

2018 No. 1288

FINANCIAL SERVICES AND MARKETS

The Securitisation Regulations 2018

Made - - - - *3rd December 2018*

Laid before Parliament *4th December 2018*

Coming into force - - *1st January 2019*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Securitisation Regulations 2018 and come into force on 1st January 2019.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(c);

“appropriate regulator” means:

(a) the FCA in the case of:

(i) a contravention of a relevant requirement by any person for which it is the competent authority under these Regulations or under the EU Securitisation Regulation 2017(d); or

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c. 8.

(d) OJ L 347, 28.12.2017, p.35.

- (ii) a contravention by any person of a relevant requirement imposed by the FCA on that person under these Regulations;
- (b) the PRA in the case of:
 - (i) a contravention of a relevant requirement by any person for which it is the competent authority under these Regulations or under the EU Securitisation Regulation 2017; or
 - (ii) a contravention by any person of a relevant requirement imposed by the PRA on that person under these Regulations;

“authorised person” has the meaning given in section 31(2) (authorised persons) of the Act;

“established in the United Kingdom” means constituted under the law of a part of the United Kingdom with a head office, and if there is a registered office, that office, in the United Kingdom and where at least part of the securitisation business of the person so constituted is carried on in the United Kingdom;

“the EU Securitisation Regulation 2017” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;

“the FCA” means the Financial Conduct Authority;

“FCA-authorized person” means an authorised person who is not a PRA-authorized person;

“original lender” has the meaning given in Article 2(20) of the EU Securitisation Regulation 2017;

“originator” has the meaning given in Article 2(3) of the EU Securitisation Regulation 2017;

“the PRA” means the Prudential Regulation Authority;

“PRA-authorized person” has the meaning given in section 2B(5)(a) (the PRA’s general objective) of the Act ;

“the register” is the register of third party verifiers provided for in regulation 18 of these Regulations;

“relevant requirement” means a requirement imposed by or under these Regulations, by or under the Act as applied by these Regulations or by or under the EU Securitisation Regulation 2017;

“securitisation business” means activities in relation to a securitisation as defined in Article 2(1) of the EU Securitisation Regulation 2017, when carried out as a regular occupation or business activity;

“SRUP” or “securitisation regulation unauthorised person” is a person who is not an authorised person and is:

- (a) an original lender;
- (b) an originator;
- (c) a person established in the United Kingdom who establishes a SSPE in a third country;
- (d) a person engaged in the conduct of selling a securitisation position, within the meaning given in Article 2(19) of the EU Securitisation Regulation 2017, to a retail client located in the United Kingdom;
- (e) a sponsor;
- (f) a SSPE; or
- (g) a third party verifier;

“securitisation special purpose entity” or “SSPE” has the meaning given in Article 2(2) of the EU Securitisation Regulation 2017;

(a) Section 2B was substituted by the section 6(1) of the Financial Services Act 2012 (c.21).

“sponsor” has the meaning given in Article 2(5) of the EU Securitisation Regulation 2017;

“STS” has the meaning given in Article 18 of the EU Securitisation Regulation 2017;

“third party verification service” means the service described in Article 27(2) of the EU Securitisation Regulation 2017;

“third party verifier” means a third party authorised by the FCA as provided in Article 28 of the EU Securitisation Regulation 2017;

“the Tribunal” means the Upper Tribunal.

(2) Except as provided by paragraph (1)—

- (a) any expression used in these Regulations which is defined for the purposes of the EU Securitisation Regulation 2017 has the meaning which it has in the EU Securitisation Regulation 2017; and
- (b) any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

Directly applicable EU regulations

3. In these Regulations a reference to an Article of the EU Securitisation Regulation 2017 includes a reference to any directly applicable EU regulation made under that Article.

Designation of competent authorities

4.—(1) Subject to paragraph (2), the FCA is designated as the competent authority responsible for—

- (a) the supervision of compliance of persons engaged in the conduct of selling a securitisation position to a retail client located in the United Kingdom with obligations set out in Article 3 of the EU Securitisation Regulation 2017;
- (b) the supervision of compliance of persons established in the United Kingdom with the obligations set out in Article 4 of the EU Securitisation Regulation 2017 when establishing SSPEs in a third country;
- (c) the supervision of compliance of originators, original lenders and SSPEs established in the United Kingdom and not covered by the European Union legislative acts referred to in paragraph 3 of Article 29 of the EU Securitisation Regulation 2017 with the obligations set out in Articles 6, 7, 8 and 9 of the EU Securitisation Regulation 2017;
- (d) the supervision of compliance of originators, sponsors and SSPEs established in the United Kingdom with the obligations set out in Articles 18 to 27 of the EU Securitisation Regulation 2017 and the supervision of compliance of originators and sponsors established in the United Kingdom with the obligation set out in the last sentence of paragraph 6 of Article 29 of the EU Securitisation Regulation 2017; and
- (e) the authorisation of third party verifiers established in the United Kingdom provided for in Article 28 of the EU Securitisation Regulation 2017 and the supervision of their compliance with the obligations set out in that Article.

(2) The PRA is designated as the competent authority responsible for the supervision of compliance by PRA-authorized persons established in the United Kingdom and not covered by the European Union legislative acts referred to in Article 29(3) of the EU Securitisation Regulation 2017 with the obligations set out in Articles 6, 7, 8 and 9 of the EU Securitisation Regulation 2017.

PART 2

Disciplinary measures and procedures

Temporary prohibition relating to management functions

5.—(1) If the appropriate regulator considers that an individual has contravened or has been knowingly concerned in the contravention of a relevant requirement, the appropriate regulator may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(2) A temporary prohibition imposed under paragraph (1) expires at the end of such period as the appropriate regulator may specify, but the imposition of a temporary prohibition does not affect the appropriate regulator's power to impose a further temporary prohibition under paragraph (1).

(3) A temporary prohibition under paragraph (1) may relate to the management of—

- (a) a named originator, sponsor or SSPE;
- (b) an originator, sponsor or SSPE of a specified description; or
- (c) any originator, sponsor or SSPE.

(4) The appropriate regulator may revoke a temporary prohibition imposed by it under this regulation, or vary it so as to reduce the period for which it has effect.

Temporary prohibition relating to management functions: obligations on originator, sponsor or SSPE

6.—(1) An originator, sponsor or SSPE must take reasonable care to ensure that no individual holds an office or position involving responsibility for taking decisions about the management of that entity in contravention of a temporary prohibition imposed under regulation 5(1).

(2) Except in the cases given in paragraph (3), if an originator, sponsor or SSPE fails to comply with paragraph (1), it is taken to have contravened a requirement imposed by the FCA under these Regulations. If an originator, sponsor or SSPE fails to comply with paragraph (1) and—

- (a) it is a PRA authorised person or a SRUP; and
- (b) the temporary prohibition has been imposed by the PRA;

the originator, sponsor or SSPE is taken to have contravened a requirement imposed by the PRA under these Regulations.

Public censure

7.—(1) If the appropriate regulator considers that—

- (a) a SRUP has contravened a relevant requirement;
- (b) a member of the management body of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement; or
- (c) another member of the senior management of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement;

the appropriate regulator may publish a statement to that effect.

(2) If the appropriate regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 5 has breached the prohibition, the appropriate regulator may publish a statement to that effect.

Financial penalties

8.—(1) If the appropriate regulator considers that—

- (a) a SRUP has contravened a relevant requirement;

- (b) a member of the management body of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement; or
- (c) another member of the senior management of a SRUP was knowingly concerned in the contravention by the SRUP of a relevant requirement;

the appropriate regulator may impose a penalty of such amount as it considers appropriate.

(2) If the appropriate regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 5 has breached the prohibition, the appropriate regulator may impose a penalty of such amount as it considers appropriate on that individual.

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

Statements of policy

9.—(1) The FCA and the PRA must prepare and issue a statement of policy with respect to their exercise of the following functions as appropriate regulator—

- (a) the imposition of a prohibition under regulation 5 (temporary prohibition relating to management functions);
- (b) the period of a prohibition under that regulation;
- (c) the imposition of penalties under regulation 8 (financial penalties); and
- (d) the amount of penalties under that regulation.

(2) The policy must require the appropriate regulator, in determining the amount of a penalty, to take into account all relevant circumstances including, where appropriate, the matters referred to in Article 33(2) of the EU Securitisation Regulation 2017.

(3) The FCA or the PRA 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 or the PRA, the FCA or the PRA must issue the altered or replacement statement.

(5) The FCA or the PRA 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 or the PRA must be published by the FCA or the PRA in the way appearing to the FCA or the PRA to be best calculated to bring it to the attention of the public.

(7) The FCA or the PRA 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 5 (temporary prohibition relating to management functions) or under regulation 8 (financial penalties) in the case of any particular contravention, the appropriate regulator 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

10.—(1) Before the appropriate regulator issues a statement under regulation 9 (statements of policy), the appropriate regulator must publish a draft of the proposed statement in the way appearing to the appropriate 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 appropriate regulator must have regard to any representations made to it in accordance with paragraph (2).

(4) If the appropriate regulator issues the proposed statement it must publish an account, in general terms, of—

- (a) the representations made to it 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 appropriate regulator, significant, the appropriate regulator must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The appropriate regulator 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.

Restriction on penalties

11.—(1) A person who is convicted of an offence under section 398 of the Act^(a) as applied by paragraph 8 of Schedule 1 of these Regulations is not subsequently liable to a penalty under regulation 8 (financial penalties) in respect of the same acts or omissions that constituted the offence.

(2) A person on whom a penalty has been imposed under regulation 8 (financial penalties) is not subsequently liable for an offence under section 398 of the Act as applied by these Regulations in respect of the same contravention that led to the imposition of the penalty.

PART 3

CHAPTER 1

Third party verifiers

Application for authorisation to provide a third party verification service

12.—(1) An application for authorisation to provide a third party verification service as provided for in Article 28 of the EU Securitisation Regulation 2017 must —

- (a) be made in such manner as the FCA may direct; and
- (b) contain, or be accompanied by, such information as may be required under Article 28 of the EU Securitisation Regulation 2017 and such other information as the FCA may reasonably require.

(2) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.

(4) The FCA may require an applicant to provide information which the applicant is required to provide to it under these regulations in such form, or to verify it in such a way, as the FCA may direct.

Determination of an application for authorisation to provide a third party verification service

13.—(1) The FCA must determine an application for authorisation to provide a third party verification service as provided for in Article 28 of the EU Securitisation Regulation 2017 before the end of the period of six months beginning with the date on which it received the completed application.

(a) Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c.21) and S.I. 2013/1773. There are other amendments but none is relevant.

(2) The FCA may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) If the FCA decides to grant an application it must give the applicant notice of its decision specifying the date on which the authorisation takes effect.

Temporary withdrawal of authorisation to provide a third party verification service

14.—(1) The FCA may decide to withdraw temporarily the authorisation of a third party verifier if it appears to the FCA that —

- (a) the third party verifier is materially non-compliant with Article 28(1) of the EU Securitisation Regulation 2017;
- (b) the third party verifier has failed, during a period of at least 12 months, to provide a third party verification service;
- (c) the third party verifier has obtained the authorisation to provide a third party verification service through false statements or other irregular means;
- (d) the third party verifier has failed to comply with Article 28(2) of the EU Securitisation Regulation 2017; or
- (e) it is desirable to do so to advance one or more of the FCA’s operational objectives set out in section 1B(3) of the Act.

(2) The FCA may—

- (a) revoke the temporary withdrawal imposed under paragraph (1); or
- (b) vary the period for which the temporary withdrawal has effect.

Temporary withdrawal of authorisation to provide a third party verification service: procedure

15.—(1) When the FCA exercises its functions under regulation 14, its decision takes effect —

- (a) immediately, if the notice given under paragraph (3) states that that is the case;
- (b) on such other date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) A decision of the FCA made under regulation 14 may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising this power, reasonably considers that it is necessary for the decision to take effect immediately (or on that date).

(3) If the FCA proposes to exercise, or exercises, its functions under regulation 14, it must give the third party verifier written notice.

(4) The notice must —

- (a) give details of the temporary withdrawal, or the revocation of the temporary withdrawal, or the variation of the temporary withdrawal, including the period of the temporary withdrawal;
- (b) state the FCA’s reasons for the temporary withdrawal, or the revocation of the temporary withdrawal or the variation of the temporary withdrawal;
- (c) inform the third party verifier that they may make representations to the FCA within such period as may be specified in the notice (whether or not they referred the matter to the Tribunal);
- (d) inform the third party verifier when the temporary withdrawal, or the revocation of the temporary withdrawal or the variation of the temporary withdrawal, is to take effect; and

- (e) inform the third party verifier of their right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(5) The FCA may extend the period allowed in the notice given under paragraph (4)(c) for making representations.

(6) If, having considered any representations made by the third party verifier to whom the notice has been given under paragraph (3), the FCA decides—

- (a) to withdraw temporarily, or revoke or vary the temporary withdrawal of the third party verifier’s authorisation, in the way proposed;
- (b) not to withdraw temporarily, or revoke or vary the temporary withdrawal of the third party verifier’s authorisation, in the way proposed;
- (c) to revoke the temporary withdrawal or variation of the temporary withdrawal which has taken effect; or
- (d) if the temporary withdrawal or variation of the temporary withdrawal has taken effect, not to revoke the temporary withdrawal or variation of the temporary withdrawal; or
- (e) to withdraw temporarily or vary the period of a withdrawal in a different way;

it must give the third party verifier written notice of its decision.

(7) A notice under paragraph (6)(a), (d) or (e) must inform the third party verifier of their right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(8) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of the Act.

(9) Where the authorisation of a third party verifier is temporarily withdrawn, the FCA must as soon as practicable update the register accordingly.

Cancellation of authorisation to provide a third party verification service on the initiative of the FCA

16.—(1) The FCA may cancel an authorisation to provide a third party verification service if it appears to the FCA that—

- (a) the third party verifier is materially non-compliant with Article 28(1) of the EU Securitisation Regulation 2017;
- (b) the third party verifier has failed, during a period of at least 12 months, to provide a third party verification service;
- (c) the third party verifier has obtained the registration to provide third party verification services through false statements or other irregular means;
- (d) the third party verifier has failed to comply with Article 28(2) of the EU Securitisation Regulation 2017; or
- (e) it is desirable to do so to advance one or more of the FCA’s operational objectives set out in section 1B(3) of the Act.

(2) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

Cancellation of authorisation to provide a third party verification service at request of third party verifier

17.—(1) The FCA may, on the application of a third party verifier, cancel their authorisation to provide a third party verification service.

(2) A request for cancellation of a person’s authorisation under this regulation must be made in such a manner as the FCA may direct.

(3) The FCA may refuse an application under this regulation if it appears to it that it is desirable to do so in order to advance any of its operational objectives set out in section 1B(3) of the Act.

(4) An application under paragraph (1) must be determined by the FCA before the end of the period of 6 months beginning with the date on which it received the completed application.

(5) The FCA may determine an incomplete application if it considers it is appropriate to do so, and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(6) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(7) If the FCA decides to grant an application, it must give the applicant notice of its decision specifying the date on which the cancellation of the authorisation takes effect, and as soon as practicable update the register accordingly.

Register of third party verifiers

18.—(1) The FCA must maintain a register of all persons it has authorised as third party verifiers as provided for in Article 28 of the EU Securitisation Regulation 2017.

(2) The FCA must—

- (a) publish the register online and make it available for public inspection; and
- (b) update the register on a regular basis.

CHAPTER 2

Warning notices and decision notices

Warning notice

19.—(1) If the appropriate regulator proposes to—

- (a) impose a temporary prohibition under regulation 5 (temporary prohibition relating to management functions);
- (b) publish a statement in respect of a person under regulation 7 (public censure);
- (c) impose a penalty on a person under regulation 8 (financial penalties);
- (d) refuse an application for authorisation to provide a third party verification service under regulation 13 (determination of application for authorisation to provide a third party verification service);
- (e) cancel a person's authorisation to provide a third party verification service under regulation 16 (cancellation of authorisation to provide a third party verification service on the initiative of the FCA); or
- (f) refuse an application to cancel a person's authorisation to provide a third party verification service under regulation 17 (cancellation of authorisation to provide a third party verification service at request of third party verifier);

it must give the person a warning notice.

(2) A warning notice about a proposal to impose a temporary prohibition relating to management functions under regulation 5 must set out the terms of the proposed prohibition.

(3) A warning notice about a proposal to publish a statement under regulation 7 must set out the terms of the statement.

(4) A warning notice about a proposal to impose a penalty under regulation 8 must state the amount of the proposed penalty.

(5) A warning notice must inform the person concerned that the person may make representations to the appropriate regulator within such period as may be specified in the notice (whether or not the person concerned has referred the matter to the Tribunal).

Decision notice

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

- (a) impose a temporary prohibition relating to management functions under regulation 5 (temporary prohibition relating to management functions) (whether or not in the terms proposed);
- (b) publish a statement under regulation 7 (public censure) (whether or not in the terms proposed);
- (c) impose a penalty under regulation 8 (financial penalties) (whether or not of the amount proposed);
- (d) refuse an application for authorisation to provide a third party verification service under regulation 13 (determination of application for authorisation to provide a third party verification service);
- (e) cancel a person’s authorisation to provide a third party verification service under regulation 16 (cancellation of authorisation to provide a third party verification service on the initiative of the FCA);
- (f) refuse an application to cancel a person’s authorisation to provide a third party verification service under regulation 17 (cancellation of authorisation to provide a third party verification service at request of third party verifier);

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

(2) A decision notice about a decision to impose a temporary prohibition relating to management functions under regulation 5 must set out the terms of the prohibition.

(3) A decision notice about a decision to publish a statement under regulation 7 must set out the terms of the statement.

(4) A decision notice about a decision to impose a penalty under regulation 8 must state the amount of the penalty.

(5) After a statement under regulation 7 (public censure) is published, the appropriate regulator must send a copy of it to the person concerned and to any person to whom a copy of the decision notice is given under section 393(4)(a) of the Act (third party rights) (as applied by Schedule 1 (application of Part 26 of the Act)).

CHAPTER 3

Temporary ban on STS notifications

Imposition of a temporary ban

21.—(1) If the FCA considers that an originator, sponsor or SSPE has failed to meet the requirements under Article 19, 20, 21, 22, 23, 24, 25 or 26 of the EU Securitisation Regulation 2017, or an originator or sponsor has made a misleading notification pursuant to Article 27(1) of the EU Securitisation Regulation 2017, the FCA may, for such period as it considers appropriate, temporarily ban the originator or sponsor from making a notification under Article 27(1).

(2) The FCA may—

- (a) revoke a temporary ban imposed under paragraph (1); or
- (b) vary the period for which the temporary ban has effect.

(3) The FCA must consult the PRA before imposing a temporary ban on an originator or sponsor who is a PRA-authorized person, or varying such a ban so as to extend the period it has effect.

(a) Section 393 was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012 (c.21).

Procedure for the imposition, variation or revocation of a temporary ban on STS notifications

22.—(1) When the FCA exercise its functions under regulation 21, its decision takes effect—

- (a) immediately, if the notice under paragraph (3) states that is the case;
- (b) on such other a date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) A decision of the FCA made under regulation 21 may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising this power, reasonably considers that it is necessary for the decision to take effect immediately (or on that date).

(3) If the FCA proposes to exercise, or exercises, its functions under regulation 21, it must give the originator or sponsor a written notice.

(4) The notice must—

- (a) give details of the temporary ban or variation;
- (b) state the FCA’s reasons for the temporary ban, or the revocation of the temporary ban or the variation of the temporary ban;
- (c) inform the originator or sponsor that they may make representations to the FCA within such period as may be specified in the notice (whether or not the originator or sponsor have referred the matter to the Tribunal);
- (d) inform the originator or sponsor when the temporary ban, or the revocation of the temporary ban or the variation of the temporary ban takes effect; and
- (e) inform the originator or sponsor of their right to refer the matter to the Tribunal and an indication of the procedure for such a reference.

(5) The FCA may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

- (a) to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed;
- (b) not to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed;
- (c) to revoke the temporary ban, or the variation of the temporary ban, which has taken effect;
- (d) if the temporary ban has been imposed or varied, not to revoke the temporary ban or variation of the temporary ban; or
- (e) to impose or vary the temporary ban in a different way;

it must give the person written notice.

(7) A notice given under paragraph (6)(a), (d) or (e) must inform the person to whom it is given of his right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(8) For the purposes of paragraph (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of the Act.

CHAPTER 4

Right to refer to the Tribunal

Right to refer a matter to the Tribunal

23.—(1) If the appropriate regulator decides to—

- (a) impose a temporary prohibition on the person under regulation 5 (temporary prohibition relating to management functions);
- (b) publish a statement in respect of a person under regulation 7 (public censure); or
- (c) impose a penalty on a person under regulation 8 (financial penalties);

the person concerned may refer the matter to the Tribunal.

(2) If the FCA decides to refuse a person's application for authorisation to provide a third party verification service under regulation 13 (determination of application for authorisation to provide a third party verification service), the person concerned may refer the matter to the Tribunal.

(3) If the FCA decides to temporarily withdraw an authorisation to provide a third party verification service under regulation 15 (temporary withdrawal of authorisation to provide a third party verification service: procedure), or varies the details of the temporary withdrawal so as to extend the period it has effect, the person concerned may refer the matter to the Tribunal.

(4) If the FCA decides to cancel an authorisation to provide a third party verification service under regulation 16 (cancellation of authorisation to provide a third party verification service on the initiative of the FCA), the person concerned may refer the matter to the Tribunal.

(5) If the FCA refuses an application to cancel an authorisation to provide a third party verification service under regulation 17 (cancellation of authorisation to provide a third party verification service at request of third party verifier), the person concerned may refer the matter to the Tribunal.

(6) If the FCA imposes a temporary ban under regulation 21 (imposition of a temporary ban), or varies such a ban so as to extend the period it has effect, the person concerned may refer the matter to the Tribunal.

PART 4

Miscellaneous provisions

Consultation in relation to taking certain enforcement action

24.—(1) The FCA must consult the PRA before giving a warning notice under regulation 19(1)(b) to (f) or a decision notice under regulation 20(1)(b) to (f) in relation to a person who—

- (a) is a PRA-authorised person; or
- (b) has a qualifying relationship with a PRA-authorised person.

(2) The FCA must consult the PRA before giving a warning notice under regulation 19(1)(a) or a decision notice under regulation 20(1)(a) if as a result of the prohibition in question an individual would be prohibited from performing a management function in relation to a PRA-authorised person.

(3) The PRA must consult the FCA before giving a warning notice under regulation 19(1) or a decision notice under regulation 20(1).

(4) A person has a qualifying relationship with a PRA-authorised person for the purposes of this regulation if the person is a member of the PRA-authorised person's immediate group.

(5) In this regulation, "immediate group" has the meaning given in section 421ZA(a) of the Act.

Transparency requirements for originators, sponsors and SSPEs of private securitisations – power of direction

25.—(1) The originator, sponsor or SSPE of a private securitisation that is established in the United Kingdom must make the information under Article 7(1)(a) to (g) of the EU Securitisation

(a) Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012 (c.21).

Regulation 2017 available to the FCA or the PRA, as appropriate, in accordance with that Article in such manner as the FCA or the PRA, as the case may be, may direct.

(2) In this regulation, “private securitisation” means a securitisation where no prospectus has to be drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC(a).

Informing the FCA of STS notifications – power of direction

26. An originator or sponsor of a securitisation established in the United Kingdom must inform the FCA of an STS notification in accordance with Article 27(1) of the EU Securitisation Regulation 2017 in such manner as the FCA may direct.

Application of the Act and secondary legislation

27. Schedule 1 applies the Act and secondary legislation made under it with modifications.

Minor and consequential amendments

28. Schedule 2 makes minor and consequential amendments to primary and secondary legislation.

Review

29.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to 26,
- (b) publish a report setting out the conclusions of the review.

(2) The first report under this regulation must be published before 5th December 2023.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the EU Securitisation Regulation 2017 (which is implemented in part by means of regulations 2 to 26) is implemented in other Member States.

(5) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulations 2 to 26;
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

Mike Freer
Paul Maynard

3rd December 2018

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) OJ L 345, 31.12.2003, p.64. Relevant amendments were made by Directive 2008/11/EC of the European Parliament and of the Council of 11 March 2008 (OJ L 76, 19.3.2008, p.37), Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 327, 11.12.2010, p.1) and Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010 2003, p.120).

Application and modification of the Act and secondary legislation

Disciplinary powers

1.—(1) Sections 66 to 70 of the Act(a) apply in respect of a contravention of a relevant requirement imposed by or under these Regulations, as they apply in respect of a contravention of a relevant requirement imposed by or under the Act, with modifications set out in this paragraph.

(2) Section 66A (misconduct: action by the FCA) applies as if in subsection (4) there were inserted—

“(ac) imposed by or under the Securitisation Regulations 2018.”.

(3) Section 66B (misconduct: action by the PRA) applies as if in subsection (4) there were inserted—

“(aa) imposed by or under the Securitisation Regulations 2018.”.

The Tribunal

2.—(1) Part 9 of the Act(b) (hearings and appeals) applies in respect of references made to the Tribunal under these Regulations and the Act as applied by these Regulations as it applies in respect of references made to the Tribunal under the Act in respect of a decision of the FCA or PRA, with the modifications set out in this paragraph.

(2) Section 133(c) of the Act (proceedings before Tribunal: general provision) applies as if—

(a) in subsection (1)(d)—

(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) 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 a decision to—

(i) take action under sections 66, 205, 206 or 206A of the Act as applied by the Securitisation Regulations 2018;

(ii) impose a temporary prohibition under regulation 5 of those Regulations;

(iii) publish a statement under regulation 7 of those Regulations; or

(iv) impose a penalty under regulation 8 of those Regulations.”.

(a) Section 66 was amended by paragraph 14 to Schedule 5 to the Financial Services Act 2012 (c.21), sections 28 and 32 and paragraph 5 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33) and section 12 and paragraph 8 of Schedule 2 to the Financial Services Act 2012 (c.28). Section 66A was amended by section 32 of the Financial Services (Banking Reform) Act 2013 (c.33), section 25 of and paragraph 16 of Schedule 4 to the Bank of England and Financial Services Act 2016 (c.14), S.I. 2015/1864, 2016/225 and 2016/568. Section 66B was amended by section 32 of the Financial Services (Banking Reform) Act 2013 (c.33), section 25 of and paragraph 17 of Schedule 4 to the Bank of England and Financial Services Act 2016 (c.14). Section 67 was amended by paragraph 15 of Schedule 5 to the Financial Services Act 2012 (c.21), paragraph 9 of Schedule 2 to the Financial Services Act 2010 (c.28) and paragraph 6 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33). Section 68 was amended by paragraph 16 of Schedule 5 to the Financial Services Act 2012 (c.21). Section 69 was amended by paragraph 17 of Schedule 5 to the Financial Services Act 2012 (c.21), paragraph 10 of Schedule 2 to the Financial Services Act 2010 (c.28), and paragraph 7 of Schedule 3 to the Financial Services (Banking Reform) Act 2010 (c.33). Section 70 was amended by paragraph 18 of Schedule 5 to the Financial Services Act 2012 (c.21).

(b) Part 9 was amended by section 23 of the Financial Services Act 2012 (c.21), 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, 2016/680 and 2017/1064.

(c) Section 133 was substituted by S.I. 2010/22.

(d) Subsections (1), (5) and (7A) were amended by section 23 of the Financial Services Act 2012 (c.21).

(3) Section 133A(a) of the Act (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if for subsection (1)(b) there were substituted—

“(1) In determining in accordance with section 133(5) (as applied by the Securitisation Regulations 2018) a reference made as a result of a decision notice given by the FCA or PRA, the Tribunal may not direct the FCA or PRA to take action which it would not, under the Securitisation Regulations 2018 or the Act as applied by those Regulations, have had power to take when giving the notice.”.

(4) Section 133B(c) (offences) applies as if in subsection (1) paragraphs (b) and (c) were omitted.

Information gathering and investigations

3.—(1) Part 11 of the Act(d) (information gathering and investigations) applies in respect of the FCA’s and the PRA’s functions under these Regulations and the EU Securitisation Regulations 2017 and the Act as applied by these Regulations, with the modifications set out in this paragraph.

(2) Part 11 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (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 included a reference to a securitisation regulation unauthorised person.

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

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

“(1) If it appears to the FCA or the PRA that there is good reason for doing so, the FCA or the PRA 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 securitisation regulation unauthorised person, as defined in regulation 2(1) of the Securitisation Regulations 2018;
- (b) a particular aspect of that business; or
- (c) the ownership or control of a securitisation regulation unauthorised person.”;
- (b) in subsection (5) for “regulated activities” there were substituted “the activities subject to regulation pursuant to the Securitisation Regulations 2018 and the EU Securitisation Regulation 2017”.

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

(a) in subsection (1) for paragraph (b) there were substituted—

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- (a) Section 133A was substituted by S.I. 2010/22.
 - (b) Subsection (1) was amended by section 23 of the Financial Services Act 2012.
 - (c) Section 133B was substituted by S.I. 2010/22. Subsection (1) was amended by section 23 of the Financial Services Act 2012.
 - (d) 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 (c.21), 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.
 - (e) Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services and Markets Act 2000 (c.8), S.I. 2007/126 and S.I. 2015/575.
 - (f) Section 168 was amended by S.I. 2007/126, paragraph 33 of Schedule 7 to the Counter-Terrorism Act 2008 (c.28); Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to the Financial Services Act 2012 (c.21), paragraph 11 of Schedule 3 to the Pension Schemes Act 2015 (c.8) and S.I. 2016/680.

- “(b) a person may be guilty of an offence under this Act as applied by the Securitisation Regulations 2018.”;
- (b) subsection (2) were omitted;
- (c) in subsection (4)(a) after paragraph (k) there were inserted—
- “(l) a person may have contravened requirements imposed under the Securitisation Regulations 2018 or the Act as applied by the Securitisation Regulations 2018.”;
- (d) for subsection (6)(b) there were substituted—
- “(6) “Investigating authority” means the FCA or the PRA.”.
- (5) Section 169 of the Act(c) (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 EU Securitisation Regulation 2017 and the Securitisation Regulations 2018.”.
- (6) Section 169A of the Act(d) (support of overseas regulator with respect to financial stability) does not apply.
- (7) Section 170 of the Act(e) (investigations: general) applies as if subsection (3)(b) were omitted.
- (8) Section 171 of the Act(f) (powers of persons appointed under section 167) applies as if subsections (3A) and (7) were omitted.
- (9) Section 173 of the Act (powers of persons appointed as a result of section 168(2)) does not apply.
- (10) Section 174 of the Act(g) (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” were omitted;
- (b) subsection (3A) were omitted;
- (c) in subsection (4) the words from “, or a person” to the end were omitted;
- (d) in subsection (5) “, 173” were omitted.
- (11) Section 175 of the Act(h) (information and documents: supplemental provisions) applies as if in subsection (8) “(3) or” were omitted.
- (12) Section 176 of the Act(i) (entry of premises under a warrant) applies as if—
- (a) in subsection (1) “the Secretary of State,” were omitted;
- (b) in subsection (3)(a) “or an appointed representative” were omitted;
- (c) in subsection (11)—
- (i) in paragraph (a) for “87C, 87J, 165, 165A, 169A” there were substituted “165”;
- (ii) in paragraph (b) “, 173” were omitted.

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- (a) Subsection (4) was amended by paragraph 8 of Schedule 12 to the Financial Services Act 2012 (c.21), paragraph 33 of Schedule 7 to the Counter-Terrorism Act 2008 (c.28), paragraph 16 of Schedule 2 to the Financial Services Act 2010 (c.28), S.I. 2007/126, 2012/2554, 2013/1773, 2016/225, 2016/680 and 2017/1255.
- (b) Subsection (6) was substituted by the Financial Services Act 2012, section 41 and paragraph 8 of Schedule 12.
- (c) Section 169 was amended by Schedule 12 to the Financial Services Act 2012 (c.21); S.I. 2011/1043 and S.I.2016/680.
- (d) Section 169A was inserted by section 18(3) of the Financial Services Act 2010 (c.28) and amended by paragraph 10 of Schedule 12 to the Financial Services Act 2012 (c.21).
- (e) Section 170 was amended by paragraph 11 of Schedule 12 to the Financial Services Act 2012 (c.21).
- (f) Subsections (3A) and (7) were inserted by S.I. 2007/126.
- (g) Section 174 was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012 (c.21) and S.I. 2016/680.
- (h) Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012 (c.21).
- (i) Section 176 was amended by paragraphs 14 and 17 of Schedule 12 to the Financial Services Act 2012 (c.21).

Disciplinary powers under Part 14

4.—(1) Part 14 of the Act (Disciplinary Measures) applies in respect of a contravention of a requirement imposed by or under these Regulations as they apply in respect of a contravention of a requirement imposed by or under the Act, with the modifications set out in this paragraph.

(2) Section 204A(a) (meaning of “relevant requirement” and “appropriate regulator”) applies as if—

(a) in subsection (2) at the end there were inserted—

“; or

(e) by or under the Securitisation Regulations 2018.”;

(b) after subsection (3A) there were inserted—

“(3B) In the case of a contravention of a requirement that is imposed by or under the Securitisation Regulations 2018, the “appropriate regulator” for the purpose of any provision of this Part is whichever of the PRA or the FCA (or both) is the “appropriate regulator” under those Regulations.”;

(c) subsection (4), (5) and (6) were omitted.

Restrictions on disclosure of information

5. Sections 348(b) (restrictions on disclosure of confidential information by FCA, PRA etc.), 349(c) (exceptions from section 348) and 352 (offences) of the Act(d) apply in respect of information received in connection with the FCA’s and the PRA’s functions under these Regulations and under the Act as applied by these Regulations as they apply in respect of information received in connection with the FCA’s and the PRA’s functions 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 Securitisation Regulations 2018”;

(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.

Injunctions and restitution

6.—(1) Part 25 of the Act(e) (injunctions and restitution) applies in respect of a relevant requirement as it applies in respect of a relevant requirement under the Act, with the modifications set out in this paragraph.

(a) Section 204A was amended by paragraph 10 of Schedule 9 to the Financial Services Act 2012 (c.21), section 23 of the Bank of England and Financial Services Act 2016 (c.14), S.I. 2013/1773, 2016/225 and 2015/1864.

(b) 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 (c.21), paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33), paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2016/1239.

(c) 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 (c.21), S.I. 2006/1183, 2007/1093 and 2011/1043.

(d) Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

(e) Part 25 was amended by paragraphs 19, 21, 23, 24 and 25 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c.33) and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

- (2) Part 25 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;
 - (d) each reference to an authorised person included a reference to a securitisation regulation unauthorised person.
- (3) Section 380 (injunctions) applies as if—
- (a) subsections (6), (7), (8), (9), (11) and (12)(a) were omitted;
 - (b) after subsection (10) there were inserted—

“(11) In the case of a contravention of a requirement that is imposed by or under the Securitisation Regulations 2018, the Act as applied by those Regulations and the EU Securitisation Regulation 2017, the “appropriate regulator” is whichever of the PRA or the FCA is the appropriate regulator under the Securitisation Regulations 2018.”
- (4) Section 381 (injunctions in cases of market abuse) does not apply.
- (5) Section 382 (restitution orders) applies as if—
- (a) subsections (9), (10), (11), (12), (14) and (15)(b) were omitted;
 - (b) after subsection (13) there were inserted—

“(14) In the case of a contravention of a requirement that is imposed by or under the Securitisation Regulations 2018, the Act as applied by those Regulations and the EU Securitisation Regulation 2017, the “appropriate regulator” is whichever of the PRA or the FCA is the appropriate regulator under the Securitisation Regulations 2018.”
- (6) Section 383 (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 (power of FCA or PRA to require restitution) applies as if—
- (a) the reference to “authorised person” in subsection (1) were a reference to a “securitisation regulation unauthorised person, as defined in regulation 2(1) of the Securitisation Regulations 2018”;
 - (b) subsections (2) and (3) and references to those subsections were omitted;
 - (c) subsections (7), (9), (10), (12) and (13)(c) were omitted;
 - (d) after subsection (11) there were inserted—

“(11) In the case of a contravention of a requirement that is imposed by or under the Securitisation Regulations 2018, the Act as applied by those Regulations and the EU Securitisation Regulation 2017, the “appropriate regulator” is whichever of the PRA or the FCA is the appropriate regulator under the Securitisation Regulations 2018.”

Notices

7.—(1) Part 26 of the Act(d) (notices) applies in respect of notices given by the FCA or the PRA under these Regulations and under the Act as applied by these Regulations as it applies in respect

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- (a) Subsection (12) was inserted by section 37 of and paragraphs 1 and 19 of Schedule 9 to the Financial Services Act 2012 (c.21).
 - (b) Subsection (15) was inserted by section 37 of and paragraphs 1 and 21 of Schedule 9 to the Financial Services Act 2012 (c.21).
 - (c) Subsection (13) was inserted by section 37 of and paragraphs 1 and 23 to Schedule 9 to the Financial Services Act 2012 (c.21).
 - (d) 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 (c.28), 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 (c.21), section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33), paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016 (c.25), 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, 2016/1239 and 2017/701. There are other amendments but none is relevant.

of notices given by the FCA and the PRA under the Act, with the modifications set out in this paragraph.

(2) Part 26 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.

(3) Section 391 (publication) applies as if—

- (a) references to a supervisory notice were references to a notice under regulations 15(3), 15(6)(a), 15(6)(d), 15(6)(e), 22(3), 22(6)(a), 22(6)(d) and 22(6)(e);
- (b) for subsection (1ZB)(a) there were substituted—
“(1ZB) A warning notice falls within this subsection if it is given under any of regulation 19(1)(a) to (c) of the Securitisation Regulations 2018.”;
- (c) subsections (4A)(b), (5A)(c), (8A)(d), (8B)(e) and (8C)(f), (8D)(g) and (8E)(h), (10) and (11)(i) were omitted.

(4) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive), 391C (publication: special provisions relating to the UCITS directive), 391D (publication: special provisions relating to the markets in financial instruments directive) and 391E (publication: special provisions relating to the insurance distribution directive) do not apply.

(5) For section 392 (application of sections 393 and 394) there were substituted—

“Sections 393 and 394 apply to—

- (a) warning notices given in accordance with regulation 19 of the Securitisation Regulations 2018 and section 385 of the Act as applied by those Regulations;
- (b) notices given in accordance with regulation 20 and section 386 of the Act as applied by those Regulations.”.

(6) Section 395 (the FCA’s and the PRA’s procedures) applies as if references to a supervisory notice were references to a notice under regulations 15(3), 15(6)(a), 15(6)(d), 15(6)(e), 22(3), 22(6)(a), 22(6)(d) and 22(6)(e).

Offences

8.—(1) Section 398 of the Act(j) (misleading FCA or PRA: residual cases) applies in respect of requirements imposed by or under these Regulations and by or under the EU Securitisation Regulation 2017 as it applies in respect of requirements imposed by or under the Act.

(2) Section 399 of the Act (misleading the CMA) does not apply.

(3) Section 400(k) (offences by bodies corporate etc.) applies in respect of offences under the Act as applied by these Regulations as it applies in respect of offences under the Act.

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- (a) Subsection (1ZB) was substituted for subsection (1) as originally enacted by section 37 of and paragraphs 1 and 30 of Schedule 9 to the Financial Services Act 2012 (c.21).
 - (b) Subsection (4A) was inserted by S.I. 2013/3115.
 - (c) Subsection (5A) was inserted by section 24 of the Financial Services Act 2012 (c.21).
 - (d) Subsection (8A) was inserted by S.I. 2014/2879.
 - (e) Subsection (8B) was inserted by S.I. 2016/680.
 - (f) Subsection (8C) was inserted by S.I. 2016/715.
 - (g) Subsection (8D) was inserted by S.I. 2017/1127.
 - (h) Subsection (8E) was inserted by S.I. 2018/135.
 - (i) Subsection (11) was substituted by section 24 of and paragraphs 1 and 28 of Schedule 2 to the Financial Services Act 2010 (c.28).
 - (j) Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c.21) and S.I. 2013/1773, 2015/1882, 2016/680, 2017/701, 2018/135 and 2018/698.
 - (k) Section 400 was amended by paragraph 37 of Schedule 9 to the Financial Services Act 2012.

(4) Section 401 of the Act(a) (proceedings for offences) applies in respect of offences under the Act as applied by these Regulations as it applies in respect of offences under the Act, as if—

- (a) subsection (1)(c) were omitted;
- (b) references to the Secretary of State were omitted;
- (c) subsections (3A), (3AB)(b) and (3B)(c) were omitted.

(5) Section 402 of the Act (power of FCA to institute proceedings for certain other offences) does not apply; and

(6) Section 403(d) of the Act (jurisdiction and procedure in respect of offences) applies in respect of offences under the Act as applied by these Regulations as they apply in respect of offences under the Act, as if in subsection (7) for the words from “or an offence” to the end were omitted.

Limitation on powers to require documents

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

Consultation in relation to taking certain enforcement action

10. Section 415B(e) of the Act (consultation in relation to taking certain enforcement action) applies in respect of notices given by the FCA or the PRA, and applications to the court by the FCA or PRA, under the Act as applied by these Regulations.

Penalties and fees

11.—(1) Paragraphs 19 to 23 of Schedule 1ZA(f) to the Act (The FCA: penalties and fees) apply with respect to the discharge by the FCA of its functions under these Regulations and of its functions under the Act as applied by 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 included a reference to penalties imposed under these Regulations and under the Act as applied by 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 its functions under the Act as applied by these Regulations.
- (3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—
 - (a) its powers under these Regulations and under Part 25(g) of the Act as applied by these Regulations;
 - (b) its powers in relation to the investigation of offences under the Act as applied by these Regulations;

(a) Section 401 was amended by paragraph 38 of Schedule 9 to the Financial Services Act 2012 (c.21) and S.I. 2013/1881 and 2016/1239.

(b) Subsection (3AB) was inserted by S.I. 2016/1239.

(c) Subsection (3A) and (3B) were inserted by section 37 of and paragraph 38 of Schedule 9 to the Financial Services Act 2012 (c.21).

(d) Section 403 was amended by paragraph 40 of Schedule 9 to the Financial Services Act 2012 (c.21).

(e) Section 415B was inserted by paragraph 41 of Schedule 9 to the Financial Services Act 2012 (c.21). It was amended by paragraph 15 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33) and S.I. 2016/680.

(f) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 (c.21) 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 (c.33), section 29 of the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2013/1773. There are other amendments but none is relevant.

(g) Part 25 was amended by paragraphs 19, 21 and 23 of Schedule 9 to the Financial Services Act 2012 (c.21) and S.I. 2016/680. There are other amendments but none is relevant.

(c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under the Act as applied by these Regulations.

(4) Paragraph 21 applies as if regulated persons included a SRUP.

(5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under the Act as applied by these Regulations.

12.—(1) Paragraphs 27 to 31 of Schedule 1ZB(a) to the Act (The PRA: penalties and fees) apply with respect to the discharge by the PRA of its functions under these Regulations and of its functions under the Act as applied by 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 included a reference to penalties imposed under these Regulations and under the Act as applied by 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 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 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 the Act as applied by these Regulations.

(4) Paragraph 29 applies as if PRA-authorized persons included a securitisation regulation unauthorised person.

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

Exemption from liability in damages

13. The functions of the FCA under these Regulations and its functions under the Act as applied by these Regulations are to be treated for the purposes of paragraph 25 of Schedule 1ZA(b) to the Act (exemption from liability in damages) as functions conferred on the FCA under the Act.

14. The functions of the PRA under these Regulations and its functions under the Act as applied by the Regulations are to be treated for the purposes of paragraph 33 of Schedule 1ZB(c) to the Act (exemption from liability in damages) as functions conferred on the PRA under the Act.

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

15. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(d) (“Notice Regulations”) apply in respect of a notice or document given by the FCA or the PRA under these Regulations or the Act as applied by these Regulations as they apply in respect of a notice or document given by the FCA or the PRA under the Act, as if—

(a) that notice or document were “a relevant document” under the Notice Regulations;

(a) Schedule 1ZB was inserted by Schedule 3 to the Financial Services Act 2012 (c.21) and is amended by section 109 of the Financial Services (Banking Reform) Act 2013 (c.33), section 16 of and paragraphs 26 and 50 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2018/1115. There are other amendments but none is relevant.

(b) Paragraph 25 was amended by section 109 of the Financial Services (Banking Reform) Act 2013 (c.33).

(c) Paragraph 33 was amended by section 109 of the Financial Services (Banking Reform) Act 2013 (c.33).

(d) S.I. 2001/1420. There are amendments but none is relevant.

- (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.
- (d) each reference to an investigating authority were a reference to the FCA or the PRA.

The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013

16. The provisions in regulations 16 to 19 of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(a) apply in respect of powers conferred on the European Securities and Markets Authority under Articles 61 to 63 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(b) (“the EMIR regulation”) as extended and modified by Article 14 of the EU Securitisation Regulation 2017 as they apply to powers conferred on the European Securities and Markets Authority under Articles 61 to 63 of the EMIR regulation (as not so extended and modified).

SCHEDULE 2

Regulation 28

Minor and consequential amendments to primary and secondary legislation

The Act

1. In section 391(c) of the Act (publication of notices), after subsection (8E)(d) insert—

“(8F) Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by—

- (a) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017(e) laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (the “EU Securitisation Regulation 2017”), or
- (b) any directly applicable regulation made under the EU Securitisation Regulation 2017,

this section has effect subject to Article 37 of the EU Securitisation Regulation 2017 (publication of administrative sanctions).”.

The Financial Services and Markets Act (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act (Regulated Activities) Order 2001(f) is amended as follows.

-
- (a) S.I. 2013/504.
 - (b) OJ L 201, 27.7.2012 p.1.
 - (c) Section 391 was amended by sections 13 and 24 of and paragraph 28 of Schedule 2 to the Financial Services Act 2010 (c.28), section 24 of and paragraph 30 of Schedule 9 to the Financial Services Act 2012 (c.21), section 4 of the Financial Services (Banking Reform) Act 2013 (c.33) and S.I. 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715, 2017/701, 2017/1127 and 2018/135.
 - (d) Subsection (8E) was inserted by S.I. 2018/135.
 - (e) OJ L347, 28.12.2017, p.35.
 - (f) S.I. 2001/544.

(2) In article 3 (interpretation), in the appropriate places insert—

“securitisation repository” means a person registered with ESMA under Article 10 of the EU Securitisation Regulation 2017;”;

“EU Securitisation Regulation 2017” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;.

(3) In Part 6, after article 35A(a) (trade repositories) there were inserted—

“35AB Securitisation repositories

A securitisation repository does not carry on an activity of the kind specified by article 25(2) by carrying on its functions of centrally collecting and maintaining records of securitisations under the EU Securitisation Regulation 2017.”.

The Payment to Treasury of Penalties (Enforcement Costs) Order 2013

3. In article 2(1) of the Payment to Treasury of Penalties (Enforcement Costs) Order 2013(b) (enforcement powers), after sub-paragraph (n) insert—

“(o) regulations 5, 7 and 8 of the Securitisation Regulations 2018.”.

The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

4.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(c) is amended as follows.

(2) In article 1(2) (interpretation), insert the following definition in the appropriate place—

“EU Securitisation Regulation 2017” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;.

(3) In article 2(2) (qualifying EU provisions: general), after subparagraph (m)(d) insert—

“(n) the EU Securitisation Regulation 2017 and any directly applicable regulation made under that Regulation.”.

(4) In article 2(6) (qualifying EU provisions: general), after sub-paragraph (e)(e) insert –

“(f) the EU Securitisation Regulation 2017 and any directly applicable regulation made under that Regulation.”

(5) In article 3 (qualifying EU provisions: disciplinary measures)—

(a) after paragraph (2)(p)(f) insert—

“(q) the EU Securitisation Regulation 2017 and any directly applicable regulation made under that Regulation.”;

(b) after paragraph (3)(n)(g) insert—

(a) Article 35A was inserted by S.I. 2013/504.

(b) S.I. 2013/418.

(c) S.I. 2013/419.

(d) Subparagraph (m) was inserted by 2018/698. There are other amendments to Article 2(2) but none is relevant.

(e) Subparagraph (e) was inserted by S.I. 2014/3348. There are other amendments to Article 2(6) but none is relevant.

(f) Paragraph (2)(p) was inserted by S.I. 2018/698. There are other amendments to Article 3(2) but none is relevant.

(g) Paragraph (3)(n) was inserted by S.I. 2018/698. There are other amendments to Article 3(3) but none is relevant.

- “(o) in relation to a contravention of a requirement imposed for the purposes of the EU Securitisation Regulation 2017 or any directly applicable regulation made under that Regulation—
 - (i) the FCA if it is the competent authority for the purposes of that Regulation for the person concerned; or
 - (ii) the PRA if it is the competent authority for the purposes of that Regulation for the person concerned.”.
- (6) In article 5 (qualifying EU provisions: injunctions and restitution)—
 - (a) after paragraph (2)(p)(a) insert—
 - “(q) the EU Securitisation Regulation 2017 and any directly applicable regulation made under that Regulation.”;
 - (b) after paragraph (5)(o)(b) insert—
 - “(p) in relation to a contravention of a requirement imposed by the EU Securitisation Regulation 2017 or any directly applicable regulation made under that Regulation—
 - (i) the FCA if it is the competent authority under that Regulation for the person concerned;
 - (ii) the PRA if it is the competent authority under that Regulation for the person concerned.”.
- (7) In article 6(2) (qualifying EU provisions: fees), after sub-paragraph (r)(c) insert—
 - “(s) the EU Securitisation Regulation 2017 and any directly applicable regulation made under that Regulation.”.
- (8) In article 6(4) (qualifying EU provisions: fees), after sub-paragraph (f) insert—
 - “(g) the EU Securitisation Regulation 2017 and any directly applicable regulation made under that Regulation.”.

The Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014

5.—(1) The Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2001(d) is amended as follows.

(2) In article 2 (relevant functions of the FCA), after paragraph (g)(e) insert “(h) its functions under the Securitisation Regulations 2018.”.

(3) In article 3 (relevant functions of the PRA), after “2017” insert “and under the Securitisation Regulations 2018”.

The Public Interest Disclosure (Prescribed Persons) Order 2014

6.—(1) The Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(f) (prescribed persons) is amended as follows.

(2) In the second column of the entry in the table relating to the Financial Conduct Authority, after paragraph (n) insert—

“and

(o) the conduct of persons regulated under Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a

(a) Paragraph 2(p) was inserted by S.I. 2018/698. There are other amendments to Article 5(2) but none is relevant.
 (b) Paragraph 5(o) was inserted by S.I. 2018/698. There are other amendments to Article 5(5) but none is relevant.
 (c) Paragraph 2(r) was inserted by S.I. 2018/698. There are other amendments to Article 6(2) but none is relevant.
 (d) S.I. 2014/1195.
 (e) Paragraph 2(g) was inserted by S.I. 2017/1127. There are other amendments to Article 2 but none is relevant.
 (f) S.I. 2014/2418 was amended by S.I. 2017/701. There are other amendments but none is relevant.

general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.”.

(3) In the second column of the entry in the table relating to the Prudential Regulatory Authority, after paragraph (b) insert—

“and

- (c) the conduct of persons regulated under Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in relation to Regulation (EU) No 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ No L 347, 28.12.2017, p.1.) (the “EU Securitisation Regulation 2017”). The EU Securitisation Regulation 2017 harmonises and reforms existing rules on due diligence, risk retention, disclosure and credit-granting which will apply in a uniform way to all securitisations, securitising entities and all types of EU regulated institutional investors and creates a new framework for simple, transparent and standardised (“STS”) long-term securitisations and asset-backed commercial paper programmes.

Regulation 4 designates the Financial Conduct Authority (“FCA”) as the competent authority for the supervision of compliance of persons engaged in the conduct of selling a securitisation position to a retail client located in the United Kingdom with Article 3 of the EU Securitisation Regulation 2017 and the compliance of persons established in the United Kingdom with Article 4 of that Regulation when establishing SSPEs in a third country. The FCA is designated as the competent authority responsible for the supervision of compliance of persons with the STS securitisation requirements set out in the EU Securitisation Regulation 2017 and the authorisation and supervision of third party verifiers. For the purpose of supervision of compliance with respect to the general requirements for securitisations (Articles 6, 7, 8 and 9 of the EU Securitisation Regulation 2017), the instrument designates the Prudential Regulation Authority (“PRA”) as the competent authority for the supervision of compliance by PRA-authorized persons and the FCA for originators, original lenders and SSPEs not regulated by the PRA.

Part 2 of the Regulation gives effect to Article 30 of the EU Securitisation Regulations 2017 by ensuring that the appropriate disciplinary and remedial measures are available to the competent authorities as a minimum to address contraventions of relevant requirements by all persons.

Part 3 of the Regulations gives effect to Article 28 of the EU Securitisation Regulation 2017 by setting out processes relating to third party verifiers, including their authorisation, the cancellation of the authorisation and the temporary withdrawal of the authorisation. Part 3 also sets out the processes for warning notices and decision notices relating to the measures set out in Part 2. In addition, Part 3 sets out the process for imposing a temporary ban on making a notification under Article 27(1) of the EU Securitisation Regulation 2017.

Part 4 of the Regulations imposes mutual consultation obligations on the competent authorities and creates powers of direction to require information.

Schedule 1 applies and modifies provisions of the Financial Services and Markets Act 2000 (c.8).

Schedule 2 makes consequential amendments to primary and secondary legislation.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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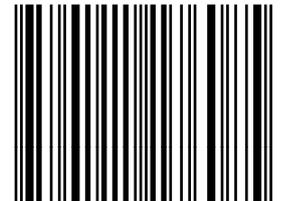
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