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STATUTORY INSTRUMENTS

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**2019 No. 926**

**The Proxy Advisors (Shareholders' Rights) Regulations 2019**

**PART 4**

Application of provisions of the Act for the purposes of Part 3

**Application of Part 11 of the Act**

**22.**—(1) Part 11 of the Act (information gathering and investigations) applies with respect to the discharge by the FCA of its functions under Part 3 of these Regulations as it applies with respect to the discharge by the FCA of its functions under the Act, and has effect for those purposes with the following modifications.

(2) A reference to the Act or to Part 11 of the Act includes a reference to these Regulations and to the Act or Part 11 as applied by these Regulations.

(3) Except in section 165(11)(d), a reference to an authorised person includes a reference to a proxy advisor.

(4) Except in section 169 (in the expression “overseas regulator”), a reference to a regulator is a reference to the FCA and a reference to each or either regulator is a reference to the FCA only.

(5) In section 165 (regulators' power to require information: authorised persons etc) ignore subsections (4)(b) and (8A) <sup>M1</sup>.

(6) Ignore sections 165A <sup>M2</sup> (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)).

(7) Section 166A <sup>M3</sup> (appointment of skilled person to collect and update information) is to be read as if—

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

“(1) This section applies if the FCA considers that a proxy advisor (within the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (interpretation)) has contravened regulation 6 of those Regulations (obligation to collect and update information).”; and

(b) subsection (10) were omitted.

(8) Section 167 <sup>M4</sup> (appointment of persons to carry out general investigations) is to be read as if—

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

“(1) If it appears to the FCA that there is good reason for doing so, the FCA 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 proxy advisor;

(b) a particular aspect of the business of a proxy advisor; or

(c) the ownership or control of a proxy advisor.”;

<sup>F1</sup>(b) .....

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*Changes to legislation: The Proxy Advisors (Shareholders' Rights) Regulations 2019, Section 22 is up to date with all changes known to be in force on or before 23 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (c) for subsection (4) there were substituted—
- “(4) The power conferred by this section may be exercised in relation to a person (“P”) who has ceased to be a proxy advisor, but only in relation to—
- (a) business carried on by P when P was a proxy advisor;
- (b) the ownership or control of P at any time when P was a proxy advisor.”;
- (d) for subsection (5A) <sup>M5</sup> there were substituted—
- “(5A) “Proxy advisor” has the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019.”;
- (e) subsection (6) were omitted.
- (9) Section 168 (appointment of persons to carry out investigations in particular cases) is to be read as if—
- (a) for subsection (1) there were substituted—
- “(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that—
- (a) a proxy advisor has contravened—
- (i) a requirement imposed by Part 2 of the Proxy Advisors (Shareholders' Rights) Regulations 2019;
- (ii) a requirement to give notice under or in accordance with regulation 31 or 32 of those Regulations; or
- (iii) a requirement imposed by or under this Act as applied by those Regulations;
- (b) a member of the board of management of the proxy advisor is responsible for a contravention of a requirement of a kind referred to in paragraph (a); or
- (c) any person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;
- (b) in subsection (3) for “investigating authority” there were substituted “ FCA ”;
- (c) subsections (2), (4) and (5) were omitted; and
- (d) for subsection (6) there were substituted—
- “(6) “Proxy advisor” has the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019.”.
- (10) Section 169 (investigations etc in support of overseas regulator) is to be read as if—
- (a) subsection (2A) <sup>M6</sup> were omitted; and
- (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 under the Proxy Advisors (Shareholders' Rights) Regulations 2019.”.
- (11) Ignore section 169A <sup>M7</sup> (support of overseas regulator with respect to financial stability).
- (12) Section 170 (investigations: general) is to be read as if—
- (a) a reference to the investigating authority were a reference to the FCA;
- (b) in subsection (1) “or (5)” were omitted;
- (c) in subsection (3)—
- (i) in paragraph (a) “or (4)” were omitted;

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- (ii) paragraph (b) were omitted; and
- (d) subsection (10) were omitted.
- (13) In section 172 (additional power of persons appointed as a result of section 168(1) or (4)), in subsection (4) and in the heading ignore the reference to subsection (4) of section 168.
- (14) Section 174 (admissibility of statements made to investigators) is to be read as if—
  - (a) in subsection (3) after paragraph (d) there were inserted—
    - “(e) under regulation 18 of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (misleading the FCA).”; and
    - (b) in subsection (4) the words from “or (5)” to the end were omitted.
  - (15) In section 175 (information and documents: supplemental provisions), in subsection (8) ignore the reference to subsection (5) of section 168.
  - (16) Section 176 (entry of premises under warrant) is to be read 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 (10) “or (5)” were omitted; and
    - (d) in subsection (11)(a) “87C, 87J,” and “, 165A, 169A”<sup>M8</sup> were omitted.

**F1** [Reg. 22\(8\)\(b\)](#) omitted (31.12.2020) by virtue of [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), regs. 1(4), **15(5)**

#### Commencement Information

**II** [Reg. 22](#) in force at 10.6.2019, see [reg. 1](#)

#### Marginal Citations

- M1** Subsections (4)(b) and (8A) were inserted by the [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [section 16](#) and Schedule 2, paragraphs 26 and 36.
- M2** [Sections 165A, 165B](#) and [165C](#) were inserted by the [Financial Services Act 2010 \(c. 28\)](#), [section 18\(1\)](#) and (2).
- M3** [Section 166A](#) was inserted by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 6.
- M4** [Section 167](#) was amended by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 7, and by [S.I. 2007/126](#) and [2015/575](#). There are other amendments, but they are not relevant.
- M5** Subsection (5A) was inserted by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 7(1) and (3).
- M6** Subsection (2A) was inserted by [S.I. 2016/680](#).
- M7** [Section 169A](#) was inserted by the [Financial Services Act 2010](#), section 18(1) and (3).
- M8** A reference to sections 87C and 87J was inserted by [S.I. 2005/1433](#) and a reference to sections 165A and 169A was inserted by the [Financial Services Act 2010](#), section 24(1) and (2) and Schedule 2, paragraphs 1 and 17.

**Changes to legislation:**

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

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)
- reg. 22(8)(b) omitted by [S.I. 2019/1370 reg. 5\(5\)](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)