
Changes to legislation: Financial Services Act 2012, Paragraph 8 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 9

DISCIPLINE AND ENFORCEMENT

PART 2

AUTHORISED PERSONS ACTING WITHOUT PERMISSION

8 After section 28 insert—

“28A Credit-related agreements made unenforceable by section 26, 26A or 27

- (1) This section applies to an agreement that—
 - (a) is entered into in the course of carrying on a credit-related regulated activity, and
 - (b) is unenforceable because of section 26, 26A or 27.
- (2) The amount of compensation recoverable as a result of that section is—
 - (a) the amount agreed by the parties, or
 - (b) on the application of either party, the amount specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
 - (a) the agreement to be enforced, or
 - (b) money paid or property transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the FCA must—
 - (a) if the case arises as a result of section 26 or 26A, have regard to the issue mentioned in subsection (5), or
 - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.
- (6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.

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- (7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.
- (8) “The relevant firm” means—
- (a) in a case falling within section 26, the person in breach of the general prohibition;
 - (b) in a case falling within section 26A or 27, the authorised person concerned.
- (9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—
- (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
 - (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

28B Decisions under section 28A: procedure

- (1) A notice under section 28A(2)(b) or (3) must—
- (a) give the FCA's reasons for its determination, and
 - (b) give an indication of—
 - (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
 - (ii) the procedure on such a reference.
- (2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.
- (3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.”

Commencement Information

II Sch. 9 para. 8 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)