

## SCHEDULE 1

### Administration and enforcement of Parts 3, 4, and 5

## 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<sup>(1)</sup> (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—

(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<sup>(2)</sup> (information gathering and investigations) applies with respect to the discharge by the regulators of their functions under these Regulations and with respect to Article

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(1) 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.

(2) 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

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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.

(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—

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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.

- (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—
      - “(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.”;

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- (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<sup>(3)</sup> 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”;

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(3) 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).

- (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(4) (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.
- (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.

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(4) 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.

**Application of Part 26 of the Act (notices)**

**22.**—(1) Part 26 of the Act(5) (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—

“(11) Section 425A(6) (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;

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(5) 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.

(6) 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.

- (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)(7) 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;
    - (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.

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(7) 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.

**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<sup>(8)</sup> 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.

**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<sup>(9)</sup> 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.

<sup>(8)</sup> 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.

<sup>(9)</sup> 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.



- (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.