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FINANCIAL SERVICES AND MARKETS

**The Small and Medium Sized Business (Finance Platforms)
Regulations 2015**

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The Treasury make these Regulations in exercise of the powers conferred by sections 5 and 6 of the Small Business, Enterprise and Employment Act 2015(a).

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 6(10) of that Act.

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Small and Medium Sized Business (Finance Platforms) Regulations 2015

(2) These Regulations come into force on [date].

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000;

“bank” means an institution that is a bank for the purposes of Part 1 of the Banking Act 2009;

“designated bank” means a bank designated for the purposes of these Regulations under regulation 9;

“designated finance platform” means a finance platform that has been designated for the purposes of these Regulations under regulation 9;

“designated firm” means a designated bank or a designated finance platform;

“the FCA” means the Financial Conduct Authority;

“finance application” means a request, in any form, for a finance facility, whether such request is made for a new facility or for the renewal or extension of an existing facility ;

“finance facility” means a loan or credit facility;

(a)

“generic platforms information” means information, in writing, summarising the services that designated finance platforms provide to small or medium sized businesses, including details of designated finance platforms and information about how a business may refer itself to designated finance platforms;

“the PRA” means the Prudential Regulation Authority;

“relevant requirement” means a requirement on a designated firm under these Regulations, or any requirement or prohibition on a person other than the FCA imposed by or under Part 5;

“specified information” means information of the type specified in the Schedule;

“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 in any part of the United Kingdom.

(2) For the purposes of these Regulations, a finance application made by a small or medium sized business to a designated bank is unsuccessful if—

- (a) such application is declined by the bank; or
- (b) the bank offers the business a finance facility on a different basis to that which the business sought in its application, and where—
 - (i) the business rejects such an offer; and
 - (ii) any reasons the business provides for rejecting the offer do not relate to proposed fees or interest to be charged for the use of the facility.

PART 2

Provision of specified information about small and medium sized businesses by banks to finance platforms

Designated banks to provide information to designated finance platforms

3.—(1) This regulation and regulation 4 apply where—

- (a) a small or medium sized business has made a finance application to a designated bank; and
- (b) the application has been unsuccessful.

(2) Subject to paragraphs (3) and (4), the bank must provide specified information that it holds about the business in relation to the application.

(3) Paragraph (2) does not apply where—

- (a) the value of the finance facility applied for is less than £1,000;
- (b) the facility applied for is sought for a period of less than 30 days; or
- (c) the bank is aware that the business is subject to a statutory demand for payment, enforcement proceedings or other legal proceedings in relation to payment obligations arising under an existing finance facility.

(4) Paragraph (2) applies only if the business to which the information relates has agreed to the information being provided.

Indication of agreement by businesses and incomplete information

4.—(1) The designated bank must—

- (a) ask the small or medium sized business whether it agrees to information being provided under regulation 3(2); and,
- (b) if the business does agree to such information being provided, ask the business to provide any of the specified information which the bank does not hold.

(2) A request under paragraph (1) must be made—

- (a) in the circumstances described at regulation 2(2)(a), at the time the bank first informs the business (whether in writing or otherwise) that its finance application has been unsuccessful; or,
- (b) in the circumstances described at regulation 2(2)(b), before the end of the working day following the day on which the business informs the bank that it rejects an offer made by the bank.

(3) If the business does not agree to such information being provided, the bank must send to the business the generic platforms information by the end of a period of 5 working days starting on the day on which the bank makes the request pursuant to paragraph (1).

Timing for provision of information to designated finance platforms and incomplete information

5.—(1) Subject to paragraph (2), the designated bank must provide information under regulation 3(2) before the end of the working day after the day on which the bank receives confirmation from the business to which the information relates of agreement to such information being provided.

(2) Where a bank holds incomplete specified information, a bank need not provide any information under regulation 3(2) until the end of the working day after the day on which the bank first holds complete information.

Designated finance platforms to provide information to lenders

6.—(1) A designated finance platform must provide a finance provider with access to information that it has received from designated banks by virtue of regulation 3(2) if—

- (a) the finance provider has requested that the platform provide such access;
- (b) the finance provider has agreed to the terms on which the platform provides access to such information, including the payment of any fees; and
- (c) the finance provider has met any conditions which are required by those terms to be met for access to be provided.

(2) The platform must ensure that information to which access is provided under paragraph (1)—

- (a) subject to sub-paragraph (b), includes all information held by the platform on the working day before the day on which the finance provider accesses such information;
- (b) is in such a form that no individual business, and no person associated with the business, can be identified.

(3) The platform must provide a finance provider with the information that it holds in relation to a particular finance application including information that identifies the particular business that has made the application and any person associated with the business if—

- (a) the finance provider has access to information by virtue of paragraph (1) and has requested such identifying information about that application; and
- (b) the business that has made the application has agreed to such identifying information being provided to that finance provider.

(4) The platform must request the agreement of the business for the purposes of paragraph (3)(b) before the end of the working day following the day on which the platform receives a request for such identifying information from the finance provider.

(5) The platform must provide information pursuant to paragraph (3) by the end of the working day following the day on which the platform receives confirmation from the business of its agreement to such information being provided to the finance provider.

(6) If a finance provider has breached the terms referred to at paragraph (1)(b) the platform need not comply with paragraphs (1), (3) or (4).

(7) The platform may not charge any fee to a small or medium sized business for discharging any of its obligations under these Regulations.

Maintenance and removal of access to lenders

7.—(1) A designated finance platform must maintain access to information in relation to a finance application provided under regulation 6(1) until the earlier of—

- (a) the end of a period of 30 days starting on the day by which such information states that the business to which the information relates requires a finance facility; or
- (b) when the business to which the information relates informs the platform that—
 - (i) the business does not wish for any finance provider to further access such information; or
 - (ii) the business no longer requires finance, including where the reason for this is that finance has been provided to the business.

(2) The platform must not provide such access after either—

- (a) the end of the period described in paragraph (1)(a); or
- (b) the end of the first working day following the platform being informed that either of the circumstances described at paragraph (1)(b) apply.

Designated finance platforms to provide information to the Treasury and retention of information

8.—(1) A designated finance platform must provide statistical information relating to information received and provided under these Regulations to the Treasury on request.

(2) Information provided under paragraph (1) must be in such form that no individual business, and no person associated with the business, can be identified.

(3) The platform must retain information received and provided under these regulations for a period of 5 years for the purposes of complying with paragraph (1), but such information may be retained in such form that no individual business and no person associated with such a business can be identified.

PART 3

Designation of banks and finance platforms

Power to designate banks and finance platforms and to revoke designations

9.—(1) The Treasury may designate a bank or a finance platform for the purposes of these Regulations, and may revoke such designation.

(2) A designation, or the revocation of a designation—

- (a) takes effect from the date specified by the Treasury, or
- (b) if no such date is specified, takes effect immediately.

(3) The Treasury may exercise the power in paragraph (1) on its own initiative or at the request of another person.

Consultation before designation of a bank

10.—(1) Before designating a bank or revoking the designation of a bank, the Treasury may consult the Bank of England and any other person they consider appropriate.

(2) In considering whether to designate a bank or to revoke the designation of a bank, the Treasury may rely on information provided in response to consultation under paragraph (1).

Consultation before designation of a finance platform

11.—(1) Before designating a finance platform or revoking the designation of a finance platform, the Treasury may consult—

- (a) the company incorporated as a private company limited by shares on 18 July 2013 with the company number 08616013 and re-registered as a public company limited by shares on 29 October 2013 with the name British Business Bank plc; and
- (b) any other person they consider appropriate.

(2) In considering whether to designate a finance platform or to revoke the designation of a finance platform, the Treasury may rely on information provided in response to consultation under paragraph (1), including (in the case of consultation under paragraph (1)(a)) information provided by another person on behalf of the person consulted.

Record of designated banks and finance platforms

12. The Treasury must, in such manner as they determine—

- (a) publish the details of each designation and revocation under regulation 9, and
- (b) maintain a publicly accessible record of current designations.

PART 4

Complaints about designated finance platforms

Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to designated finance platforms

13.—(1) Part 16 (the Ombudsman Scheme) of the 2000 Act applies in respect of a complaint relating to the act or omission of a designated finance platform as if—

- (a) in section 226(2)(b) of that Act, after “Payment Services Regulations 2009,” there were inserted “or a designated finance platform which is not an authorised person,”;
- (b) in section 226(4) of that Act, after “under section 22,” there were inserted “or the activity of furnishing by a designated finance platform of persons with information relating to an application made by a person or business for finance,”;
- (c) in section 232A of that Act, after “FCA’s operational objectives,” there were inserted “or which might otherwise be of assistance to the FCA for the purposes of discharging any of the FCA’s duties under the Small and Medium Sized Business (Finance Platforms) Regulations 2015,”;
- (d) in section 234 of that Act, after “Payment Services Regulations 2009” there were inserted “, or a designated finance platform which is not an authorised person,”;
- (e) in section 417(1) of that Act (definitions) in the appropriate place there were inserted—
““designated finance platform” has the meaning given in regulation 2 of the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015,”;
- (f) in paragraph 13(4) of Schedule 17 to that Act, after “Payment Services Regulations 2009,” there were inserted “or a designated finance platform which is not an authorised person,”.

(2) The Financial Conduct Authority must make compulsory jurisdiction rules (as defined in section 226(3) of the 2000 Act) relating to the furnishing by a designated finance platform of persons with information relating to an application made by a person or business for finance.

PART 5

Monitoring of compliance and enforcement

CHAPTER 1

The FCA

Functions of the FCA

14.—(1) The FCA has the functions conferred on it by this Part.

(2) In discharging its functions under this Part (including its functions under any provision of the 2000 Act as applied by this Part), the FCA must have regard to the need to use its resources in the most efficient and economic way.

Monitoring and enforcement

15.—(1) The FCA must maintain arrangements designed to enable it to determine whether—

- (a) designated banks are complying with any relevant requirements applicable to them;
- (b) designated finance platforms are complying with any requirements under regulation 6; and
- (c) there has been a contravention of regulation 31 (misleading the FCA).

(2) The FCA must also maintain arrangements designed to enable it to enforce relevant requirements.

Guidance

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

Complaints

17.—(1) The FCA must maintain arrangements designed to enable persons to submit complaints to it alleging that a relevant requirement has been breached by a designated bank or a designated finance platform (“the complaints arrangements”).

(2) Up-to-date details of the complaints arrangements must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.

Fees and penalties

18.—(1) Paragraph 23 (fees) of Schedule 1ZA to the 2000 Act applies with respect to the discharge of its functions under this Part as if—

- (a) the qualifying functions of the FCA referred to in sub-paragraphs (1) and (2) included its functions under these Regulations; and

- (b) the reference to the 2000 Act in each of the sub-paragraphs (7) and (8) included a reference to these Regulations;
- (c) with the exception that—
 - (i) section 1B(5)(a) of the 2000 Act (the FCA’s general duties) does not apply to the making of rules under paragraph 23 by virtue of this regulation; and
 - (ii) rules made under paragraph 23 by virtue of this regulation are not to be treated as regulating provisions for the purposes of Chapter 4 of Part 9A (competition scrutiny) of the 2000 Act

(2) The FCA must apply amounts paid to it by way of penalties imposed under regulation 26 towards expenses incurred in carrying out its functions under this Part or for any incidental purpose.

Exemption from liability in damages

19. The functions of the FCA under this Part are to be treated for the purposes of paragraph 25 of Schedule 1ZA to the 2000 Act (exemption from liability in damages) as functions conferred on the FCA under that Act.

CHAPTER 2

Reporting and information

Reporting requirements

20.—(1) A designated firm must provide the FCA with such information in respect of its compliance or non-compliance with any relevant requirement applicable to it as the FCA may direct.

(2) A designated firm 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 designated firm considers that it is unable to comply with a relevant requirement applicable to it, the designated firm must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

Record keeping

21.—(1) A designated firm must maintain relevant records in retrievable and legible form for no less than five years from the date on which the records were created.

(2) For the purposes of this regulation, records are relevant where they contain information relevant to demonstrating the designated firm’s compliance or non-compliance with any relevant requirement applicable to the designated firm.

Restrictions on disclosure of information

22.—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348) and 352 (offences) of the 2000 Act^(a) apply for the purposes of this Part as if—

- (a) in section 348—

^(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).

- (i) in subsection (2)(b) for the words “, the PRA” to the end there were substituted “under the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015”;
 - (ii) in subsection (3)(a) for “this Act” there were substituted “the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015”;
 - (iii) in subsection (5)—
 - (aa) paragraphs (aa) and (c) were omitted;
 - (bb) in paragraph (d) after “section 166” there were inserted “as applied by the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015”;
 - (cc) in paragraph (e) for “ a person mentioned in paragraphs (a) to (c)” there were substituted “the FCA”;
 - (dd) in paragraphs (ea) and (f) for “a person mentioned in those paragraphs” there were substituted “the FCA”;
 - (iv) for subsection (6) there were substituted—

“(6) In subsection (5)(f) “expert” includes a competent person appointed by the FCA to conduct an investigation under Part 11 as applied by the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015.”;
 - (b) in section 349, subsections (3A) and (3B) were omitted;
 - (c) 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.
- (2) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 apply for the purposes of this Part as if Part 3 were omitted.

CHAPTER 3

Investigatory powers

Investigations under Part 11 of the 2000 Act

- 23.—**(1) Part 11 (information gathering and investigations) of the 2000 Act(a) applies for the purposes of this Part as if—
- (a) each reference in that Part to the 2000 Act were a reference to this Part;
 - (b) each reference in that Part to an authorised person were a reference to a designated firm;
 - (c) each reference in that Part to the PRA were omitted;
 - (d) each reference in that Part to either regulator were a reference to the FCA only;
 - (e) in section 165(7) (regulators’ power to require information: authorised persons etc.), paragraphs (b) to (d) were omitted;
 - (f) sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) were omitted;
 - (g) in section 166 (reports by skilled persons), subsections (10) and (11) were omitted;

(a) 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.

- (h) in section 166A (appointment of skilled person to collect and update information)—
 - (i) in subsection (1) for “rules made by that regulator to collect, and keep up to date, information of a description specified in the rules” there were substituted “regulation 21 of the Small and Medium Sized Business (Credit Information) Regulations 2015 to maintain relevant records as specified in those Regulations”;
 - (ii) each reference in that section to “information” were a reference to “relevant records”;
 - (iii) subsection (10) were omitted;
- (i) in section 167 (appointment of persons to carry out general investigations)—
 - (i) in subsection (1)—
 - (aa) for “an investigating authority” and “the investigating authority” there were substituted “the FCA”;
 - (bb) in paragraphs (a) and (c) of subsection (1) the words “a recognised investment exchange or” were omitted;
 - (cc) in paragraph (a) of subsection (1) the words “or of an appointed representative” were omitted;
 - (ii) in subsection (4) the words “(or appointed representative)” were omitted in each place;
 - (iii) subsections (5A) and (6) were omitted;
- (j) in section 168 (appointment of persons to carry out investigations in particular cases)—
 - (i) in subsection (1)—
 - (aa) for “an investigating authority” there were substituted “the FCA”;
 - (bb) for paragraph (b) there were substituted—
 - “(b) a designated firm may have contravened a requirement imposed by or under the Small and Medium Sized Businesses (Credit Information) Regulations 2015, or a person may be guilty of an offence under regulation 31 of those Regulations (misleading the FCA).”;
 - (ii) in subsection (3) for “investigating authority” there were substituted “FCA”; and
 - (iii) subsections (2), (4), (5) and (6) were omitted;
- (k) sections 169 (investigations etc. in support of overseas regulator) and 169A (support of overseas regulator with respect to financial stability) were omitted;
- (l) in section 170 (investigations: general)—
 - (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” means the FCA.”;
- (m) in section 171 (powers of persons appointed under section 167), subsections (3A) and (7) were omitted;
- (n) in section 172 (additional power of persons appointed as a result of section 168(1) or (4)), in the heading and in subsection (4), “or (4)” were omitted;
- (o) section 173 (powers of persons appointed as a result of section 168(2)) were omitted;
- (p) in section 174 (admissibility of statements made to investigators)—
 - (i) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123” were omitted;

- (ii) in subsection (3)(a) for “398” there were substituted “regulation 31 of the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015 (misleading the FCA)”;
- (iii) in subsection (4), “or (5)” were omitted;
- (iv) in subsection (5) “, 173” were omitted;
- (q) in section 175(8) (information and documents: supplemental provisions) “or (5)” were omitted;
- (r) in section 176 (entry of premises under warrant)—
 - (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;
 - (iv) in subsection (10) “or (5)” were omitted;
 - (v) in subsection (11)—
 - (aa) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted; and
 - (bb) in paragraph (b) “, 173” were omitted.

Protected information

24. Section 413 of the 2000 Act (protected information) applies for the purposes of this Part as it applies for the purposes of that Act.

CHAPTER 4

Disciplinary measures

Public censure

25. If the FCA considers that a designated firm has contravened a relevant requirement, the FCA may publish a statement to that effect.

Financial penalties

26.—(1) The FCA may impose a penalty of such amount as it considers appropriate on—

- (a) a designated firm which it considers has contravened a relevant requirement; or
- (b) a person who it considers has contravened regulation 31 (misleading the FCA).

(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 regulated activities

27.—(1) If the FCA considers that a designated firm has contravened a relevant requirement, it may impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity by the designated firm as it considers appropriate.

(2) In paragraph (1) above “carrying on a regulated activity” means carrying on a regulated activity under any permission given (or treated as given) by the FCA or PRA or conferred by any provision of the 2000 Act.

(3) The period for which a restriction is to have effect may not exceed 12 months.

(4) A restriction may, in particular, be imposed so as to require the designated firm to take, or refrain from taking, specified action.

(5) 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.

(6) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the regulated activities that the designated firm carries on.

(7) Any one or more of the powers under this regulation and regulations 25 and 26 (public censure and financial penalties) may be exercised in relation to the same contravention.

CHAPTER 5

Injunctions and restitution

Injunctions

28.—(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 relevant requirement; 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 relevant requirement; 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 relevant requirement imposed; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or, in Scotland, an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied that they are 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

29.—(1) The FCA may exercise the power in paragraph (2) if it is satisfied that a designated firm (referred to in this regulation as “the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned 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 the person concerned, 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 sub-paragraph (a) of paragraph (1), to the profits appearing to the FCA to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;

(c) in a case within both of those sub-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).

Restitution orders

30.—(1) The court may, on the application of the FCA, make an order under paragraph (2) if it is satisfied that a designated firm has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the designated firm 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 court may order the designated firm to pay to the FCA such sum as appears to the court to be just having regard—

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

(3) Any amount paid to the FCA in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), “qualifying person” means a person appearing to the court 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).

(5) On an application under paragraph (1) the court may require the designated firm to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and
- (c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.

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

(8) Nothing in this regulation affects the right of any person other than the FCA to bring proceedings in respect of the matters to which this regulation applies.

CHAPTER 6
Misleading the FCA

Offence of misleading the FCA

31.—(1) A person must not, for the purposes of compliance or purported compliance with a relevant requirement 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,

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 this Part.

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

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

- (a) on summary conviction, to a fine [not exceeding the statutory maximum], or
- (b) on conviction on indictment, to a fine.

Restriction on penalties

32.—(1) A person who is convicted of an offence under regulation 31 (misleading the FCA) is not subsequently liable to a penalty under regulation 26 (financial penalties) in respect of the same acts or omissions that constituted the offence.

Liability of officers of bodies corporate etc

33.—(1) If an offence under regulation 31 committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under regulation 31 committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under regulation 31 committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect of such officer,

(5) the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in that capacity; and
 - (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;
- “partner” includes a person purporting to act as a partner.

Proceedings for offence

34.—(1) Proceedings for an offence under regulation 31 (misleading the FCA) 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.

(2) In exercising its power to institute proceedings for an offence under regulation 31, the FCA must comply with any conditions or restrictions imposed in writing by the Treasury in relation to such proceedings.

Proceedings against unincorporated bodies

35.—(1) Proceedings for an offence under regulation 31 (misleading the FCA) 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 under regulation 31 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 under regulation 31 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;
- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995(c) apply;
- (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945(d) and Schedule 4 (corporations) to the Magistrates’ Courts (Northern Ireland) Order 1981(e) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under regulation 31 may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (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.

(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.

(c) 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.

(d) 1945 c.15.

(e) S.I. 1981/1675.

CHAPTER 7

Procedure

Requirement to issue warning notice

36.—(1) Where the FCA proposes to—

- (a) publish a statement under regulation 25 (public censure),
- (b) impose a penalty under regulation 26 (financial penalties),
- (c) impose a restriction on a permission under regulation 27 (restrictions on permission to carry on regulated activities), or
- (d) exercise the power in regulation 29(2) (power of FCA to require restitution),

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 25, the terms of the proposed statement;
- (b) in the case of a penalty under regulation 26, the amount of the proposed penalty;
- (c) in the case of a restriction on a permission under regulation 27, the restriction and the period for which it is to have effect;
- (d) in the case of the exercise of the power in regulation 29(2), the amount which the FCA proposes to require to be paid or distributed as mentioned in regulation 29(2).

Requirement to issue decision notice

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

- (a) publish a statement under regulation 25 (public censure);
- (b) impose a penalty under regulation 26 (financial penalties);
- (c) impose a restriction on a permission under regulation 27 (restriction on permission to carry on regulated activities); or
- (d) exercise the power in regulation 29(2),

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 25, the terms of the statement;
- (b) in the case of a penalty under regulation 26, the amount of the penalty;
- (c) in the case of a restriction on a permission under regulation 27, the restriction and the period for which it is to have effect;
- (d) in the case of the exercise of the power in regulation 29(2)—
 - (i) the amount to be paid or distributed;
 - (ii) the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
 - (iii) the arrangements in accordance with which the payment or distribution is to be made.

Third party rights

38. After a statement under regulation 25 (public censure) 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 2000 Act(a) (as applied by regulation 41 (application of Part 26 of the 2000 Act)).

Service of notices

39.—(1) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 apply to any notice, direction or document of any kind given by or to the FCA under this Part as they apply to any notice, direction or document of any kind under the 2000 Act.

(2) Section 414 of the 2000 Act applies for the purposes of this Part as if in subsections (1) and (4) for “this Act” there were substituted “the Small and Medium Sized Business (Finance Platforms) Regulations 2015”.

Statements of policy

40.—(1) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act(b) apply to the FCA with respect to—

- (a) the imposition of penalties or restrictions under regulations 26 (financial penalties) and 27 (restrictions on permission to carry on regulated activities);
- (b) the amount of penalties imposed under regulation 26(1); and
- (c) the period for which restrictions imposed under regulation 27 are to have effect;

as they apply with respect to action the FCA may take under sections 206 and 206A of the 2000 Act(c) (financial penalties and suspending permission to carry on regulated activities).

But see paragraph (2).

(2) Section 210 of the 2000 Act applies as if subsection (1A) were omitted.

Application of Part 26 of the 2000 Act

41.—(1) Part 26 (notices) of the 2000 Act(d) applies for the purposes of this Part as if—

- (a) references to the PRA in that Part were omitted;
- (b) in section 387 (warning notices), subsections (1A) and (3A) were omitted;
- (c) in section 388 (decision notices), subsections (1A) and (2) were omitted;
- (d) in section 390 (final notices), in subsection (6) for “section 384(5)” there were substituted “regulation 29(2) of the Small and Medium Sized Businesses Finance Platforms) Regulations 2015”;
- (e) in section 391 (publication)—
 - (i) in subsection (1) for “falling within subsection (1ZB)” there were substituted “given under regulation 36 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015”;
 - (ii) subsections (1ZA), (1ZB), (4A), (5), (5A), (6A), (7A), (7B), (8), (10) and (11) were omitted;
- (f) for section 392(a) and (b) (application of sections 393 and 394) there were substituted—

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

(b) 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.

(c) 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.

(d) 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.

- “(a) a warning notice given in accordance with regulation 36 of the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015;
- (b) a decision notice given in accordance with regulation 37 of those regulations.”
- (g) in section 395 (the FCA’s and PRA’s procedures)—
 - (i) for subsections (1) and (2) 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.
 - (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.”;
 - (ii) subsections (3), (4), (9A) and (13) were omitted, and
 - (iii) in subsection (9), there were omitted “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)”.

CHAPTER 8

Referral to the Tribunal

Referral to Tribunal

42. If the FCA decides to—

- (a) publish a statement under regulation 25 (public censure);
- (b) impose a penalty under regulation 26 (financial penalties);
- (c) impose a restriction on a permission under regulation 27 (restriction on permission to carry on regulated activities); or
- (d) exercise the power in regulation 29(2) ,

the person concerned may refer the matter to the Upper Tribunal.

The Tribunal

43.—(1) Part 9 (hearings and appeals) of the 2000 Act(a) applies with respect to proceedings pursuant to references to the Upper Tribunal under regulation 42 (“relevant proceedings”) as it applies to proceedings pursuant to references to the Upper Tribunal under that Act, with the following modifications.

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

- (a) in subsection (1)—
 - (i) there were omitted “(whether made under this or any other Act)”;
 - (ii) in paragraph (a) “or the PRA” were omitted;
 - (iii) 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 any of the following decisions—

(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.

- (a) a decision to publish a statement under regulation 25 (public censure) of the Small and Medium Sized Businesses (Finance Platforms) Regulations 2015;
- (b) a decision to impose a penalty under regulation 26 of those Regulations (financial penalties);
- (c) a decision to impose a restriction on a permission under regulation 27 of those Regulations (restrictions on permission to carry on regulated activities).”

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

- (a) the words “(whether under this or any other Act” were omitted in each place;
- (b) in subsection (1) “, as a result of section 388(2),” were omitted;
- (c) in subsection (5) the words “or the PRA” were omitted.

(4) Section 133B(1) (offences) applies as if—

- (a) in paragraph (a), “or the PRA” were omitted;
- (b) paragraphs (b) and (c) were omitted.

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

Name
Name

DRAFT

SCHEDULE

Specified Information

The following is specified information—

- (a) the name of the small or medium sized business;
- (b) the postal address, email address and telephone number of the business;
- (c) the amount of finance requested by the business;
- (d) the type of finance requested by the business (where a specific type of finance has been requested by the business);
- (e) the legal structure of the business (limited company, limited partnership, partnership sole trader, or other);
- (f) the period in years and months for which the business has been trading and receiving income;
- (g) the date by which the business requires finance by or, if such date is not known, the date by which the business has requested finance.