

**2017 No. 0000**

**FINANCIAL SERVICES AND MARKETS**

**The Data Reporting Services Regulations 2017**

*Made* - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - in accordance with regulation 1(2)

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

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

## PART 1 Introductory Provisions

### Citation and commencement

**1.—**(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2017.

(2) These Regulations come into force—

(a) on 1st April 2017 for the purposes of—

(i) enabling applications to be made and determined under regulations 7 and 8;

(ii) enabling the FCA to give guidance under regulation 22; and

(iii) regulations 21 (fees), 23 (exemption from liability in damages), 38 to 42 (offence of misleading the FCA and other provisions about offences) and 53 (applications for authorisation);

(b) for all other purposes on 3rd January 2018.

### Interpretation

**2.—**(1) In these Regulations—

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(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 at Brussels on 17th March 1993 (Cm 2183).

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

“APA” means a person authorised under regulation 10 to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation;

“ARM” means a person authorised under regulation 10 to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

“CTP” means a person authorised under regulation 10 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities, and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“data reporting service” means—

- (a) the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation;
- (b) the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms; or
- (c) the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities, and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“data reporting service provider” means an APA, an ARM, or a CTP;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(b);

“the FCA” means the Financial Conduct Authority;

“financial instrument” has the same meaning as in Article 4.1.15 of the markets in financial instruments directive;

“home Member State” has the meaning given by Article 4.1.55(c) of the markets in financial instruments directive;

“investment firm” has the same meaning as in Article 4.1.1 of the markets in financial instruments directive, but does not include a person to whom that directive does not apply by virtue of Article 2 of that directive;

“management body” in relation to a data reporting service has the same meaning as in Article 4.1.36 of the markets in financial instruments directive;

“the markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast)(c);

“the markets in financial instruments regulation” means Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) 648/2012(d);

“multilateral trading facility” has the same meaning as in Article 4.1.22 of the markets in financial instruments directive;

“organised trading facility” has the same meaning as in Article 4.1.23 of the markets in financial instruments directive;

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(a) 2000 c.8.

(b) OJ no L331, 15/12/2010, p. 84.

(c) OJ no L173, 12/6/2014, p349.

(d) OJ no L173, 12/6/2014, p84.

“recognised investment exchange” has the same meaning as in section 285 of the Act<sup>(a)</sup>;  
“register” means the register maintained by the FCA under regulation 6;  
“regulated market” has the same meaning as in Article 4.1.21 of the markets in financial instruments directive;  
“systematic internaliser” has the same meaning as in Article 4.1.20 of the markets in financial instruments directive;  
“trading venue” has the same meaning as in Article 4.1.24 of the markets in financial instruments directive;  
“the Tribunal” means the Upper Tribunal;  
“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(b)</sup> in any part of the United Kingdom.

(2) For the purposes of these Regulations a person is established in the United Kingdom if they are—

- (a) a natural person and their head office is situated in the United Kingdom; or
- (b) a body corporate and their registered office is situated in the United Kingdom.

### **CTP definition and conditions**

3.—(1) The following definitions in regulation 2(1) apply as if they do not include reference to Articles 10 and 21 of the markets in financial instruments regulation until 3rd September 2019—

- (a) the definition of “CTP”, and
- (b) paragraph (c) of the definition of “data reporting service”.

(2) The conditions for a CTP in regulation 155 apply as if paragraphs (5) to (8) were not included until 3rd September 2019.

### **Directly applicable EU regulations**

4.—(1) In these Regulations, a reference to an Article of the markets in financial instruments regulation includes a reference to any directly applicable EU regulation made under that Article.

(2) In Parts 4 to 7 any reference to a requirement under these Regulations includes a reference to a requirement imposed on a person to whom these Regulations apply under—

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

## **PART 2**

### **Authorisation of Data Reporting Services**

#### **Prohibition on provision of data reporting service**

5. A person must not provide a data reporting service in the United Kingdom as a regular occupation or business unless the person is—

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(a) There are amendments to section 285, but none is relevant.  
(b) 1971 c.80. Schedule 1 was amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2). There are other amendments but none is relevant.

- (a) acting in accordance with an authorisation to provide a data reporting service granted under these Regulations;
- (b) an investment firm which is operating a multilateral trading facility or an organised trading facility where the FCA has verified in accordance with Article 59(2) of the markets in financial instruments directive that the firm complies with Title V of that directive;
- (c) a credit institution which is operating a multilateral trading facility or an organised trading facility where the FCA has verified in accordance with Article 59(2) of the markets in financial instruments directive that the firm complies with Title V of that directive;
- (d) a recognised investment exchange operating a trading venue where the FCA has verified in accordance with Article 59(2) of the markets in financial instruments directive that the firm complies with Title V of that directive; or
- (e) a person who is—
  - (i) established in an EEA State other than the United Kingdom; and
  - (ii) authorised in its home Member State in accordance with Title V of the markets in financial instruments directive.

#### **Register of data reporting service providers**

6.—(1) The FCA must maintain a register of all persons it has authorised to provide a data reporting service under these Regulations.

(2) The FCA must—

- (a) publish the register online and make it available for public inspection;
- (b) ensure that the register contains information on the services which persons on the register are authorised to provide; and
- (c) update the register on a regular basis.

#### **Application for authorisation to provide a data reporting service**

7.—(1) An application for authorisation to provide a data reporting service must be made to the FCA and contain, or be accompanied by, all the information required to demonstrate that the applicant meets the obligations under these Regulations for the data reporting service the applicant wishes to provide.

(2) An application made under paragraph (1) must be made in such manner as the FCA may direct.

(3) At any time after receiving an application and before determining it 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.

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

(5) The information referred to in paragraph (1) must be provided in accordance with any regulatory technical standards and implementing technical standards adopted by the European Commission under Article 61.4 or 61.5 of the markets in financial instruments directive.

#### **Application for verification of compliance with Title V of the markets in financial instruments directive**

8.—(1) Regulation 7 applies to an application in accordance with Article 59(2) of the markets in financial instruments directive to the FCA for verification of compliance with Title V of that directive as it applies to an application for authorisation to provide a data reporting service.

(2) Where the FCA verifies that an investment firm, credit institution or recognised investment exchange complies with Title V of the markets in financial instruments directive, it must record the data reporting service to which the verification relates—

- (a) in the case of an investment firm or a credit institution (including a PRA-authorised person within the meaning of section 2B(5) of the Act), in the firm’s permission under Part 4A of the Act; and
- (b) in the case of a recognised investment exchange, in the exchange’s recognition order (within the meaning of section 313(1) of the Act).

(3) Regulation 11 applies to a verification under paragraph (2) as it applies to an authorisation to provide a data reporting service with the following modifications—

- (a) for paragraph (1) there is substituted—

“(1) The FCA may cancel a person’s verification under regulation 8(2) where the person no longer complies with Title V of the markets in financial instruments directive.”;
- (b) in paragraphs (4)(a) and (6)(a), ignore the words “other than at the person’s request”;
- (c) paragraphs (2), (3), (4)(b), (5)(a)(ii) and (b)(ii), (6)(b) and (7) do not apply.

(4) Regulation 12 applies to a verification under paragraph (2) as it applies to an authorisation to provide a data reporting service with the modifications that paragraphs (7) and (9) do not apply.

(5) Where the FCA cancels or varies a verification under paragraph (2)—

- (a) in the case of an investment firm or a credit institution (including a PRA-authorised person within the meaning of section 2B(5) of the Act), it must amend the firm’s permission under Part 4A of the Act accordingly; and
- (b) in the case of a recognised investment exchange, it must amend the exchange’s recognition order (within the meaning of section 313(1) of the Act) accordingly.

### **Conditions for authorisation to provide a data reporting service**

**9.** The FCA may only grant an application for authorisation to provide a data reporting service if—

- (a) the applicant has complied with all directions and requirements under regulation 7;
- (b) the applicant is established in the United Kingdom;
- (c) the FCA is satisfied that the applicant complies with all the requirements of—
  - (i) these Regulations,
  - (ii) the markets in financial instruments regulation,
  - (iii) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation, applicable to the applicant; and
- (d) the FCA is satisfied that the persons who effectively direct the business of the applicant are of sufficiently good repute.

### **Determination of an application for authorisation to provide a data reporting service**

**10.—(1)** The FCA must determine an application for an authorisation to provide a data reporting service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it is appropriate to do so.

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

(4) The FCA may grant authorisation to carry out the data reporting services to which the application relates or such of them as may be specified in the authorisation.

(5) The FCA may, subject to paragraphs (8) and (9), grant authorisation subject to the imposition of such limitations or other restrictions on the applicant, taking effect from the grant of authorisation, as it considers appropriate.

(6) If the FCA decides to grant an application for authorisation, it must give the applicant notice of its decision specifying—

- (a) which data reporting services the applicant has been granted authorisation to provide; and
- (b) any restrictions imposed under paragraph (5),

described in such manner as the FCA considers appropriate.

(7) The notice must state the date on which the authorisation takes effect.

(8) If the FCA proposes to—

- (a) impose a restriction on the applicant; or
- (b) refuse an application;

it must give the applicant a warning notice.

(9) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to grant authorisation, whether subject to the imposition of restrictions or not, give the applicant notice of its decision complying with paragraphs (6) and (7); or
- (b) if it refuses the application, give the applicant a decision notice.

(10) If the FCA decides to—

- (a) grant authorisation subject to the imposition of restrictions on the applicant; or
- (b) refuse the application,

the applicant may refer the matter to the Tribunal.

(11) The FCA must notify the European Securities and Markets Authority of every authorisation it grants.

### **Cancellation of an authorisation to provide a data reporting service**

**11.—**(1) The FCA may cancel a person's authorisation to provide a data reporting service and remove the person from the register where—

- (a) the person does not provide any of the data reporting services which the person is authorised to provide within 12 months beginning with the date on which the authorisation took effect;
- (b) the person requests, or consents to, the cancellation of the authorisation;
- (c) the person has provided no data reporting service for the preceding six months;
- (d) the person has obtained the authorisation through false statements or other irregular means;
- (e) the person no longer meets the conditions under which the authorisation was granted;
- (f) the person is not established in the United Kingdom;
- (g) the FCA is not satisfied the persons who effectively direct the business of the applicant are of sufficiently good repute;
- (h) the person has seriously and systematically infringed the provisions of—
  - (i) these Regulations,
  - (ii) the markets in financial instruments directive,
  - (iii) the markets in financial instruments regulation,
  - (iv) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) A request made under paragraph (1)(b) must be made in such manner as the FCA may direct.



- (3) The FCA may refuse a request under paragraph (1)(b).
- (4) The FCA must give a person a warning notice where the FCA proposes—
  - (a) to cancel a person’s authorisation, other than at the person’s request, or
  - (b) to refuse a request under paragraph (1)(b).
- (5) The FCA must, having considered any representations made in response to the warning notice—
  - (a) give the person notice of its decision if it decides—
    - (i) not to cancel the authorisation, or
    - (ii) to agree the request under paragraph (1)(b); or
  - (b) give the person a decision notice if it decides—
    - (i) to cancel the authorisation, or
    - (ii) to refuse the request under paragraph (1)(b).
- (6) The person may refer the matter to the Tribunal if the FCA decides—
  - (a) to cancel the authorisation, other than at the person’s request, or
  - (b) to refuse the request under paragraph (1)(b).
- (7) 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.

#### **Variation of an authorisation to provide additional data reporting services**

**12.—**(1) A data reporting service provider may apply to the FCA to vary its authorisation to enable it to provide one or more additional data reporting services or to remove one or more data reporting services (“an application for a variation”).

(2) An application for a variation must be made in such manner as the FCA may direct.

(3) If the FCA proposes to refuse a person’s application for a variation it must give the person a warning notice.

(4) If the FCA, having considered any representations made in response to the warning notice, refuses a person’s application for a variation it must give the person a decision notice.

(5) If the FCA, having considered any representations made in response to the warning notice, decides grants a person’s application for a variation, it must give the person notice of its decision.

(6) If the FCA refuses a person’s application for a variation the person may refer the matter to the Tribunal.

(7) 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.

(8) The FCA may wholly or partly cancel a variation of a person’s authorisation where the person requests, or consents to, the cancellation.

(9) In this regulation, “authorisation” means an authorisation under regulation 10.

## **PART 3**

### **Operating Requirements**

#### **Requirements for the management body of a person providing a data reporting service**

**13.—**(1) The following requirements apply in respect of the management body of a data reporting service provider—

- (a) the management body must possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting service provider;

- (b) the members of the management body must—
  - (i) be of sufficiently good repute;
  - (ii) possess sufficient knowledge, skill and experience, and commit sufficient time, to perform their duties; and
  - (iii) be able to act with honesty, integrity and independence of mind to—
    - (aa) effectively challenge the decisions of the senior management where necessary; and
    - (bb) effectively oversee and monitor management decision making where necessary;
- (c) the management body must—
  - (i) define and oversee the implementation of governance arrangements of the data reporting service provider to ensure the effective and prudent management of the provider including the segregation of duties in the provider and the prevention of conflicts of interest;
  - (ii) when doing so act in a manner that promotes the integrity of financial markets and the interests of its clients.

(2) In paragraph (1), “data reporting service provider” includes an applicant for authorisation under regulation 10.

(3) Where—

- (a) an applicant for authorisation under regulation 10 is a recognised investment exchange; and
- (b) the management body of the applicant is the same as the management body of the exchange,

the requirements in paragraph (1)(a) and (b) are deemed to be met.

### **Conditions for an APA**

**14.—**(1) An APA must have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of the markets in financial instruments regulation in as close to real time as technically possible on a reasonable commercial basis.

(2) The information mentioned in paragraph (1) must be made available by the APA free of charge 15 minutes after the APA has first published it.

(3) The APA must be able to efficiently and consistently disseminate the information referred to in paragraph (1) in a way which—

- (a) ensures fast access to the information on a non-discriminatory basis; and
- (b) is in a format that facilitates the consolidation of the information with similar data from other sources.

(4) The information mentioned in paragraph (1) must include the following details—

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a systematic internaliser, the code ‘SI’ or, otherwise, ‘OTC’; and
- (h) if applicable, an indicator that the transaction was subject to special conditions.

(5) An APA must—

- (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
- (b) have sound security mechanisms in place designed to—
  - (i) guarantee the security of the means of the transfer of information;
  - (ii) minimise the risk of data corruption and unauthorised access; and
  - (iii) prevent information leakage before publication;
- (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
- (d) have systems which can effectively—
  - (i) check trade reports for completeness;
  - (ii) identify omissions and obvious errors; and
  - (iii) request re-transmission of any erroneous reports.

(6) An APA which is also a recognised investment exchange or an investment firm must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

(7) An APA must meet its obligations under this regulation in accordance with—

- (a) any regulatory technical standards adopted by the European Commission under Article 64.6 and 64.8 of the markets in financial instruments directive; and
- (b) any delegated acts adopted by the European Commission under Article 64.7 of that directive.

### **Conditions for a CTP**

**15.—**(1) A CTP must have adequate policies and arrangements in place to—

- (a) collect the information made public in accordance with Articles 6 and 20 of the markets in financial instruments regulation;
- (b) consolidate that information into a continuous electronic data stream; and
- (c) make that information available to the public in as close to real time as technically possible on a reasonable commercial basis.

(2) The information mentioned in paragraph (1) shall be made available by the CTP free of charge 15 minutes after the CTP has first published it.

(3) The CTP must be able to efficiently and consistently disseminate the information referred to in paragraph (1) in a way which—

- (a) ensures fast access to the information on a non-discriminatory basis; and
- (b) is in a format that is easily accessible and utilisable for market participants.

(4) The information mentioned in paragraph (1) must include the following details—

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a systematic internaliser, the code 'SI' or, otherwise, 'OTC';
- (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;
- (i) if applicable, an indicator that the transaction was subject to special conditions; and

- (j) if the obligation to make public the information referred to in Article 3.1 of the markets in financial instruments regulation was waived in accordance with Article 4.1(a) or (b) of that regulation, a flag to indicate which of those waivers the transaction was subject to.
- (5) A CTP must have adequate policies and arrangements in place to—
- (a) collect the information made public in accordance with Articles 10 and 21 of the markets in financial instruments regulation;
  - (b) consolidate that information into a continuous electronic data stream; and
  - (c) make that information available to the public in as close to real time as technically possible on a reasonable commercial basis.
- (6) The information mentioned in paragraph (5) must be made available by the CTP free of charge 15 minutes after the CTP has first published it.
- (7) The CTP must be able to efficiently and consistently disseminate the information referred to in paragraph (5) in a way which—
- (a) ensures fast access to the information on a non-discriminatory basis; and
  - (b) is in a generally accepted format that is interoperable, easily accessible and utilisable for market participants.
- (8) The information mentioned in paragraph (5) must include the following details—
- (a) the identifier or identifying features of the financial instrument;
  - (b) the price at which the transaction was concluded;
  - (c) the volume of the transaction;
  - (d) the time of the transaction;
  - (e) the time the transaction was reported;
  - (f) the price notation of the transaction;
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a systematic internaliser, the code ‘SI’, or otherwise, ‘OTC’; and
  - (h) if applicable, an indicator that the transaction was subject to special conditions.
- (9) A CTP must ensure that the data it makes available publicly is consolidated—
- (a) from all regulated markets, multilateral trading facilities, organised trading facilities and APAs; and
  - (b) for the financial instruments specified in regulatory technical standards adopted by the European Commission under Article 65.8(c) of the markets in financial instruments directive.
- (10) A CTP must—
- (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
  - (b) have sound security mechanisms in place designed to—
    - (i) guarantee the security of the means of the transfer of information; and
    - (ii) minimise the risk of data corruption and unauthorised access; and
  - (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times.
- (11) A recognised investment exchange or an APA which is also a CTP must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.
- (12) A CTP must meet its obligations under this regulation in accordance with—
- (a) any regulatory technical standards adopted by the European Commission under Article 65.6 and 65.8 of the markets in financial instruments directive; and

- (b) any delegated acts adopted by the European Commission under Article 65.7 of that directive.

### **Conditions for an ARM**

16.—(1) An ARM must have adequate policies and arrangements in place to provide the service to an investment firm of reporting the information required from that firm under Article 26 of the markets in financial instruments regulation as quickly as possible and no later than 11.59pm on the working day following the day on which the transaction took place.

(2) The information mentioned in paragraph (1) must be reported in accordance with Article 26 of the markets in financial instruments regulation.

(3) An ARM must—

- (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
- (b) have sound security mechanisms in place designed to—
  - (i) guarantee the security and authentication of the means of the transfer of information;
  - (ii) minimise the risk of data corruption and unauthorised access;
  - (iii) prevent information leakage; and
  - (iv) maintain the confidentiality of the data at all times;
- (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
- (d) have systems which—
  - (i) effectively check transaction reports for completeness;
  - (ii) identify omissions and obvious errors caused by the investment firm;
  - (iii) communicate details of such omissions or errors to the investment firm and request re-transmission of erroneous reports;
  - (iv) detect omissions or errors caused by the ARM itself; and
  - (v) enable the ARM to correct and transmit, or retransmit, accurate transaction reports to the FCA.

(4) An ARM which is also a recognised investment exchange or an investment firm must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

(5) An ARM must meet its obligations under this regulation in accordance with any regulatory technical standards adopted by the European Commission under Article 66.5 of the markets in financial instruments directive.

## **PART 4**

### **The FCA**

#### **Functions of the FCA**

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

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

- (a) is compatible with its strategic objective as defined in section 1B(2) of the Act<sup>(a)</sup> (the FCA's general duties); and
  - (b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.
- (3) For the purposes of section 1B as applied by paragraph (2), section 1F of the Act must be read as if “relevant markets” includes the market for data reporting services.

### **Monitoring and enforcement**

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

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

### **Co-operation**

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

### **Penalties**

**20.** Paragraphs 19 to 22 (penalties) of Schedule 1ZA to the Act<sup>(b)</sup> apply with respect to the discharge of the FCA's functions under these Regulations with the following modifications—

- (a) the reference to the Act in each of paragraphs 19, 20(2), 20(3)(b), 20(5)(a), 20(8)(a), 21(1) includes a reference to these Regulations; and
- (b) the FCA's enforcement powers referred to in paragraph 20(4) include its powers under Part 7 of these Regulations.

### **Fees**

**21.** Paragraph 23 (fees) of Schedule 1ZA to the Act applies with respect to the discharge by the FCA of its functions under these Regulations with the following modifications—

- (a) the qualifying functions of the FCA referred to in sub-paragraphs (1) and (2) include its functions under these Regulations; and
- (b) the reference to the Act in each of sub-paragraphs (7) and (8) includes a reference to these Regulations.

### **Guidance**

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

- (a) the operation of these Regulations;
- (b) any matters relating to the functions of the FCA under these Regulations; or
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.

(2) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price; or

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(a) Sections 1B and 1F were inserted by section 6 of the Financial Services Act 2012 (c.21).

(b) 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 (c.33) and S.I. 2013/1773. Other amendments are not relevant here.

- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

### **Exemption from liability in damages**

23. Paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act applies with respect to the discharge or purported discharge of the FCA’s functions under these Regulations with the following modifications—

- (a) the reference in sub-paragraph (1) to the FCA’s functions includes a reference to its functions under these Regulations; and
- (b) the reference in sub-paragraph (2) to sections 166 to 169 of the Act includes a reference to those sections as applied by these Regulations.

## **PART 5**

### **Reporting and Information**

#### **Reporting requirements**

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

(2) A data reporting service provider must provide the FCA with information required to be given under this regulation at such times, in such form, and verified in such manner, as the FCA may direct.

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

#### **Record keeping**

25.—(1) A data reporting service provider must maintain records in retrievable and legible form of information that could be relevant to demonstrating its compliance or non-compliance with any requirement under these Regulations applicable to it.

(2) A data reporting service provider must retain the records for no less than five years from the date on which the records were created.

#### **Reporting of infringements**

26. A data reporting service provider must have in place effective procedures for its employees to report potential or actual infringements of these Regulations internally through a specific, independent and autonomous channel.

#### **Information given by an auditor**

27.—(1) Sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: person with close links) and 344 (duty of auditor or actuary resigning etc to give notice) apply in relation to the auditor of a data reporting service provider with the following modifications—

- (a) sections 342(2) and 343(2) are omitted;
- (b) each reference to an authorised person were a reference to a data reporting service provider; and
- (c) in section 344(4), “the appropriate regulator” means the FCA.

(2) The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 apply in relation to the auditor of a data reporting service provider with the following modifications—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) in regulation 1(2) (citation, commencement and interpretation), “relevant requirements” means a requirement which is imposed under these Regulations;
- (c) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate), the reference to functions were a reference to the FCA’s functions conferred under these Regulations; and
- (d) in regulation 2(3)(b), the reference to threshold conditions were a reference to the conditions in regulation 9 of these Regulations.

### **Restrictions on disclosure of information**

**28.** Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348), and 352 (offences) of the Act(a) apply in relation to the functions of the FCA under these Regulations with the following modifications—

- (a) each reference to the Act in those sections includes a reference to these Regulations;
- (b) the reference in section 348(5)(d) to sections 166A and 166 of that Act includes a reference to those sections as applied by these Regulations; and
- (c) the reference in section 348(6)(b) to a competent person refers to a competent person appointed by the FCA to conduct an investigation under Part 11 of the Act as applied by these Regulations.

### **Disclosure of confidential information**

**29.** The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(b) apply in relation to the functions of the FCA under these Regulations.

## **PART 6**

### **Investigatory Powers and Cooperation**

#### **Investigations under Part 11 of the Act**

**30.—**(1) Part 11 (information gathering and investigations) of the Act(c) applies with respect to the discharge by the FCA of its functions under these Regulations as if in that Part—

- (a) each reference to the Act included a reference to these Regulations.
- (b) each reference to an authorised person were a reference to a data reporting service provider;
- (c) each reference to the PRA were omitted;

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(a) Section 348 is 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 and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013. Section 349 is 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, S.I. 2007/1093 and S.I. 2011/1043. Section 352 is amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

(b) S.I. 2001/2188, amended by S.I. 2001/3437, S.I. 2003/2174, S.I. 2003/2817, S.I. 2005/3071, S.I. 2006/3413, S.I. 2010/1265, S.I. 2012/916 and S.I. 2013/472. Other amendments are not relevant here.

(c) Part 11 is amended by 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, S.I. 2001/1090, S.I. 2007/126, S.I. 2011/1043, S.I. 2012/2554 and S.I. 2013/1773. Other amendments are not relevant here.



- (d) each reference to either regulator were a reference to the FCA only; and
  - (e) each of sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A), 165C (orders under section 165A(2)(d)), 169A (support of overseas regulator with respect to financial stability) and 173 (powers of persons appointed as a result of section 168(2)) were omitted.
- (2) With respect to the discharge by the FCA of its functions under these Regulations—
- (a) section 165 (regulators’ power to require information: authorised persons etc.) of the Act applies as if in subsection (7), paragraphs (b) to (d) were omitted;
  - (b) section 166 (reports by skilled persons) of the Act applies as if subsections (10) and (11) were omitted;
  - (c) section 166A (appointment of skilled person to collect and update information) of the Act applies as if—
    - (i) as if each reference to a requirement with respect to information included a reference to a requirement by or under these Regulations with respect to information; and
    - (ii) as if subsection (10) were omitted;
  - (d) section 167 (appointment of persons to carry out general investigations) of the Act applies as if—
    - (i) in paragraphs (a) and (c) of subsection (1) the words “a recognised investment exchange or” were omitted;
    - (ii) in paragraph (a) of subsection (1) the words “or of an appointed representative” were omitted;
    - (iii) in subsection (4) the words “(or appointed representative)” were omitted;
    - (iv) in subsection (5A), paragraphs (a) and (c) and in paragraph (b) the words “or the PRA” were omitted; and
    - (v) subsection (6) were omitted;
  - (e) section 168 (appointment of persons to carry out investigations in particular cases) of the Act applies as if—
    - (i) in subsection (1) for paragraph (b) the following were substituted—
      - “(b) a data reporting service provider may have contravened any requirement imposed by or under the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016; or
      - (c) there may have been a breach of regulation 5 of the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016 (prohibition on provision of data reporting service).”;
    - (ii) in subsection (3) for “investigating authority” the term “FCA” were substituted; and
    - (iii) subsections (2), (4), (5) and (6) were omitted;
  - (f) section 169 (investigations etc in support of overseas regulator) applies as if for subsection (13) the following 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 Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016.”;
  - (g) section 170 (investigations: general) of the Act applies as if—
    - (i) in subsection (1) “or (5)” were omitted;
    - (ii) in subsection (3)(a) “or (4)” were omitted;
    - (iii) subsection (3)(b) and the preceding “; or” were omitted; and
    - (iv) for subsection (10) the following were substituted—
      - “(10) “Investigating authority”, in relation to an investigator, means the FCA.”;

- (h) section 171 (powers of persons appointed under section 167) of the Act applies as if subsections (3A) and (7) were omitted;
- (i) section 172 (additional power of persons appointed as a result of section 168(1) or (4)) of the Act applies as if in subsection (4) “or (4)” were omitted;
- (j) section 174 (admissibility of statements made to investigators) of the Act applies as if for subsection (3) the following were substituted—
  - “(3) Subsection (2) applies to any offence other than under regulation 35 of the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016.”;
- (k) section 175 (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted; and
- (l) section 176 (entry of premises under warrant) of the Act applies as if—
  - (i) in subsection (1) “the Secretary of State,” were omitted and “first or second” were substituted for “first, second or third”;
  - (ii) in subsection (3)(a) “or an appointed representative” were omitted;
  - (iii) subsection (4) were omitted; and
  - (iv) in subsection (11)—
    - (aa) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted; and
    - (bb) in paragraph (b) “, 173” were omitted.

#### **FCA’s duty to cooperate with others**

**31.** Section 354A (FCA’s duty to cooperate with others) applies in relation to the functions of the FCA under these Regulations with the modification that in subsection (1)(a) the reference to functions similar to those of the FCA were references to the FCA’s functions under these Regulations.

## **PART 7**

### **Disciplinary Measures and Offences**

#### **Public censure**

**32.** If the FCA considers that a data reporting service provider, or a member of the management body or senior management of a data reporting service provider, has contravened a requirement under these Regulations, the FCA may publish a statement to that effect.

#### **Financial penalties**

**33.—(1)** If the FCA considers that a data reporting service provider (“P”) has contravened a requirement under these Regulations, it may impose a penalty of such amount as it considers appropriate on—

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

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

## **Restrictions on permission to carry on data reporting services**

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

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

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

(4) The FCA may—

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

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

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

- (a) references to either regulator’s own-initiative variation power and own-initiative requirement power are references to the FCA’s power to impose a restriction under this regulation;
- (b) references to the regulator are references to the FCA;
- (c) references to an authorised person are references to P;
- (d) references to a variation of permission, or the imposition or variation of a requirement, are references to a restriction imposed on an authorisation granted under these Regulations to P;
- (e) references to the Tribunal are references to the Tribunal under these Regulations; and
- (f) references to the right to refer the matter to the Tribunal are references to a right to refer to the Tribunal under regulation 43.

(7) Sections 391 (publication) and 395 (the FCA’s procedures) of the Act apply to a notice given by the FCA for the purposes of the procedure in paragraph (5).

## **Injunctions**

**35.**—(1) If on the application of the FCA, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed under these Regulations; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the FCA, the court is satisfied—

- (a) that any person has contravened a requirement imposed under these Regulations; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If on the application of the FCA, the court is satisfied that any person may have —

- (a) contravened a requirement imposed under these Regulations; or

(b) been knowingly concerned in the contravention of such a requirement, it may make an order restraining (or in Scotland an interdict prohibiting) the person from disposing of, or otherwise dealing with, any assets of the person which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

### **Power of FCA to require restitution**

**36.**—(1) The FCA may exercise the power in paragraph (2) if it is satisfied that a data reporting service provider (“P”) has contravened a requirement imposed under these Regulations, or has been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to P as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require P, in accordance with such arrangements as the FCA considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just having regard—

- (a) in a case within paragraph (1)(a), to the profits appearing to the FCA to have accrued;
- (b) in a case within paragraph (1)(b), to the extent of the loss or other adverse effect; or
- (c) in a case within both of those paragraphs, to the profits appearing to the FCA to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the FCA to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

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

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

(2) This regulation does not apply to—

- (a) an authorised person as defined in section 31(2) (authorised persons) of the Act; and
- (b) a recognised investment exchange.

(3) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine,
  - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

### **Misleading the FCA**

**38.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement under these Regulations knowingly or recklessly give the FCA information which is false or misleading in a material particular.

(2) A person must not provide information to another person—

- (a) knowing; or
- (b) being reckless as to whether,

(3) the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, the FCA in connection with the discharge of its functions under these Regulations.

(4) A person who contravenes paragraph (1) or (2) is guilty of an offence.

(5) A person guilty of an offence under this regulation is liable—

(a) on summary conviction—

(i) in England and Wales, to a fine,

(ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

### **Restriction on penalties**

**39.**—(1) A person who is convicted of an offence under these Regulations is not subsequently liable to a penalty under regulation 33 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under regulation 33 is not subsequently liable for an offence under these Regulations in respect of the same acts or omissions that constituted the contravention of a requirement under these Regulations for the purposes of that penalty.

### **Proceedings for offences**

**40.** Proceedings for an offence under these Regulations may be instituted—

(a) in England and Wales only by the FCA or by or with the consent of the Director of Public Prosecutions; or

(b) in Northern Ireland only by the FCA or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

### **Offences by bodies cooperate etc**

**41.** Section 400(1) to (6) of the Act (offences by bodies corporate) applies in relation to offences under these Regulations as if in subsections (1), (3) and (6) references to offences under this Act were references to offences under these Regulations.

### **Proceedings against unincorporated bodies**

**42.**—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on a partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if a partnership or association were a body corporate.

(4) In proceedings for an offence brought against a partnership or association—

(a) section 33 (procedure on charge of offence against corporation) of the Criminal Justice Act 1925(a) and section 46 (corporations) of and Schedule 3 to the Magistrates' Courts Act 1980(b) apply as they do in relation to a body corporate;

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(a) 1925 c.86. Section 33 is amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, the Courts Act 1971 (c.23), Schedule 8, and the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(b) 1980 c.43. Schedule 3 is amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4.

- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> apply; and
  - (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945<sup>(b)</sup> and Schedule 4 (corporations) to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(c)</sup> apply as they do in relation to a body corporate.
- (5) Summary proceedings for an offence under regulation 37 or 38 may be taken—
- (a) against a body corporate or unincorporated association at any place at which it has a place of business; and
  - (b) against an individual at any place where that individual is for the time being.
- (6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

## PART 8

### Notices

#### **Requirement to issue warning notice**

**43.**—(1) Where the FCA proposes to—

- (a) publish a statement under regulation 32;
- (b) impose a penalty under regulation 33; or
- (c) require restitution be paid under regulation 36,

it must give the person concerned a warning notice.

(2) The warning notice must set out the following—

- (a) in the case of a statement under regulation 32 the terms of the proposed statement;
- (b) in the case of a penalty under regulation 33 the amount of the proposed penalty; or
- (c) in the case of a requirement to pay restitution under regulation 36 the amount of the restitution and to whom it is to be paid.

#### **Requirement to issue decision notice**

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

- (a) publish a statement under regulation 32;
- (b) impose a penalty under regulation 33; or
- (c) require restitution be paid under regulation 36,

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

(2) The decision notice must set out the following—

- (a) in the case of a statement under regulation 32, the terms of the statement;
- (b) in the case of a penalty under regulation 33 the amount of the penalty; or
- (c) in the case of a requirement to pay restitution under regulation 36 the amount of the restitution and to whom it is to be paid.

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(a) 1995 c.46. Section 70 is amended by section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13. Section 143 is amended by section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, section 17 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6 and S.S.I. 2001/128.

(b) 1945 c.15.

(c) S.I. 1981/1675.

## Notices: other interested parties and third party rights

45. After a statement under regulation 32 is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) (third party rights) of the Act(a) (as applied by regulation 49).

## Service of Notices

46. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(b) (“Notice Regulations”) apply in respect to any notice or document to be given by the FCA under regulation 10, 11, 12, 32, 33, 34 or 36 as if that notice or document were “a relevant document” under the Notice Regulations.

## Referral to Tribunal

47. If the FCA decides to—

- (a) publish a statement under regulation 32;
- (b) impose a penalty under regulation 33;
- (c) impose a restriction on a permission under regulation 34; or
- (d) require restitution be paid under regulation 36,

the person concerned may refer the matter to the Tribunal.

## Statements of policy

48.—(1) Sections 69 (statements of policy) and 70 (statements of policy: procedure) of the Act(c) apply in relation to the preparation and issuance by the FCA of statements of policy with respect to—

- (a) the imposition of penalties or restrictions under regulations 33 and 34;
- (b) the amount of penalties imposed under regulation 33; and
- (c) the period for which restrictions imposed under regulation 34 are to have effect,

as they apply in relation to the preparation and issuance by the FCA of statements of policy with respect to action the FCA may take under section 66 (disciplinary powers) of the Act(d).

(2) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act(e) apply in relation to the preparation and issuance by the FCA of statements of policy with respect to—

- (a) the imposition of penalties or restrictions under regulations 33 and 34;
- (b) the amount of penalties imposed under regulation 33; and
- (c) the period for which restrictions imposed under regulation 34 are to have effect,

as they apply in relation to the preparation and issuance by the FCA of statements of policy with respect to action the FCA may take under Part 14 (disciplinary measures) of the Act(f).

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

(b) S.I. 2001/1420.

(c) Section 69 is amended by paragraph 10 of Schedule 2 to the Financial Services Act 2010, paragraph 17 of Schedule 5 to the Financial Services Act 2012, and paragraph 7 of Schedule 3 to the Financial Services (Banking Reform) Act 2013. Section 70 is amended by paragraph 18 of Schedule 5 to the Financial Services Act 2012.

(d) Section 66 is amended by section 12 of and paragraph 8 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 5 to the Financial Services Act 2012, sections 28 and 32 of and paragraph 5 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773.

(e) Section 210 is amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 is amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.

(f) Part 14 is amended by sections 9 and 10 of and Schedule 2 to the Financial Services Act 2010, Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1773.

### **Application of Part 26 of the Act**

**49.**—(1) Part 26 (notices) of the Act(a) applies with respect to the discharge by the FCA of its functions under regulations 10, 11, 12, 32, 34 or 36 as if references to the PRA in that Part were omitted.

(2) With respect to the discharge by the FCA of its functions under regulations 10, 11, 12, 32, 34 and 36—

- (a) section 387 (warning notices) of the Act applies as if subsections (1A) and (3A) were omitted;
- (b) section 388 (decision notices) of the Act applies as if subsections (1A) were omitted;
- (c) section 390 (final notices) of the Act applies as if—
  - (i) in subsection (7) for “In any other case, the” the word “The” were substituted; and
  - (ii) in subsection (8) the words “or (6)(c)” were omitted;
- (d) section 391 (publication) of the Act applies as if—
  - (i) subsections (5A), (6A) and (8A) were omitted; and
  - (ii) in subsection (1ZB) references to sections of the Act were references to regulations 32, 33 or 36;
- (e) sections 393 (third party rights) and 394 (access to FCA or PRA material) of the Act apply in respect of a warning notice or a decision notice given in accordance with these Regulations; and
- (f) section 395 (the FCA’s and PRA’s procedures) of the Act applies as if—
  - (i) for subsection (1) there were substituted—

“(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give a warning notice or decision notice.”

;
  - (ii) for subsection (2) there were substituted—

“(2) That procedure must be designed to secure, among other things, that a decision falling within subsection (1) is taken—

    - (a) by a person not directly involved in establishing the evidence on which the decision is based; or
    - (b) by 2 or more persons who include a person not directly involved in establishing that evidence.”;
  - (iii) subsections (3), (4), (9A) and (13) were omitted; and
  - (iv) in subsection (9), the words “supervisory notice, or a” and “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.

### **Application of section 413 of the Act**

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

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(a) Part 26 is 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, S.I. 2005/381, S.I. 2005/1433, S.I. 2007/126, S.I. 2007/1973, S.I. 2009/534, S.I. 2010/22, S.I. 2010/747, S.I. 2012/916, S.I. 2013/1388 and S.I. 2013/3115.



## PART 9

### The Tribunal

#### The Tribunal

**51.**—(1) Part 9 (hearings and appeals) of the Act<sup>(a)</sup> applies with respect to proceedings pursuant to references to the Tribunal under these Regulations (“relevant proceedings”) as it applies to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

(2) Section 133 (proceedings before the Tribunal: general provision) of the Act applies in relation to relevant proceedings as if—

- (a) references to decisions included references to decisions of the FCA only; and
- (b) any of the following decisions was a “disciplinary reference” within the meaning of subsection (7A)—
  - (i) a decision to publish a statement under regulation 32;
  - (ii) a decision to impose a penalty under regulation 33; and
  - (iii) a decision to require restitution be paid under regulation 36.

(3) Section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) of the Act applies as if—

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

“(1) In determining in accordance with section 133(5) (as applied by the Financial Services and Markets 2000 (Data Reporting Services) Regulations 2016) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Financial Services and Markets 2000 (Data Reporting Services) Regulations 2016, have had power to take when giving the notice.”; and

(5) in subsection (5) the words “or the PRA” were omitted.

(6) Section 133B (offences) of the Act applies as if references to decisions only referred to decisions of the FCA.

## PART 10

### Miscellaneous

#### Application to Gibraltar

**52.** For the purposes of these Regulations a data reporting service provider authorised in Gibraltar in accordance with Title V of the markets in financial instruments directive is deemed to fall within regulation 5(e).

#### Applications for authorisation

**53.**—(1) Where a person makes a completed application before 3rd July 2017 under regulation 7, regulation 10(1) does not apply to the application.

(2) If the FCA has not determined an application to which paragraph (1) applies before the end of the period of six months beginning on the date on which it received the completed application it must inform the applicant of the progress being made on the application.

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(a) Part 9 is 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 and S.I. 2013/1388.

(3) In any event the FCA must determine an application to which paragraph (1) applies before 3rd January 2018.

#### **Applications for authorisation and verification: CTP definition and conditions**

**54.**—(1) This regulation applies where before 3rd September 2019 a person wishes to make an application under regulation 7 or 8 in relation to the data reporting service mentioned in paragraph (c) of the definition of “data reporting service” in regulation 2(1) (CTP) in relation to any financial instrument listed in Article 10 or 21 of the markets in financial instruments directive.

(2) For the purposes of enabling the application to be made under regulation 7 or 8 and determined under regulations 9 and 10, ignore regulation 3.

#### **Review**

**55.**—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to 54,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)(a) (which is implemented in part by means of regulations 2 to 54) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made by regulations 2 to 54,
- (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.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 1st April 2017.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Title V of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (OJ no L173, 12/6/2014, p349) (“MiFID 2”).

“Data reporting services” is defined in regulation 2. An approved reporting mechanism and an approved publication arrangement (“APA”) provide services to investment firms to enable them to meet their transaction reporting obligations under MiFIR. They need to be authorised under these

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(a) OJ L173, 12/6/2014, p.349.

Regulations in order to make public that information, which they must do initially on a reasonable commercial basis and after 15 minutes without charge. A consolidated tape provider (“CTP”) is a business which collates all the transaction data which must be made available by trading venues and investment firms (as published by APAs) under MiFIR and makes that available to the public as a continuous data stream. That data stream must be made available to the public on a reasonable commercial basis. A business providing this service must be authorised under these Regulations.

Regulation 3 gives effect to Article 93 of MiFID 2 which provides that requirements on CTPs relating to the reporting of non-equity financial instruments do not commence until 3rd September 2019.

Regulation 4 enables the Financial Conduct Authority (“FCA”) to enforce directly applicable requirements imposed on data reporting service providers under Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L173, 12/6/2014, p.84) (“MiFIR”) and directly applicable EU Regulations made under MiFID 2 and MiFIR.

Regulation 5 prohibits the provision of data reporting services by persons who are not—

- authorised under these Regulations;
- EEA data reporting service providers authorised in their home state and who are exercising their right to provide such services in the United Kingdom under Article 60 of MiFID 2; or
- authorised investment firms, credit institutions or recognised investment exchanges (in each case when operating a “trading venue” which means a multilateral trading facility, organised trading facility or regulated market) where the FCA has verified that the firm complies with Title V of MiFID 2.

Regulation 6 requires the FCA to keep a register of data reporting service providers.

Regulations 7 to 122 provide for the making of applications for authorisation as a data reporting services provider to the FCA, the information which must be provided with applications, the determination process by the FCA and when authorisation may be cancelled or varied. They also make provision relating to verification for the purposes of Article 59(2) of MiFID 2 that investment firms, credit institutions and recognised investment exchanges operating a trading venue that the firm complies with Title V of that directive.

Part 3 transposes operating conditions set out in Articles 63 to 66 of MiFID 2 for each of the three types of data reporting service.

Part 4 confers functions on the FCA to be the data reporting service authorising authority and to be responsible for the monitoring of compliance with and enforcement of these Regulations.

Part 5 imposes reporting and record keeping requirements on data reporting service providers. It also applies restrictions on the FCA in respect of the disclosure of confidential information obtained under these Regulations.

Part 6 applies Part 11 of the Financial Services and Markets Act 2000 (c.8) (information gathering and investigations) in respect of the FCA’s functions under these Regulations.

Part 7 contains the disciplinary measures the FCA may take in respect of contraventions of the requirements in these Regulations. The FCA may make a public censure, impose financial penalties, restrict the ability of a data reporting service provider to provide services and require restitution to be paid. The FCA may also bring proceedings for injunctions to prevent contraventions, or further contraventions, of these Regulations. Part 7 also contains criminal offences for a breach of the requirement to be authorised under these Regulations and for misleading the FCA.

Part 8 contains obligations for the FCA to issue supervisory, warning and decision notices in the use of its disciplinary powers and requires it to make statements of policy in relation to the use of such powers.

Part 9 provides for decisions made by the FCA under these Regulations to be brought before the Tribunal.

Regulation 52 provides that data reporting service providers authorised in Gibraltar are to be treated under these Regulations as if they have been authorised in an EEA State other than the United Kingdom.

Regulation 55 requires the Treasury to review these Regulations every five years.

A transposition note setting out how MiFID 2 is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.gov.uk](http://www.gov.uk) and is published alongside the Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).