

2016 No. 680

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Market Abuse)
Regulations 2016**

<i>Made</i> - - - -	<i>28th June 2016</i>
<i>Laid before Parliament</i>	<i>29th June 2016</i>
<i>Coming into force</i> - -	<i>3rd July 2016</i>

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

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

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 and come into force on 3rd July 2016.

Interpretation

2. In these Regulations—

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

“the FCA” means the Financial Conduct Authority;

“the market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC(d); and

(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) made by section 1 of the European Economic Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p572).

(c) 2000 c. 8.

(d) OJ No L 173, 14.04.2014, p31.

“supplementary EU regulation” means a directly applicable EU regulation made under the market abuse regulation.

Designation of competent authority

3. The FCA is designated under Article 22 (competent authorities) of the market abuse regulation as the competent authority for the purposes of the market abuse regulation and any supplementary EU regulation.

Delayed public disclosure of inside information

4.—(1) Where an issuer or an emission allowance market participant delays the disclosure of inside information under Article 17.4 (public disclosure of inside information) of the market abuse regulation it is required to provide a record of its written explanation of how the conditions set out in Article 17.4 were met to the competent authority specified under Article 17.3 only upon the request of that authority.

(2) In this regulation—

“emission allowance market participant” has the meaning given in Article 3.1 (20) of the market abuse regulation; and

“issuer” has the meaning given in Article 3.1(21) of the market abuse regulation.

Reporting contraventions of the market abuse regulation

5. The Schedule (reporting of actual or potential contraventions of the market abuse regulation to the FCA) has effect.

Applications under the market abuse regulation

6.—(1) Any application to the FCA under the market abuse regulation or a supplementary EU regulation must—

(a) be made in such manner as the FCA may direct; and

(b) contain or be accompanied by, such other information as the FCA may reasonably require.

(2) 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.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The FCA may require an applicant to provide information under this regulation in such form, or to verify it in such a way, as the FCA may direct.

(5) Section 398(a) of the 2000 Act (misleading FCA or PRA: residual cases) applies to a requirement imposed under this regulation as it applies to a requirement imposed by or under the 2000 Act.

Notifications under the market abuse regulation

7. Any notification to the FCA under the market abuse regulation or a supplementary EU regulation must be made in such manner as the FCA may direct.

(a) 2000 c.8; Section 398 was amended by S.I. 2013/423, S.I. 2013/1773, S.I. 2015/1882 and by paragraphs 36(2) and (3) of Schedule 9 to the Financial Services Act 2012 (c. 21).

PART 2

Amendments to the Financial Services and Markets Act 2000

Amendments to Part 6 of the 2000 Act

- 8.**—(1) Part 6 of the 2000 Act is amended as follows.
- (2) In section 73A(a) (Part 6 Rules)—
- (a) omit subsection (3); and
 - (b) in subsection (6) omit “, disclosure rules”.
- (3) In section 91(b) (penalties for breach of Part 6 rules)—
- (a) omit subsection (1ZA); and
 - (b) in subsection (2) omit “(1ZA)(a),”.
- (4) Omit sections 96A (disclosure of information requirements) to 96C (suspension of trading)(c).
- (5) In section 97(1)(b)(d) (appointment by FCA of persons to carry out investigations) omit “(1ZA)(a),”.
- (6) For section 102A(4)(e) (meaning of “securities” etc) substitute—
- “(4) “Financial instrument” has the meaning given in Article 4.1.17 of the markets in financial instruments directive(f).”.
- (7) In section 102B(g) (meaning of “offer of transferable securities to the public” etc.)—
- (a) for subsection (5)(c) substitute—
 - “(c) a prescribed market.”; and
 - (b) after subsection (5) insert—
 - “(5A) The Treasury may make regulations to specify (whether by name or description) the markets which are prescribed markets for the purposes of subsection (5)(c).”.
- (8) In section 102C(a)(h)(meaning of “home State” in relation to transferable securities) omit “and in section 96A”.
- (9) In section 103(1)(i) (definitions) omit the definitions of “disclosure rules” and “inside information”.
- (10) Omit Schedule 11B(j)(connected persons).

Amendments to Part 8 of the 2000 Act

- 9.**—(1) Part 8 of the 2000 Act is amended as follows.
- (2) For the heading of Part 8 substitute “Provisions relating to market abuse”.

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- (a) Section 73A was inserted by S.I. 2005/381 and amended by section 16(4) of the Financial Services Act 2012.
 - (b) Section 91 was amended by S.I. 2005/1433, 2005/381, 2015/1755, paragraphs 6(2) to (4) of Schedule 15 to the Companies Act 2006 (c. 46) and by sections 16(3)(g) and 20 of the Financial Services Act.
 - (c) Sections 96A to 96C were inserted by S.I. 2005/381. Section 96A was amended by 2012/1538 and section 16(3) of the Financial Services Act 2012. Section 96B was amended by S.I. 2009/2461 and paragraph 7(a) and (b) of Schedule 15 to the Companies Act 2006 (c.46). Section 96C was amended by section 16(3)(g) of the Financial Services Act 2012.
 - (d) Section 97(1)(b) was amended by S.I. 2015/1755.
 - (e) Section 102A(4) was amended by S.I. 2008/3053.
 - (f) OJ No L 145, 30.04.2004, p1.
 - (g) Section 102B was amended by S.I. 2005/1433 and 2007/126.
 - (h) Section 102C was amended by S.I. 2015/1755.
 - (i) Section 103(1) was amended by S.I. 2005/1433, 2008/1886, 2012/1538, 2013/113, 2014/3293, 2015/1755, sections 16(3)(i) and (14)(g) of the Financial Services Act 2012 and by section 1265 and paragraphs 11(2) and (3) of Schedule 15 to the Companies Act 2006.
 - (j) Schedule 11B was inserted by S.I. 2009/2461.

(3) Omit sections 118 (market abuse) to 122 (effect of the code)(a), including the italic headings before section 118 and section 119.

(4) Before section 123(b) (power to impose penalties in cases of market abuse) and the italic cross heading preceding that section insert—

“Powers to require information and supplemental provisions

Power to require information from issuers

122A.—(1) The FCA may require an issuer, a person discharging managerial responsibilities or a person closely associated with a person discharging managerial responsibilities to provide—

- (a) any information the FCA reasonably requires for the purpose of protecting—
 - (i) the interests of users of financial markets and exchanges in the United Kingdom; or
 - (ii) the orderly operation of financial markets and exchanges in the United Kingdom; or
- (b) any information or explanation the FCA reasonably requires to verify whether Article 17 (public disclosure of inside information) or Article 19 (managers’ transactions) of the market abuse regulation(c) is being, or has been, complied with.

(2) Information required under this section must be provided—

- (a) before the end of such reasonable period as may be specified by the FCA; and
- (b) at such place as may be specified by the FCA.

(3) The FCA may require any information provided under this section to be provided in such form as it may reasonably require.

(4) The FCA may require any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require.

(5) In this section—

“person closely associated” has the meaning given in Article 3.1(26) of the market abuse regulation (see section 131AC (meaning of “persons closely associated” in the market abuse regulation)); and

“person discharging managerial responsibilities” has the meaning given in Article 3.1(25) of the market abuse regulation.

(6) For the meaning of “issuer” in this Part, see section 131AB.

General power to require information

122B.—(1) The FCA may, by notice in writing, require a person—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(2) This section applies only to information and documents that the FCA reasonably requires for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(3) Information or documents required under this section must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and

(a) Sections 118 to 118C were substituted for the original section 118 by S.I. 2005/381 and sections 118 and 118A were further amended by S.I. 2014/3081. Sections 119 to 122 were amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012 and section 121 was also amended by paragraph 9(3) of that Schedule.

(b) Section 123 was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

(c) OJ No L 173, 14.04.2014, p31.

- (b) at such place as may be specified.
- (4) The FCA may require any information provided under this section to be provided in such form as it may reasonably require.
- (5) The FCA may require—
 - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
 - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (6) The FCA may exercise its powers under this section at the request of an EEA regulator where the regulator makes the request in the exercise of its functions under the market abuse regulation(a) or a supplementary EU regulation.
- (7) If such a request is made to the FCA it must, in deciding whether or not to exercise its powers under this section in response to the request, consider whether it is necessary to do so to comply with the market abuse regulation or a supplementary EU regulation.
- (8) In this section “specified” means specified in the notice.

Power to require information: supplementary

122C.—(1) If a document is produced in response to a requirement imposed under section 122B, the FCA may—

- (a) take copies of, or extracts from, the document; or
 - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (2) In subsection (1)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
- (a) has been, is, or is proposed to be, a director or controller of that person;
 - (b) has been or is an auditor of that person;
 - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
 - (d) has been or is an employee of that person.
- (3) If a person who is required under section 122B to produce a document fails to do so, the FCA may require the person to state, to the best of the person’s knowledge and belief, where the document is.
- (4) A lawyer may be required under section 122B to provide the name and address of the lawyer’s client.
- (5) A person (“P”) may not be required under section 122A or 122B to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless condition A, B or C is met.
- (6) Condition A is met if the FCA suspects that P or a member of P’s group—
- (a) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; or
 - (b) has contravened, or been knowingly concerned in the contravention of—
 - (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
 - (ii) a provision of a supplementary EU regulation.

(a) OJ No L 173, 14.04.2014, p31.

(7) Condition B is met if the FCA suspects that the person to whom the obligation of confidence is owed or a member of that person's group—

- (a) has contravened Article 14 or Article 15 of the market abuse regulation; or
- (b) has contravened, or been knowingly concerned in the contravention of—
 - (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
 - (ii) a provision of a supplementary EU regulation.

(8) Condition C is met if the person to whom the obligation of confidence is owed consents to the disclosure or production.

(9) If a person claims a lien on a document, its production under section 122B does not affect the lien.

Entry of premises under warrant

122D.—(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA that there are reasonable grounds for believing that the conditions in subsection (2) are met.

(2) The conditions are—

- (a) that a person on whom a requirement has been imposed under section 122B or 122C has failed (wholly or in part) to comply with it; and
- (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required; or
 - (ii) there is information which has been required.

(3) A warrant under this section shall authorise a constable—

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
- (e) to use such force as may be reasonably necessary.

(4) A warrant under this section may be executed by any constable.

(5) The warrant may authorise persons to accompany any constable who is executing it.

(6) The powers in subsection (3) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(7) In England and Wales, sections 15(5) to (8)(a) and 16(3) to (12)(b) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(a) 1984 c. 60; section 15(5) was amended and section 15(5A) was inserted by section 114(5) and (6) of the Serious Organised Crime and Police Act 2005 (c.15), section 15(6) was amended by section 113(8) the Serious Organised Crime and Police Act 2005 and further amended by S.I. 2005/3496, and section 15(7) was amended by section 114(7) of the Serious Organised Crime and Police Act 2005.

(b) Section 16(3) was amended by section 114(8) of the Serious Organised Crime and Police Act 2005, section 16(3A) was inserted by section 113(9), section 16(10) and (10A) was substituted for section 16(10) by section 114(8) of the Serious

(8) In Northern Ireland, Articles 17(5) to (8)(a) and 18(3) to (12)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) apply to warrants issued under this section.

(9) In the application of this section to Scotland—

(a) for the reference to a justice of the peace substitute a reference to a justice of the peace or a sheriff; and

(b) for the references to information on oath substitute references to evidence on oath.

(10) The FCA may give information under subsection (1) or under section 176(1)(c) at the request of an EEA regulator where the regulator makes the request in the exercise of its functions under the market abuse regulation or a supplementary EU regulation.

(11) The FCA must, in deciding whether or not to exercise a power referred to in subsection (10), consider whether the exercise of that power is necessary to comply with an obligation under the market abuse regulation or a supplementary EU regulation.

Retention of documents taken under section 122D

122E.—(1) Any document of which possession is taken under section 122D (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If, on an application under subsection (2), the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

Offences

122F.—(1) If a person (“A”) fails to comply with a requirement imposed on A under section 122B or 122C the FCA may certify that fact in writing to the court.

(2) If the court is satisfied that A failed without reasonable excuse to comply with the requirement, it may deal with A (and where A is a body corporate, any director or other officer) as if A (or as the case may be the director or officer) were in contempt.

(3) A person (“B”) who, in purported compliance with a requirement imposed on B under section 122B or 122C—

(a) provides information which B knows to be false or misleading in a material particular; or

(b) recklessly provides information which is false or misleading in a material particular;

Organised Crime and Police Act 2005, section 16(9) was amended by S.I. 2005/3496 and section 16(11) was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39).

(a) S.I. 1989/1341 (N.I. 12); Article 17(5) was amended by S.I. 2007/288 (N.I. 2), Article 17(5A) inserted by S.I. 2007/288 (N.I. 2) and Article 17(6) and (7) was amended by S.I. 2007/288 (N.I. 2).

(b) Article 18(3) was amended by S.I. 2007/288 (N.I. 2), Article 18(3A) and (3B) were inserted by S.I. 2007/288 (N.I. 2), Article 18(9) was amended by S.I. 2007/288 (N.I. 2), Article 18(10) was substituted by S.I. 2007/288 (N.I. 2), Article 18(10A) was inserted by S.I. 2007/288 (N.I. 2), and Article 12 was amended by S.I. 2007/288 (N.I. 2).

(c) Section 176(1) was amended by paragraph 14(1) and (2) of Schedule 12 to the Financial Services Act 2012.

is guilty of an offence.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding three months or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 122D is guilty of an offence and liable on summary conviction—

(a) in England and Wales, to imprisonment for a term not exceeding three months or a fine, or both;

(b) in Scotland, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both;

(c) in Northern Ireland, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(6) In this section—

(a) “court” means—

(i) the High Court;

(ii) in Scotland, the Court of Session;

(b) “officer”, in relation to a limited liability partnership, means a member of the partnership.

Other administrative powers

Publication of information and corrective statements by issuers

122G.—(1) If condition A or B is met, the FCA may require an issuer to publish—

(a) specified information; or

(b) a specified statement.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting—

(a) the interests of users of financial markets and exchanges in the United Kingdom; or

(b) the orderly operation of financial markets and exchanges in the United Kingdom.

(3) Condition B is met if—

(a) the information or statement corrects false or misleading information made public, or a false or misleading impression given to the public, by that person; and

(b) the FCA considers that the publication of the information is necessary for the purpose of the exercise by it of functions under the market abuse regulation^(a) or a supplementary EU regulation.

(4) Information or statements required to be published under this section must be published—

(a) before the end of such reasonable period as may be specified; and

(a) OJ No L 173, 14.04.2014, p31.

(b) by any method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section, the FCA may publish the information or statement.

(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section “specified” means specified by the FCA.

(8) For the meaning of “issuer”, see section 131AB.

Publication of corrective statements generally

122H.—(1) If condition A or B is met, the FCA may, by notice in writing, require a person to publish—

- (a) specified information; or
- (b) a specified statement

correcting false or misleading information made public, or a false or misleading impression given to the public, by that person.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting—

- (a) the interests of users of financial markets and exchanges in the United Kingdom; or
- (b) the orderly operation of financial markets and exchanges in the United Kingdom.

(3) Condition B is met if the FCA considers that the publication of the information or statement is necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(4) Information or statements required to be published under this section must be published—

- (a) before the end of such reasonable period as may be specified; and
- (b) by any method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section the FCA may publish the information or statement.

(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section “specified” means specified in the notice.

Power to suspend trading in financial instruments

122I.—(1) The FCA may suspend trading of a financial instrument where it considers it necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(2) If the FCA does so the issuer of the financial instrument may refer the matter to the Tribunal.

(3) The FCA may—

- (a) cancel a suspension under subsection (1); and
- (b) impose such conditions for the cancellation to take effect as it considers appropriate.

(4) The provisions relating to suspension of listing of securities in section 78(a) (discontinuance or suspension: procedure) apply to a suspension of trading in a financial instrument under subsection (1) and for the purposes of this section—

- (a) the references in section 78 to listing are to be read as references to trading; and
- (b) the references in section 78 to securities are to be read as references to financial instruments.

(5) For the meaning of “issuer” in this Part, see section 131AB.”.

(5) For section 123(b) (power to impose penalties in cases of market abuse) and the italic heading before it substitute—

“Administrative sanctions

Power to impose penalties or issue censure

123.—(1) The FCA may exercise its power under subsection (2) if it is satisfied that—

- (a) a person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;
- (b) a person has contravened, or been knowingly concerned in the contravention of—
 - (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
 - (ii) a provision of a supplementary EU regulation; or
- (c) a person other than an authorised person has contravened any requirement—
 - (i) imposed on that person under section 122A, 122B, 122C, 122G, 122H, 122I, 123A or 123B; or
 - (ii) relating to the market abuse regulation or any supplementary EU regulation imposed on that person under Part 11.

(2) The FCA’s power under this subsection is a power to impose a penalty of such amount as it considers appropriate on the person.

(3) The FCA may, instead of imposing a penalty on a person, publish a statement censuring the person.

Power to prohibit individuals from managing or dealing

123A.—(1) The FCA may exercise its power under subsection (2) if it is satisfied that an individual—

- (a) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;
- (b) has contravened, or been knowingly concerned in the contravention of—
 - (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
 - (ii) a provision of a supplementary EU regulation; or
- (c) has contravened a requirement imposed on that individual under this section or section 122A, 122B, 122C, 122G, 122H, 122I or 123B.

(2) The FCA’s power under this subsection is a power to impose either or both of the following—

(a) Section 78 was amended by S.I. 2007/1973, section 16(1) to (3) of the Financial Services Act 2012 and by S.I. 2014/3329.
(b) Section 123(1) and (3) was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

- (a) a temporary prohibition on the individual holding an office or position involving responsibility for taking decisions about the management of an investment firm;
- (b) a temporary prohibition on the individual acquiring or disposing of financial instruments, whether on his or her own account or the account of a third party and whether directly or indirectly.

(3) If the FCA is satisfied that an individual has contravened Article 14 or 15 of the market abuse regulation the FCA may impose a permanent prohibition on the individual holding an office or position involving responsibility for taking decisions about the management of an investment firm.

(4) A prohibition imposed under subsection (2) may be expressed to expire at the end of such period as the FCA may specify, but the imposition of a prohibition that expires at the end of a specified period does not affect the FCA's power to impose a new prohibition under subsection (2).

(5) A prohibition imposed under subsection (2)(a) or (3) may be expressed to prohibit an individual holding an office or position involving responsibility for taking decisions about the management of—

- (a) a named investment firm;
- (b) an investment firm of a specified description; or
- (c) any investment firm.

(6) An investment firm must take reasonable care to ensure that no individual who is subject to a prohibition under subsection (2)(a) or (3) on the holding of an office or position involving responsibility for taking decisions about the management of the firm holds such an office or position.

(7) The FCA may vary or revoke a prohibition imposed under this section.

Suspending permission to carry on regulated activities etc

123B.—(1) The FCA may exercise its power under subsection (2) if it is satisfied that an authorised person—

- (a) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;
- (b) has contravened, or been knowingly concerned in the contravention of—
 - (i) a provision of the market abuse regulation other than Article 14 and 15 of that regulation;
 - (ii) a provision of a supplementary EU regulation; or
- (c) has contravened a requirement imposed on that person under this section or section 122A, 122B, 122C, 122G, 122H, 122I or 123A.

(2) The FCA's power under this subsection is a power to do either or both of the following —

- (a) to suspend, for such period as it considers appropriate, any permission which the person has to carry on a regulated activity;
- (b) to 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 person as it considers appropriate.

(3) In subsection (2) "permission" means any permission that the authorised person has, whether given (or treated as given) by the FCA or the PRA or conferred by any provision of this Act.

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

(5) A suspension may relate only to the carrying on of an activity in specified circumstances.

(6) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.

(7) The FCA may—

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

(8) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person concerned carries on.

Exercise of administrative sanctions

123C. Any one or more of the powers under sections 123, 123A and 123B may be exercised in relation to the same contravention.”.

(6) In section 124(a) (statement of policy)—

(a) for subsections (1) and (2) substitute—

“(1) The FCA must prepare and issue a statement of its policy with respect to the type and level of administrative sanctions it may impose on a relevant person.

(2) The FCA’s policy in determining the type and level of administrative sanctions to be imposed must take into account all relevant circumstances including, where appropriate, the matters referred to in Article 31(1) of the market abuse regulation.”;

(b) omit subsection (3);

(c) for subsection (6) substitute—

“(6) When imposing, or deciding whether to impose, an administrative sanction on a relevant person the FCA must have regard to any statement published under this section in force at the time of the contravention.”; and

(d) after subsection (9) insert—

“(10) In this section—

“administrative sanction” means—

- (a) a penalty or statement of censure imposed or published under section 123;
- (b) a prohibition imposed under section 123A; or
- (c) a suspension or restriction imposed under section 123B; and

“relevant person” means a person—

- (a) who has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;
- (b) who has contravened, or been knowingly concerned in the contravention of—
 - (i) a provision of the market abuse regulation^(b) other than Article 14 or 15 of that regulation; or
 - (ii) a provision of a supplementary EU regulation; or
- (c) who has contravened—
 - (i) any requirement imposed on the person under section 122A, 122B, 122C, 122G, 122H, 122I, 123A or 123B; or

(a) Section 124 was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

(b) OJ No L 173, 14.04.2014, p31.

- (ii) in the case of a person other than an authorised person, any requirement relating to the market abuse regulation or a supplementary EU regulation imposed on the person under Part 11.”.

(7) In section 126(a) (warning notices)—

(a) for subsection (1) substitute—

“(1) If the FCA proposes—

- (a) to impose a penalty on a person under section 123(2);
- (b) to publish a statement censuring a person under section 123(3);
- (c) to impose a temporary prohibition on an individual under section 123A(2)(a);
- (d) to impose a temporary prohibition on an individual under section 123A(2)(b);
- (e) to impose a permanent prohibition on an individual under section 123A(3); or
- (f) to impose a suspension or restriction in relation to a person under section 123B;

it must give the person a warning notice.”;

(b) in subsection (2) after “a penalty” insert “under section 123”;

(c) in subsection (3) after “a statement” insert “under section 123”; and

(d) after subsection (3) insert—

“(4) A warning notice about a proposal to impose a prohibition under section 123A must set out the terms of the proposed prohibition.

(5) A warning notice about a proposal to impose a suspension or restriction under section 123B must state the period for which the suspension or restriction is to have effect.”.

(8) In section 127 (decision notices)—

(a) for subsection (1)(b) substitute—

“(1) If the FCA decides—

- (a) to impose a penalty on a person under section 123(2);
- (b) to publish a statement censuring a person under section 123(3);
- (c) to impose a temporary prohibition on an individual under section 123A(2)(a);
- (d) to impose a temporary prohibition on an individual under section 123A(2)(b);
- (e) to impose a permanent prohibition on an individual under section 123A(3);
- (f) to impose a suspension or restriction in relation to a person under section 123B;

it must give the person a decision notice.”;

(b) in subsection (2) after “a penalty” insert “under section 123”;

(c) in subsection (3) after “a statement” insert “under section 123”;

(d) after subsection (3) insert—

“(3A) A decision notice about the imposition of a prohibition under section 123A must set out the terms of the prohibition.

(3B) A decision notice about the imposition of a suspension or restriction under section 123B must state the period for which the suspension or restriction is to have effect.”; and

(e) for subsection (4)(c) substitute—

“(4) If the FCA decides—

- (a) to impose a penalty on a person under section 123(2);
- (b) to publish a statement censuring a person under section 123(3);

(a) Section 126 was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.
(b) Section 127(1) was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.
(c) Section 127(4) was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

- (c) to impose a prohibition on an individual under section 123A; or
 - (d) to impose a suspension or restriction in relation to a person under section 123B;
- that person may refer the matter to the Tribunal.”.
- (9) After section 127 (decision notices) insert—

“Consultation with the PRA in relation to administrative sanctions

127A.—(1) The FCA must consult the PRA before giving a warning notice under section 126(1)(a), (b), (d) or (f) or a decision notice under section 127(1)(a), (b), (d) or (f) in relation to a person who—

- (a) is a PRA-authorised person; or
- (b) is a member of a PRA-authorised person’s immediate group.

(2) The FCA must consult the PRA before giving a warning notice under section 126(1)(c) or (e) or a decision notice under section 127(1)(c) or (e) if as a result of the prohibition in question an individual would be prohibited from holding an office or position involving responsibility for taking decisions about the management of a PRA-authorised investment firm.

(3) The FCA must consult the PRA before varying or revoking a prohibition under section 123A(2)(a) or (3) if as a result of the proposed variation or revocation an individual would no longer be prohibited from holding an office or position involving responsibility for taking decisions about the management of a PRA-authorised investment firm.

(4) In this section “PRA-authorised investment firm” means an investment firm which is a PRA-authorised person and carries on a regulated activity.”.

- (10) In section 128 (suspension of investigations)—

- (a) in subsection (1)(a) for “power relating to market abuse” substitute “relevant power”; and
- (b) for subsection (3)(b) substitute—

“(3) In this section “relevant power” means the FCA’s power—

- (a) to impose a penalty or publish a statement of censure under section 123;
- (b) to impose a prohibition under section 123A;
- (c) to impose a suspension or restriction under section 123B;
- (d) to appoint a person to conduct an investigation under section 168 in a case falling within subsection (2)(d) of that section; or
- (e) to appoint a person to conduct an investigation under section 169 (investigation etc in support of an overseas regulator) in a case falling within subsection (2A) of that section.”.

- (11) For section 129(c) (power of court to impose penalty in cases of market abuse) substitute—

“Power of court to impose administrative sanctions in cases of market abuse

129.—(1) The FCA may, on an application to the court under sections 380 to 383 which relates to a market abuse requirement, request the court to consider whether it is appropriate to impose one or more of the following on the person to whom the application relates—

- (a) a penalty;
- (b) if the person concerned is an individual, a temporary prohibition or a permanent prohibition; or
- (c) a suspension or restriction.

(a) Section 128(1) was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.
 (b) Section 128(3) was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.
 (c) Section 129 was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

(2) The court may, if it considers it appropriate, make an order which does one or more of the following—

- (a) requires the person concerned to pay to the FCA a penalty of such amount as the court considers appropriate;
- (b) if the person concerned is an individual, imposes a temporary prohibition or a permanent prohibition on that individual; or
- (c) imposes a suspension or restriction on the person concerned.

(3) But the court may impose a permanent prohibition only where it is satisfied the person concerned has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.

(4) Section 123A(4) to (6) apply to a prohibition imposed by an order made under subsection (2) as they do to a prohibition under section 123A, but with—

- (a) references to a prohibition under section 123A having effect as references to a prohibition under this section; and
- (b) references to the FCA having effect as references to the court which makes the order under this section.

(5) Section 123B(4) to (6) and (8) apply to a suspension or restriction imposed by an order under subsection (2) as they do to a suspension or restriction imposed under section 123B.

(6) The court may—

- (a) vary or revoke a prohibition imposed under this section;
- (b) withdraw a suspension or restriction imposed under this section; or
- (c) vary a suspension or a restriction imposed under this section so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) In this section—

“market abuse requirement” means a requirement imposed by the market abuse regulation or a supplementary EU regulation which is a relevant requirement for the purposes of section 380 or 382 (as the case may be);

“permanent prohibition” means a permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of an investment firm;

“suspension or restriction” means—

- (a) a suspension of any permission which a person has to carry on a regulated activity for such period as the court considers appropriate ; or
- (b) such limitations or other restrictions as the court considers appropriate in relation to the carrying on of a regulated activity by a person for such period as the court considers appropriate;

“temporary prohibition” means a temporary prohibition on an individual—

- (a) holding an office or position involving responsibility for taking decisions about the management of an investment firm; or
- (b) acquiring or disposing of financial instruments, whether on his or her own account or the account of a third party and whether directly or indirectly.”.

(12) In section 130 (guidance)—

- (a) for subsection (1)(a), substitute—

(a) Section 130(1) was amended by paragraph 9(4) of Schedule 9 to the Financial Services Act 2012.

“(1) The Treasury may from time to time issue written guidance for the purpose of helping relevant authorities to determine the action to be taken in cases where—

- (a) it appears a person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and
 - (b) in so doing the person appears to have committed an offence under Part 7 of the Financial Services Act 2012(a) or Part 5 of the Criminal Justice Act 1993(b) (insider dealing).”; and
- (b) in subsection (5)(c) for “where behaviour mentioned in subsection (1) occurs” substitute “mentioned in subsection (1)”.

(13) Omit section 130A(d) (interpretation and supplementary provision).

(14) In section 131A (protected disclosures)—

(a) in subsection (2)(e)—

(i) for subsection (b) substitute—

“(b) gives him reasonable grounds for knowing or suspecting that another person has engaged in market abuse”; and

(ii) after that paragraph, and as the closing words of the subsection, insert—

“that another person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.”; and

(b) in subsection (4)(f) omit “to the FCA or”.

(15) After section 131A insert—

“Reporting of infringements

131AA.—(1) This section applies to employers who—

- (a) provide regulated financial services;
- (b) carry on regulated activities in reliance on the exemption in section 327; or
- (c) are recognised bodies, EEA central counterparties, or third country central counterparties.

(2) Employers must have in place appropriate internal procedures for their employees to report contraventions of the market abuse regulation or any supplementary EU regulation.

(3) In this section—

“employee” and “employer” have the meaning given in section 230(g) of the Employment Rights Act 1996;

“recognised body” has the meaning given in section 313(h);

“regulated financial services” has the meaning given in section 1H(i).

(a) 2012 c. 21.

(b) 1993 c. 36.

(c) Section 130(5) was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

(d) Section 130A was amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

(e) Section 131A(2) was inserted by S.I. 2005/381.

(f) Section 131A(4) was inserted by S.I. 2005/381 and further amended by paragraph 9(1) and (2) of Schedule 9 to the Financial Services Act 2012.

(g) 1996 c. 18; section 230 was amended by section 15(1) of the Public Interest Disclosure Act 1989 (c.23), paragraph 41 of Schedule 7 to the Children and Families Act 2014 (c.6) and by section 149(3) of the Small Business, Enterprise and Employment Act 2015 (c.26).

(h) Section 313 was amended by S.I. 2007/126, paragraph 36(3) of Schedule 8 to the Financial Services Act 2012 (c.21) and by S.I. 2013/504 and 2014/892.

(i) Section 1H was inserted by section 6(1) of the Financial Services Act 2012 and further amended by S.I. 2013/1881; there are other amending instruments but none is relevant.

Interpretation

131AB. In this Part—

“EEA regulator” means the competent authority of an EEA State other than the United Kingdom for the purposes of the market abuse regulation^(a);

“financial instrument” has the meaning given in Article 4.1(17) of the markets in financial instruments directive^(b);

“issuer” has the meaning given in Article 3.1(21) of the market abuse regulation; and

“supplementary EU regulation” means a directly applicable EU regulation made under the market abuse regulation.

Meaning of “persons closely associated” in the market abuse regulation

131AC.—(1) In Article 3.1(26)(a) (definitions) of the market abuse regulation “partner considered to be equivalent to a spouse” includes a civil partner.

(2) In Article 3.1(26)(b) of the market abuse regulation “dependent child” means a child who—

- (a) is under the age of 18 years;
- (b) is unmarried; and
- (c) does not have a civil partner.

(3) In this section “child” includes a stepchild.

Individual liability in respect of legal persons under Articles 8 and 12 of the market abuse regulation

131AD.—(1) An individual participates in a decision by a body corporate for the purposes of Article 8.5 (insider dealing) or Article 12.4 (market manipulation) of the market abuse regulation where—

- (a) the individual was an officer of the body corporate when the decision was made; and
- (b) the FCA are satisfied that the individual was knowingly concerned in the decision.

(2) In this section “officer”, in relation to a body corporate, means—

- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; or
- (b) an individual who is a controller of the body.

Liability for contraventions of Article 14 or 15 of the market abuse regulation

131AE. For the purposes of any enactment a person contravenes Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) whether the contravention is by that person alone or by that person and one or more other persons jointly or in concert.”.

Other amendments to the 2000 Act

10.—(1) The 2000 Act is amended as follows.

(a) OJ No L 173, 14.04.2014, p31.

(b) OJ No L 145, 30.04.2004, p1.

(2) In section 1D(2)(c)(a) (the integrity objective) for “behaviour that amounts to market abuse” substitute “contraventions by persons of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation”.

(3) After section 55J(7ZA)(b) (variation or cancellation on initiative of regulator) insert—

“(7ZB) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who is an investment firm, exercise its power under this section if it appears to it that the authorised person has failed to comply with a requirement of the market abuse regulation or of a directly applicable EU regulation made under the market abuse regulation.”.

(4) For section 133(7A)(h)(c) (proceedings before Tribunal: general provision) substitute—

“(h) a decision to impose a penalty or publish a statement of censure under section 123, impose a prohibition under section 123A or impose a suspension or restriction under section 123B;”.

(5) In section 137Q (price stabilising rules)—

(a) after subsection (2)(a)(d) insert—

“(aa) must not apply to transactions, orders, behaviour, actions or omissions to which the market abuse regulation applies;”;

(b) for subsection (3)(e) substitute—

“(3) The FCA may make rules which, for the purposes of the relevant exemption provisions, treat a person who acts or engages in conduct in conformity with specified provisions as acting, or engaging in that conduct, in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.

(3A) “Specified provisions” means such provisions—

(a) corresponding to the relevant provisions of Article 5 of the market abuse regulation, and

(b) made by a body or authority outside the EEA as may be specified in rules made by the FCA,

as may be specified in rules made by the FCA.”;

(c) in subsection (4)(f)—

(i) in paragraph (a) for “section 90(9)(b)” substitute “section 90(9)(d)”; and

(ii) in paragraph (b) for “section 91(4)(a)” substitute “section 91(4)(c)”;;

(d) after subsection (4) insert—

“(5) In this section references to Article 5 of the market abuse regulation include any directly applicable EU regulation made under that Article.”

(6) In section 139A(4)(g) (power of the FCA to give guidance), after “short selling regulation” insert “or the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation”.

(7) In section 140A(1)(h) (interpretation) in the definition of “regulating provisions” omit paragraph (a)(iv).

(a) Section 1D(2)(c) was inserted by section 6(1) of the Financial Services Act 2012.

(b) Section 55J(7) was inserted by section 11(2) of the Financial Services Act 2012.

(c) Section 133(7A)(h) was inserted by section 23(2)(c) of the Financial Services Act 2012.

(d) Section 137Q(2)(a) was inserted by section 24(1) of the Financial Services Act 2012.

(e) Section 137Q(3) was inserted by section 24(1) of the Financial Services Act 2012.

(f) Section 137Q(4) was inserted by section 24(1) of the Financial Services Act 2012.

(g) Section 139A(4) was inserted by section 24(1) of the Financial Services Act 2012.

(h) Section 140A(1) was inserted by section 24(1) of the Financial Services Act 2012 and the definition of “regulating provisions” was further amended by paragraph 10(a) and (b) of Schedule 3 to the Pensions Act 2013 (c.8); there are other amending instruments but none is relevant.

- (8) In section 168 (appointment of persons to carry out investigations in particular cases)—
- (a) in subsection (1)(b)(a) after “section” insert “122F,”;
 - (b) for subsection (2)(d) substitute—
 - “(d) a person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.”; and
 - (c) in subsection (4)(ja)(iv)(b) omit “or”; and
 - (d) after subsection (4)(ja) insert—
 - “(jb)a person may have contravened any provision made by or under this Act for the purposes of the market abuse regulation; or”.
- (9) After section 169(2) (investigations etc in support of overseas regulator) insert—
- “(2A) But where the investigator is—
- (a) appointed by the FCA, and
 - (b) the appointment is in response to a request to the FCA to investigate a possible contravention by a person of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation,
- the investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (2) of that section).”.
- (10) In section 174 (admissibility of statements made to investigators)—
- (a) in subsection (2)(c) after “section 123” insert “to which this subsection applies”;
 - (b) after subsection (3) insert—
 - “(3A) Subsection (2) applies to proceedings in relation to action to be taken under section 123(2) or (3) against a person who may have contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.”; and
 - (c) in subsection (4), after “or (5)” insert “, or a person appointed under section 169 who has the powers conferred by virtue of subsection (2A) of that section”.
- (11) For section 177(7) (offences) substitute—
- “(7) In this section—
- “court” means—
- (a) the High Court;
 - (b) in Scotland, the Court of Session;
- “investigator appointed by the FCA” means an investigator appointed by the FCA under section 167(d), 168(e) or 169(f);
- “officer of the FCA” means an officer authorised by the FCA for the purposes of section 165(3).”.

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- (a) Section 168(1)(b) was amended by paragraph 8(2)(b) of Schedule 12 to the Financial Services Act 2012.
 - (b) Section 168(4)(ja) was amended by S.I. 2013/1773.
 - (c) Section 174(2) was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.
 - (d) Section 167 was amended by S.I. 2007/126, paragraph 7(2) and (3) of Schedule 12 to the Financial Services Act 2012, and by S.I. 2015/575.
 - (e) Section 168 was amended by S.I. 2007/126, paragraph 33(3) of Schedule 7 to the Counter-Terrorism Act 2008 (c.28), paragraph 16(2) and (3) of Schedule 2 to the Financial Services Act 2010, paragraph 8(2)(a) to (c), (3)(a) and (b), (4)(a) to (g), (5), and (6) of Schedule 12 to the Financial Services Act 2012, S.I. 2012/2554 and 2013/1773, paragraph 11 of Schedule 3 to the Pension Schemes Act 2015 (c.8), and 2016/225.
 - (f) Section 169 was amended by S.I. 2011/1043 and by paragraph 9(2) to (9) of Schedule 12 to the Financial Services Act 2012.

(12) After section 206A(1A)(a) (suspending permission to carry on regulated activities etc) insert—

“(1B) The power conferred by subsection (1) may not be exercised in relation to a contravention of a requirement imposed under section 122A, 122B, 122C, 122G, 122H, 122I, 123A or 123B.”.

(13) In section 300(4) (extension of functions of Tribunal) for “market abuse by persons subject to the rules” substitute “a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation by a person subject to the rules.”.

(14) In section 381 (injunctions in cases of market abuse)—

(a) in subsection (1)(b)—

(i) in paragraph (a) for “engage in market abuse” substitute “contravene Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation”;

(ii) in paragraph (b)—

(aa) for “engaged in market abuse” substitute “contravened Article 14 or 15 of the market abuse regulation”; and

(bb) for “market abuse” substitute “contravention”; and

(iii) in the closing words for “market abuse” substitute “contravention”;

(b) in subsection (2)(c)—

(i) in paragraph (a) for “engaged in market abuse” substitute “contravened Article 14 or 15 of the market abuse regulation”; and

(ii) in paragraph (b) for “market abuse” substitute “contravention”;

(c) in subsection (3)(d)—

(i) in paragraph (a) for “engaged in market abuse” substitute “contravening Article 14 or 15 of the market abuse regulation”; and

(ii) in paragraph (b) for “been engaged in market abuse” substitute “contravened Article 14 or 15 of the market abuse regulation”; and

(d) in subsection (6) for “market abuse” substitute “contravention”.

(15) In section 383 (restitution orders in cases of market abuse)—

(a) for subsection (1)(e) substitute—

“(1) The court may, on the application of the FCA, make an order under subsection (4) if it is satisfied that—

(a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation(f); and

(b) the condition mentioned in subsection (2) is fulfilled.”; and

(b) omit subsection (3).

(16) in section 384 (power of FCA or PRA to require restitution)—

(a) for subsection (2)(g) substitute—

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- (a) Section 206A was inserted by section 9 of the Financial Services Act 2010 and subsection (1A) was inserted by paragraph 13(3) of Schedule 9 to the Financial Services Act 2012.
- (b) Section 381(1) was amended by paragraph 20(2) of Schedule 9 to the Financial Services Act 2012.
- (c) Section 381(2) was amended by paragraph 20(2) of Schedule 9 to the Financial Services Act 2012.
- (d) Section 381(3) was amended by paragraph 20(2) of Schedule 9 to the Financial Services Act 2012.
- (e) Section 383(1) was amended by paragraph 22 of Schedule 9 to the Financial Services Act 2012.
- (f) OJ No L 173, 14.04.2014, p31.
- (g) Section 384(2) was amended by paragraph 23(2)(a) of Schedule 9 to the Financial Services Act 2012.

- “(2) The FCA may exercise the power in subsection (5)(a) if it is satisfied that—
- (a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and
 - (b) the condition mentioned in subsection (3) is fulfilled.”;
- (b) in subsection (3) for “market abuse” (in each place) substitute “contravention of Article 14 or 15 of the market abuse regulation”;
- (c) omit subsection (4)(b).
- (17) In section 391 (publication)—
- (a) in subsection (7B)(c) omit paragraphs (a) and (b);
 - (b) after subsection (8A)(d) insert—

“(8B) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation, this section has effect subject to Article 34 of the market abuse regulation (publication of decisions).”.
- (18) In section 395(13) (the FCA’s and PRA’s procedures)—
- (a) omit paragraph (ba)(e); and
 - (b) after paragraph (bb)(f) insert—

“(bbza) 122I.”.
- (19) In section 398(1A) (misleading FCA or PRA: residual cases)—
- (a) omit “or” following paragraph (e)(g); and
 - (b) in paragraph (f)(h) omit the full stop after “Funds”; and insert—

“; or

 - (g) the market abuse regulation.”.
- (20) Omit section 415B(3)(c)(i) (consultation in relation to taking certain enforcement action).
- (21) In section 417(1) (definitions)—
- (a) omit the definition of “market abuse”;
 - (b) in the appropriate place insert—

““market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.”.
- (22) Omit paragraph 8(3)(b) of Schedule 1ZA(j) (arrangements for discharging functions).

(a) Section 384(5) was amended by paragraph 23(4)(a) and (b) of Schedule 9 to the Financial Services Act 2012.

(b) Section 384(4) was amended by paragraph 23(3) of Schedule 9 to the Financial Services Act 2012.

(c) Section 391(7B) was inserted by S.I. 2012/916.

(d) Section 391(8A) was inserted by S.I. 2014/2879.

(e) Section 395(13)(ba) was inserted by S.I. 2005/381.

(f) Section 395(13)(bb) was inserted by S.I. 2005/1433.

(g) Section 398(1A)(e) was inserted by S.I. 2013/1773.

(h) Section 398(1A)(f) was inserted by S.I. 2015/1882.

(i) Section 415B(3)(c) was inserted by paragraph 41 of Schedule 9 to the Financial Services Act 2012.

(j) Paragraph 8(3)(b) of Schedule 1ZA was inserted by paragraph 1 of Schedule 3 to the Financial Services Act 2012 and amended by paragraph 16(a) of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

PART 3

Other amendments to legislation

CHAPTER 1

Amendments to primary legislation

Criminal Justice Act 1993

11. For paragraph 5 of Schedule 1(a) to the Criminal Justice Act 1993 (special defences) and the italic heading before paragraph 5 substitute—

“Buy-back programmes and stabilisation

5. An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that he acted in conformity with—

- (a) Article 5 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and each directly applicable EU regulation made under that Article;
- (b) rules made under section 137Q(1)(b) of the Financial Services and Markets Act 2000.”.

Terrorism Act 2000

12. For paragraph 1(6) of Part 1 of Schedule 3A (regulated sector and supervisory authorities) to the Terrorism Act 2000(c) substitute—

“(6) For the purposes of sub-paragraph (5) “the specified disclosure obligations” means—

- (a) disclosure requirements set out in Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation);
- (b) disclosure requirements consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading(d);
- (c) disclosure requirements consistent with Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market(e); or
- (d) disclosure requirements consistent with EU legislation made under the provisions mentioned in paragraphs (a) to (c).”.

Criminal Justice and Police Act 2001

13.—(1) The Criminal Justice and Police Act 2001(f) is amended as follows.

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- (a) Paragraph 5 of Schedule 1 was amended by S.I. 2001/3649 and 2005/381 and by paragraph 76 of Schedule 18 to the Financial Services Act 2012.
 - (b) Section 137Q(1) was inserted by section 24(1) of the Financial Services Act 2012.
 - (c) Paragraph 1(6) of Schedule 3A was inserted by S.I. 2007/3288 and amended by S.I. 2011/1043.
 - (d) OJ No L 345, 31.12.2003, p64.
 - (e) OJ No L 32, 5.2.2004, p17.
 - (f) 2001 c. 16.

(2) In section 57(1)(o)(a) (retention of seized items), for “section 176A(b)” substitute “sections 122E and 176A”.

(3) In section 66(5)(i) (general interpretation of Part 2), for “section 176(5)” substitute “sections 122D(3) and 176(5)”.

(4) In section 68(2)(f) (application to Scotland), for “section 176(5)” substitute “sections 122D(3) and 176(5)”.

(5) In Part 1 of Schedule 1 (powers of seizure to which section 50 applies), before paragraph 69 and after the italic heading before it, insert—

“**68A.** The power of seizure conferred by section 122D(3) of the Financial Services and Markets Act 2000 (entry of premises under warrant).”.

Proceeds of Crime Act 2002

14. For paragraph 1(6) of Part 1 of Schedule 9 (regulated sector and supervisory authorities) to the Proceeds of Crime Act 2002(c) substitute—

“(6) For the purposes of sub-paragraph (5) “the specified disclosure obligations” means—

- (a) disclosure requirements set out in Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation);
- (b) disclosure requirements consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4th November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;
- (c) disclosure requirements consistent with Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15th December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or
- (d) disclosure requirements consistent with EU legislation made under the provisions mentioned in paragraphs (a) to (c).”.

Financial Services Act 2012

15.—(1) The Financial Services Act 2012 is amended as follows.

(2) For section 89(3)(c) (misleading statements) substitute—

“(c) the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.”.

(3) In section 90 (misleading impressions)—

(a) in subsection (9) for paragraph (d) substitute—

“(d) that D acted or engaged in the conduct in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.”; and

(b) after subsection (10) insert—

“(11) See section 137Q(3) of FSMA 2000 regarding the power of the FCA to make rules for the purposes of subsection (9)(d).”.

(4) In section 91 (misleading statements etc. in relation to benchmarks)—

(a) Section 57(1)(o) was amended by paragraph 92 of Schedule 18 to the Financial Services Act 2012.

(b) Section 176A of the Financial Services and Markets Act 2000 was inserted by paragraph 15 of Schedule 12 to the Financial Services Act 2012.

(c) 2002 c. 29; paragraph 1(6) was amended by S.I. 2011/1043.

- (a) in subsection (3)—
 - (i) omit paragraph (a); and
 - (ii) for paragraph (c) substitute—
 - “(c) the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.”;
- (b) for subsection (4)(c) substitute—
 - “(c) that D acted or engaged in the conduct in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.”; and
- (c) after subsection (6) insert—
 - “(7) See section 137Q(3) of FSMA 2000 regarding the power of the FCA to make rules for the purposes of subsection (4)(c).”.
- (5) After section 93(8) (interpretation of Part 7) insert—
 - “(8A) “Market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.
 - “(8B) References to Article 5 of the market abuse regulation include any directly applicable EU regulation made under that Article.”.

CHAPTER 2

Amendments to secondary legislation

Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

16. In paragraph 7A(10) of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(a), in the definition of “the relevant articles”, for paragraph (a) substitute—

“(a) Articles 17, 18 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse,”.

Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001

17. The Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001(b) is revoked.

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

18.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(c) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the appropriate place insert—

““market abuse regulation information” means confidential information received by the FCA in the course of discharging its functions as a competent authority under the

(a) S.I. 2001/995; paragraph 7A(10) of the Schedule was inserted by S.I. 2006/3386 and 2011/1043.
 (b) S.I. 2001/996.
 (c) S.I. 2001/2188.

- market abuse regulation(a) or any directly applicable EU regulation made under the market abuse regulation;”;
- (b) in the definition of “EEA competent authority”(b), for “or the EMIR regulation” substitute “, the EMIR regulation or the market abuse regulation”;
- (c) in the definition of “single market restrictions”(c)—
- (i) at the end of paragraph (l)(d) omit “and”; and
- (ii) at the end of paragraph (m)(e) insert—
- “; and
- (n) article 27 of the market abuse regulation;”.
- (3) In regulation 8 (application of this Part)—
- (a) at the end of paragraph (c)(f) omit “and”; and
- (b) at the end of paragraph (d)(g) insert—
- “; and
- (e) market abuse regulation information”.
- (4) In regulation 9 (disclosure by regulators or regulator workers to certain other persons)—
- (a) in paragraph (1)(h), after “(3F)” insert “, (3G)”;
- (b) in paragraph (2)(i), for “or in paragraph (2C)” substitute “, (2C) or (2D)”;
- (c) after paragraph (2C)(j) insert—
- “(2D) The conditions in this paragraph are that—
- (a) the disclosure is provided for by a cooperation agreement of the kind referred to in Article 26 of the market abuse regulation; and
- (b) where the disclosure is of personal data, as defined in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, it is in accordance with Article 29(1) and (2) of the market abuse regulation.”; and
- (d) after paragraph (3F)(k) insert—
- “(3G) Paragraph (1) does not permit disclosure of market abuse regulation information to a person specified in the first column of Schedule 1 in contravention of Article 27 of the market abuse regulation.”
- (5) In regulation 11 (application of this Part), after paragraph (g)(l) insert—
- “(h) market abuse regulation information.”.

Investment Recommendation (Media) Regulations 2005

- 19.** The Investment Recommendation (Media) Regulations 2005(m) are revoked.

(a) OJ No L 173, 14.04.2014, p31.

(b) The definition of “EEA competent authority” was amended by S.I. 2003/2066, 2006/3413 and 2013/504.

(c) The definition of “single market restrictions” was inserted by S.I. 2012/996.

(d) Sub-paragraph (l) was amended by S.I. 2014/3348.

(e) Sub-paragraph (m) was inserted by S.I. 2014/3348.

(f) Regulation 8(c) was inserted by S.I. 2013/509 and amended by 2014/3348.

(g) Regulation 8(d) was inserted by S.I. 2014/3348.

(h) Regulation 9(1) was amended by S.I. 2015/910, there are other amending instruments but none is relevant.

(i) Regulation 9(2) was amended by S.I. 2013/1773 and 2014/3348.

(j) Regulation 9(2C) was inserted by S.I. 2014/3348.

(k) Regulation 9(3F) was inserted by S.I. 2015/910.

(l) Regulation 11(g) was inserted by S.I. 2014/3348.

(m) S.I. 2005/382.

Money Laundering Regulations 2007

20. In regulation 2(1) (interpretation) of the Money Laundering Regulations 2007(a) for the definition of “the specified disclosure obligations” substitute—

“the specified disclosure obligations” means—

- (a) disclosure requirements set out in Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;
- (b) disclosure requirements consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;
- (c) disclosure requirements consistent with Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or
- (d) disclosure requirements consistent with EU legislation made under the provisions mentioned in sub-paragraphs (a) to (c);”.

Recognised Auction Platform Regulations 2011

21.—(1) The Recognised Auction Platform Regulations 2011(b) are amended as follows.

(2) For regulation 6 (market abuse on auction platforms) substitute—

“Market abuse regime applicable from July 2016 to January 2018 in relation to auctioned products other than financial instruments

6.—(1) Schedule 1 (modifications of the Act for the purposes of Articles 37 to 43 of the emission allowance auctioning regulation) has effect.

(2) This regulation and Schedule 1 cease to have effect on 3rd January 2018.”.

(3) For Schedule 1 (modifications of Part 8 of the Act in relation to behaviour related to auction platforms) substitute—

“SCHEDULE 1

Regulation 6

Modifications of the Act for the purposes of Articles 37 to 43 of the emission allowance auctioning regulation

The Authority’s powers

1.—(1) Where the Authority exercises functions under the emission allowance market abuse regime the following provisions of the Act apply with the modifications set out in paragraphs 2 to 22—

- (a) Part 8 (provisions relating to market abuse), except for section 122A (power to require information from issuers) and section 122G (publication of information and corrective statements by issuers);
- (b) Part 9 (hearings and appeals);

(a) S.I. 2007/3299; regulation 2(1) was amended by S.I. 2011/1043, there are other amending instruments but none is relevant.

(b) S.I. 2011/2699.

- (c) Part 11 (information gathering and investigations), except for sections 165 (regulator’s power to require information: authorised persons etc) to 167(a) (appointment of persons to carry out general investigations);
- (d) Part 14 (disciplinary measures);
- (e) section 300 (extension of functions of Tribunal);
- (f) Part 25 (injunctions and restitution);
- (g) Part 26 (notices); and
- (h) section 417 (definitions)(b).

(2) In this paragraph “functions under the emission allowance market abuse regime” means functions which—

- (a) are conferred on the Authority by Article 43.1 of the emission allowance auctioning regulation; and
- (b) relate to Articles 37 to 43 of the emission allowance auctioning regulation as they apply under Article 36.2 of that regulation to auctioned products which are not financial instruments as defined by Article 4.1(17) of the markets in financial instruments directive.

Modifications of Part 8 of the Act

2. Section 122B (general power to require information) has effect as if the references in that section to the market abuse regulation or a supplementary EU regulation were to the emission allowance auctioning regulation.

3. Section 122C (power to require information: supplementary) has effect as if—

- (a) in subsection (6)(a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation;
- (b) in subsection (6)(b) the reference to a provision of the market abuse regulation or a supplementary EU regulation were to Article 42 of the emission allowance auctioning regulation;
- (c) in subsection (7)(a) the reference to Article 14 or 15 of the market abuse regulation were to Article 38, 39 or 41 of the emission allowance auctioning regulation;
- (d) in subsection (7)(b) the reference to a provision of the market abuse regulation or a supplementary EU regulation were to Article 42 of the emission allowance auctioning regulation.

4. Section 122D (entry of premises under warrant) has effect as if the references in that section to the market abuse regulation or a supplementary EU regulation were to the emission allowance auctioning regulation.

5. Section 122H(3) (publication of corrective statements generally) has effect as if the reference to the market abuse regulation or a supplementary EU regulation were to the emission allowance auctioning regulation.

6. Part 8 (provisions relating to market abuse) has effect as if for section 122I there were substituted—

(a) There are amendments to section 165 to 167 which are not relevant to these Regulations.
 (b) Section 417 was amended by sections 48(1)(d) and (k) of the Financial Services Act 2012, there are other amending instruments but none is relevant.

“Power to suspend trading in auctioned products

122I.—(1) The FCA may suspend trading in, or the auctioning of, an auctioned product where it considers it necessary for the purposes of the exercise by it of functions under the emission allowances market abuse regime.

(2) A suspension by the FCA takes effect—

- (a) immediately, if the FCA specify that that is the case;
- (b) in any other case, on such date as the FCA specify.

(3) The FCA may—

- (a) cancel a suspension under subsection (1); and
- (b) impose such conditions for the cancellation to take effect as it considers appropriate.”.

7. Section 123(1) (power to impose penalties or issue censure) has effect as if—

- (a) in paragraph (a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation;
- (b) in paragraph (b) the reference to a provision of the market abuse regulation or a supplementary EU regulation were to Article 42 of the emission allowance auctioning regulation; and
- (c) in paragraph (c)(ii) the reference to the market abuse regulation or a supplementary EU regulation were to the emission allowance market abuse regime.

8. Section 123A (power to prohibit individuals from managing or dealing) has effect as if—

- (a) in subsection (1)—
 - (i) in paragraph (a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation; and
 - (ii) in paragraph (b) the reference to a provision of the market abuse regulation or a supplementary EU regulation were to Article 42 of the emission allowance auctioning regulation; and
- (b) in subsection (2)—
 - (i) in paragraph (b) the reference to financial instruments were to auctioned products; and
 - (ii) after paragraph (b) there were inserted—
 - “(c) a temporary prohibition on the individual making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”; and
- (c) in subsection (3) the reference to Article 14 or 15 of the market abuse regulation(a) were to Article 38, 39 or 41 of the emission allowance auctioning regulation.

9. Section 123B(1) (suspending permission to carry on regulated activities etc) has effect as if —

(a) OJ No L 173, 14.04.2014, p31.

- (a) in paragraph (a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation; and
- (b) in paragraph (b) the reference to a provision of the market abuse regulation or a supplementary EU regulation were to Article 42 of the emission allowance auctioning regulation.

10. In section 124(10) (statement of policy) the definition of “relevant person” has effect as if—

- (a) in paragraph (a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation;
- (b) in paragraph (b) the reference to a provision of the market abuse regulation or a supplementary EU regulation were to Article 42 of the emission allowance auctioning regulation; and
- (c) in paragraph (c)(ii) the references to the market abuse regulation were to the emission allowance market abuse regime.

11. Section 129 (power of court to impose a penalty, prohibition, suspension, or restriction in cases of market abuse) has effect as if—

- (a) in subsection (1) the reference to a market abuse requirement were to an emission allowance market abuse regime requirement;
- (b) in subsection (3) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation;
- (c) in subsection (7)—
 - (i) the definition of “market abuse requirement” were omitted; and
 - (ii) at the appropriate place there were inserted—

““emission allowance market abuse regime requirement” means a requirement imposed by the emission allowance market abuse regime which is a relevant requirement for the purposes of section 380 or 382 (as the case may be);”;
 - (iii) in paragraph (ii) of the definition of “temporary prohibition” the reference to financial instruments were to auctioned products;
 - (iv) after paragraph (ii) of the definition of “temporary prohibition” there were inserted—

“(iii) making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”.

12. Section 130(1)(a) (guidance) has effect as if the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

13. Section 131A(2) (protected disclosures) has effect as if the reference in the closing words to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

14. Section 131AB (interpretation) has effect as if at the appropriate places there were inserted—

- (a) ““auctioned product” has the meaning given in Article 4 of the emission allowance auctioning regulation;”; and
- (b) ““emission allowance market abuse regime” means Articles 37 to 43 of the emission allowance auctioning regulation as they apply to auctioned products which are not financial instruments;”.

15. Section 131AE (liability for contraventions of Article 14 or 15 of the market abuse regulation) has effect as if the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

Other modifications of the Act

16. Section 139A(4) (power of the FCA to give guidance) has effect as if the reference to the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation were to the emission allowance market abuse regime.

17. Section 168 (appointment of persons to carry out investigations in particular cases) has effect as if—

- (a) in subsection (2)(d) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation; and
- (b) in subsection (4)(jb) the reference to the market abuse regulation were to the emission allowance market abuse regime.

18. Section 169(2A)(b) (investigations etc in support of overseas regulator) has effect as if the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

19. Section 174(3A) (admissibility of statements made to investigators) has effect as if the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

20. Section 300(4) (extension of functions of Tribunal) has effect as if the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside

information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

21. Section 381 (injunctions in cases of market abuse) has effect as if—

- (a) in subsection (1)(a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation; and
- (b) in subsection (1)(b), (2)(a), 3(a) and (b) the reference to Article 14 or 15 of the market abuse regulation were to Article 38, 39 or 41 of the emission allowance auctioning regulation.

22. Section 383(1)(a) (restitution orders in cases of market abuse) has effect as if the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation.

23. Section 384 (power of FCA to require restitution) has effect as if—

- (a) in subsection (2)—
 - (i) in paragraph (a) the reference to Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation were to Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) or Article 41 (prohibition of market manipulation) of the emission allowance auctioning regulation; and
 - (ii) in paragraph (b) the reference to Article 14 or 15 of the market abuse regulation were to Article 38, 39 or 41 of the emission allowance auctioning regulation; and
- (b) in subsection (3) the references to Article 14 or 15 of the market abuse regulation were to Article 38, 39 or 41 of the emission allowance auctioning regulation.

24. Section 417(1) (definitions) has effect as if at the appropriate place there were inserted—

““emission allowance market abuse regime” has the meaning given in section 131AB.””

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

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

(2) In article 2 (qualifying EU provisions: general)—

(a) after paragraph (2)(i)(b) insert—

“(j) the market abuse regulation and any directly applicable regulation made under that Regulation.”;

(b) after paragraph (8)(e)(c) insert—

(a) S.I. 2013/419.

(b) Article 2(2)(i) was inserted by S.I. 2015/1882.

(c) Article 2(8)(e) was inserted by S.I. 2014/2879.

- “(f) the market abuse regulation and any directly applicable regulation made under that Regulation.”; and
- (c) after paragraph (9)(a) insert—
- “(10) The market abuse regulation and any directly applicable regulation made under that Regulation are specified qualifying EU provisions for the purposes of section 66A(4) of the Act.”.
- (3) In article 4 (qualifying EU provisions etc.: recognised investment exchanges and clearing houses) after paragraph (9)(b) insert—
- “(10) The market abuse regulation and any directly applicable regulation made under that Regulation are specified qualifying EU provisions for the purposes of sections 296(1A) and 297(2A)(c) of the Act.”.
- (4) In article 5 (qualifying EU provisions: injunctions and restitution)—
- (a) in paragraph (2)(c) after “regulation” insert “, except for Article 38 (prohibition of insider dealing), Article 39 (other prohibited uses of inside information) and Article 41 (prohibition of market manipulation) of that regulation”;
- (b) after paragraph (2)(j)(c) insert—
- “(k) the market abuse regulation and any directly applicable regulation made under that Regulation, except for Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) and Article 15 (prohibition of market manipulation) of the market abuse regulation.”; and
- (c) after paragraph (5)(i)(d) insert—
- “(j) in relation to a contravention of the market abuse regulation or any directly applicable regulation made under that Regulation, the FCA.”.
- (5) In article 6 (qualifying EU provisions: fees), after paragraph (2)(l)(e) insert—
- “(m)the market abuse regulation and any directly applicable regulation made under that Regulation.”.

PART 4

Miscellaneous

Review

- 23.**—(1) The Treasury must from time to time—
- (a) carry out a review of these Regulations;
- (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 the market abuse regulation and any supplementary EU Regulation is implemented in other Member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and

(a) Article 2(9) was inserted by S.I. 2014/3348.
 (b) There are amendments to article 4(9) which are not relevant to these Regulations.
 (c) Article 5(2)(j) was inserted by S.I. 2015/1882.
 (d) Article 5(5)(i) was inserted by S.I. 2015/1882.
 (e) Article 6(2)(l) was inserted by S.I. 2015/1882.

- (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 3rd July 2021.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

David Evennett
Mel Stride

28th June 2016

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 5

Reporting of actual or potential contraventions of the market abuse regulation to the FCA

Interpretation

1. In this Schedule—

“dedicated communication channels” has the meaning given by paragraph 5;

“FCA dedicated staff members” has the meaning given by paragraph 2;

“reported person” means a person who is accused of having committed, or of intending to commit, a contravention of the market abuse regulation by a reporting person;

“reporting person” means a person reporting an actual or potential contravention of the market abuse regulation to the FCA; and

“report of a contravention” means a report submitted by the reporting person to the FCA regarding an actual or potential contravention of the market abuse regulation(a).

FCA dedicated staff members

2.—(1) The FCA must have staff members dedicated to handling reports of contraventions (“FCA dedicated staff members”).

(2) FCA dedicated staff members must be trained for the purposes of handling reports of contraventions.

(3) FCA dedicated staff members must exercise the following functions—

- (a) providing any interested person with information on the procedures for making reports of contraventions;
- (b) receiving and following up reports of contraventions; and
- (c) where the reporting person has provided contact details, maintaining contact with that person except where the reporting person has explicitly requested otherwise or the FCA reasonably believes that maintaining contact would jeopardise the protection of the reporting person’s identity.

Information regarding the receipt of reports of contraventions and their follow up

3.—(1) The FCA must publish on its website in a separate, easily identifiable and accessible section the information regarding the receipt of reports of contraventions set out in sub-paragraph (2).

(2) The information is—

- (a) the dedicated communication channels established by the FCA for the purposes of paragraph 5, including—
 - (i) the telephone numbers, indicating whether conversations are recorded or unrecorded when using those telephone lines; and
 - (ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact FCA dedicated staff members;
- (b) the procedures applicable to reports of contraventions referred to in paragraph 4;

(a) OJ No L 173, 14.04.2014, p31.

- (c) the confidentiality regime applicable to reports of contraventions in accordance with the procedures applicable to reports of contraventions referred to in paragraph 4;
- (d) the procedures for the protection of persons working under a contract of employment; and
- (e) a statement clearly explaining that persons making information available to the FCA in accordance with the market abuse regulation are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and do not incur liability of any kind related to such disclosure.

Procedures applicable to reports of contraventions

4.—(1) The procedures applicable to reports of contraventions referred to in paragraph 3(2)(b) (information regarding the receipt of reports of contraventions and their follow up) must clearly indicate all of the following information—

- (a) that reports of contraventions can be submitted anonymously;
- (b) the manner in which the FCA may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person;
- (c) the type, content and timeframe of the response about the outcome of the report of the contravention that the reporting person can expect after the reporting;
- (d) the confidentiality regime applicable to reports of contraventions, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed in accordance with Articles 27 (professional secrecy), 28 (data protection) and 29 (disclosure of personal data to third countries) of the market abuse regulation.

(2) The detailed description referred to in sub-paragraph (1)(d) must set out the exceptional cases in which confidentiality of data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required by an EU obligation or the law of the United Kingdom—

- (a) in the context of investigations or subsequent judicial proceedings; or
- (b) to safeguard the freedoms of others, including the right of defence of the reported person; in each case subject to appropriate safeguards under such laws.

Dedicated communication channels

5.—(1) The FCA must establish independent and autonomous communication channels, which are both secure and ensure confidentiality, for receiving and following up reports of contraventions of the market abuse regulation (“dedicated communication channels”).

(2) Dedicated communication channels are considered independent and autonomous provided that they meet all the following criteria—

- (a) they are separated from general communication channels of the FCA, including those through which the FCA communicates internally and with third parties in its ordinary course of business;
- (b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access by non-authorised staff members of the FCA; and
- (c) they enable the storage of durable information in accordance with paragraph 6 to allow for further investigations.

(3) The dedicated communication channels must allow a report of a contravention to be made in one or more of the following ways—

- (a) a written report of a contravention in electronic or paper format;
- (b) an oral report of a contravention through telephone lines, whether recorded or unrecorded; or

(c) physical meeting with FCA dedicated staff members.

(4) The FCA must provide the information referred to in paragraph 3(2) to the reporting person before or immediately on receipt of the report of a contravention, unless the FCA reasonably believes that providing that information would jeopardise the protection of the reporting person's identity.

(5) The FCA must ensure that a report of a contravention received by means other than dedicated communication channels is promptly forwarded without modification to FCA dedicated staff members using the dedicated communication channels.

Record-keeping of reports received

6.—(1) The FCA must keep records of every report of a contravention received.

(2) The FCA must promptly acknowledge the receipt of a written report of a contravention to the postal or electronic address indicated by the reporting person, unless the reporting person has explicitly requested otherwise, or the FCA reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

(3) Where a recorded telephone line is used to make a report of a contravention, the FCA may document the oral reporting in the form of—

- (a) an audio recording of the conversation in a durable and retrievable form; or
- (b) a complete and accurate transcript of the conversation prepared by FCA dedicated staff members.

(4) If the FCA prepares a transcript of a report of a contravention for the purposes of sub-paragraph (3)(b) and the reporting person has disclosed his or her identity to the FCA, the FCA must give the reporting person the opportunity to check, rectify and agree the transcript by signing it.

(5) Where an unrecorded telephone line is used to make a report of a contravention, the FCA may document the oral reporting in the form of accurate minutes of the conversation prepared by FCA dedicated staff members.

(6) If the FCA prepares minutes of a report of a contravention for the purposes of sub-paragraph (5) and the reporting person has disclosed his or her identity to the FCA, the FCA must give the reporting person the opportunity to check, rectify and agree the minutes of the call by signing them.

(7) Where a person requests a physical meeting with FCA dedicated staff members to make a report of a contravention under paragraph 5(3)(c) the FCA must ensure that complete and accurate records of the meeting are kept in a durable and retrievable form.

(8) The FCA may document the records of the physical meeting referred to in sub-paragraph (7) in the form of—

- (a) an audio recording of the conversation in a durable and retrievable form; or
- (b) accurate minutes of the meeting prepared by the FCA dedicated staff members.

(9) If the FCA prepares minutes of a report of a contravention for the purposes of paragraph (8)(b) and the reporting person has disclosed his or her identity to the FCA, the FCA must give the reporting person the opportunity to check, rectify and agree the minutes of the meeting by signing them.

Protection of persons working under a contract of employment

7.—(1) The FCA must provide reporting persons with access to comprehensive information and advice on the remedies and procedures available under the law of the United Kingdom to protect them against unfair treatment.

(2) The information and advice referred to in sub-paragraph (1) must include information and advice on any relevant procedures under the law of the United Kingdom to claim damages or compensation for unfair treatment.

Review of the procedures by FCA

8.—(1) The FCA must review its procedures for receiving and following up reports of contraventions regularly, and in any event at least once every two years.

(2) In reviewing its procedures the FCA must take account of its experience and that of other competent authorities and adapt its procedures accordingly and in line with market and technological developments.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ No L 173, 14.04.2014, p31) (“MAR”).

Part 1 of these Regulations deals with miscellaneous matters in respect of MAR. The Financial Conduct Authority (“the FCA”) is designated as the UK’s competent authority for the purposes of MAR. Part 1 describes how applications or notifications to the FCA under MAR are to be made and when explanations for delaying public disclosure of inside information must be provided to the FCA for the purposes of MAR. Part 1 (in conjunction with the Schedule to the Regulations) also implements Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation (OJ No L 332, 18.12.2015, p126).

Parts 2 and 3 of these Regulations amend UK law to make it compatible with and implement MAR (in particular there are substantial amendments to the UK market abuse regime under Parts 6 and 8 of the Financial Services and Markets Act 2000 (c.8) (“FSMA”). The FCA is given new powers to police MAR, including powers to monitor the financial markets and gather information, require the publication of corrective statements and other information, and to suspend the trading of financial instruments. The FCA is also given enforcement powers in respect of contraventions of MAR, to allow it to impose financial penalties and other administrative sanctions such as prohibitions on trading in financial instruments or working in investment firms. The investigative and disciplinary powers in Parts 11 and 14 of FSMA and the powers relating to injunctions and restitution orders in Part 25 of FSMA are also updated so they apply for the purposes of MAR.

Part 3 of the Regulations also contains amendments to the Recognised Auction Platforms Regulations 2011 (S.I. 2011/2699) (“the 2011 Regulations”) which implemented Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p1) (“the auctioning regulation”). Schedule 1 to the 2011 Regulations, which modified Part 8 FSMA to implement the market abuse regime in the auctioning regulation for emission allowances which are not financial instruments, is replaced. These Regulations recast those modifications so the powers in FSMA which relate to MAR also apply with appropriate modifications for the purposes of the regime under the auctioning regulation. Schedule 1 to the 2011 Regulations will then cease to have effect on 3rd January 2018 when MAR itself will apply to market abuse in relation to all emission allowances on the coming into force of 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 (OJ No L 173, 12.6.2014, p349).

Part 4 of the regulations requires the Treasury to review of these Regulations every 5 years.

A validation stage impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument at <http://www.legislation.gov.uk>.

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