—(1) Part 26 of the Act(**13**) (notices) applies with respect to the giving of notices under regulations 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) and 40(3) and (6) (removal of persons from management boards: procedure), paragraphs 12 and 13 of this Schedule and the Act as applied by these Regulations as it applies with respect to the giving of notices under the Act, with the following modifications.

- (2) Part 26 of the Act applies as if—
 - (a) each reference to the Act included a reference to these Regulations;
 - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
 - (c) each reference to a regulator or to the regulator concerned were a reference to the regulator giving the notice.
- (3) In this paragraph, “regulator” means the FCA or the PRA.
- (4) Section 387 of the Act (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (5) Section 388 of the Act (decision notices) applies as if subsections (1A) and (2) were omitted.
- (6) Section 391 of the Act (publication) applies as if—
 - (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under paragraph 12;
 - (b) in subsection (1ZA) the reference to a warning notice not falling within subsection (1ZB) were to a warning notice given under the Act as applied by these Regulations;
 - (c) subsection (1ZB) were omitted;
 - (d) in subsection (4A) the reference to sections 391A, 391B and 391C were omitted;
 - (e) subsections (5A), (8A), (8B) and (8C) were omitted;
 - (f) for subsection (11) there were substituted—

(13) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, S.I. 2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22, 2010/747, 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715 and 2016/1239. There are other amendments but none is relevant.

“(11) Section 425A(14) (meaning of “consumers”) applies for the purposes of this section as if subsection (2)(c) were omitted.”.

(7) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive) and 391C (publication: special provisions relating to the UCITS directive) of the Act do not apply.

(8) Section 392 of the Act (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—

- “(a) a warning notice given in accordance with paragraph 12 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or section 385 as applied by those Regulations;
- (b) a decision notice given in accordance with paragraph 13 of Schedule 1 to those Regulations or section 386 as applied by those Regulations.”.

(9) Section 395 of the Act (the FCA’s and PRA’s procedures) applies as if—

- (a) in subsection (1) paragraph (b)(ii) were omitted;
- (b) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1) (b)(ii)” were omitted;
- (c) subsection (9A) were omitted;
- (d) for subsection (13) there were substituted—

“(13) “Supervisory notice” means a notice given in accordance with regulation 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) or 40(3) or (6) (removal of persons from management boards: procedure) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.”.

Application of Part 27 of the Act (offences)

23.—(1) Part 27 of the Act (offences)(15) applies with respect to offences under these Regulations and the Act as applied by these Regulations as it applies with respect to offences under the Act, with the following modifications.

(2) Part 27 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
- (c) references to the Secretary of State were omitted.

(3) Sections 398 (misleading the FCA or PRA: residual cases) and 399 (misleading the CMA) of the Act do not apply.

(4) Section 400 of the Act (offences by bodies corporate) applies as if subsection (6A) were omitted.

(5) Section 401 of the Act (proceedings for offences) applies as if—

- (a) subsection (1)(c) were omitted;
- (b) in subsection (3A)—
 - (i) paragraphs (a), (f), (g) and (h) were omitted;

(14) Section 425A was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 and amended by [S.I. 2013/655](#) and [2013/3115](#).

(15) Part 27 was amended by section 95 of and paragraphs 37, 38 and 40 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1881](#) and [2016/1239](#). There are other amendments but none is relevant.

Status: This is the original version (as it was originally made).

(ii) in paragraph (i) for “section 398(1)” there were substituted “paragraph 16(1) of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;

(c) subsection (3AB) were omitted.

(6) Section 402 of the Act (power of FCA to institute proceedings for certain other offences) does not apply.

(7) Section 403(7) of the Act (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

Application of section 413 of the Act (protected items)

24. Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

FCA: penalties, fees and exemption from liability in damages

25.—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA to the Act⁽¹⁶⁾ apply with respect to the discharge by the FCA of its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

- (a) each reference to penalties imposed under the Act included a reference to penalties imposed under these Regulations;
- (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
- (c) each reference to the functions of the FCA included a reference to its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation.

(3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—

- (a) its powers under these Regulations and under Part 25 of the Act as applied by these Regulations;
- (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under the Act as applied by these Regulations.

(4) Paragraph 21 applies as if regulated persons included persons on whom requirements are imposed under these Regulations and non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation.

(5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations, with respect to Article 28 of the markets in financial instruments regulation and under the Act as applied by these Regulations.

⁽¹⁶⁾ Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

PRA: penalties, fees and exemption from liability in damages

26.—(1) Paragraphs 27 to 31 (penalties and fees) and 33 (exemption from liability in damages) of Schedule 1ZB to the Act⁽¹⁷⁾ apply with respect to the discharge by the PRA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

- (a) each reference to penalties imposed under the Act or under FSMA 2000 included a reference to penalties imposed under these Regulations;
- (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
- (c) each reference to the functions of the PRA included a reference to its functions under these Regulations.

(3) Paragraph 28 applies as if references to the PRA’s enforcement powers included—

- (a) its powers under Part 5 of these Regulations and under Part 25 of the Act as applied by these Regulations;
- (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under those Regulations or under the Act as applied by those Regulations.

(4) Paragraph 31 applies as if references to qualifying functions included references to the functions of the PRA under Part 5 of these Regulations and under the Act as applied by these Regulations.

PART 5

Application of secondary legislation for the purposes of the Regulations

Service of notices

27. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001⁽¹⁸⁾ (“Notice Regulations”) apply with respect to any notice or document to be given by the FCA or PRA under regulation 12(3)(b) (FCA power to intervene in relation to third country firms registered with ESMA), 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) or 40(3) or (6) (removal of persons from management boards: procedure), paragraph 12 or 13 of this Schedule or the Act as applied by these Regulations, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations;
- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.

⁽¹⁷⁾ Schedule 1ZB was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, paragraph 50 of Schedule 2 to the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

⁽¹⁸⁾ [S.I. 2001/1420](#).

Disclosure of confidential information

28. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001⁽¹⁹⁾ apply for the purposes of section 349 of the Act (exceptions from section 348) as applied by paragraph 20.

Communications by auditors

29. The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001⁽²⁰⁾ apply for the purposes of sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: person with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of the Act as if—

- (a) in regulation 1(2) (citation, commencement and interpretation) “relevant requirement” included a requirement which is imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation;
- (b) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate) the reference to functions included a reference to the FCA’s and PRA’s functions under these Regulations and under the Act as applied by these Regulations.

⁽¹⁹⁾ S.I. 2001/2188.

⁽²⁰⁾ S.I. 2001/2587.