STATUTORY INSTRUMENTS

2015 No. 1755

FINANCIAL SERVICES AND MARKETS

The Transparency Regulations 2015

Made - - - - 8th October 2015

Laid before Parliament 9th October 2015

Coming into force in accordance with regulation 1(2), (3) and (4)

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Transparency Regulations 2015.

(2) Regulations 1, 3 and 7 come into force on 1st November 2015, regulations 2 and 5 come into force on that date for the purpose of making rules under Part 6 of the Act(**3**) and regulation 6 comes into force on that date for the purpose of making rules under Part 9A of the Act(**4**).

(3) Regulation 4 comes into force on 26th November 2015, and regulations 2 and 5 come into force on that date for remaining purposes.

(4) Regulation 6 comes into force on 31st May 2016 for remaining purposes.

(5) In these Regulations, "the Act" means the Financial Services and Markets Act 2000.

Amendments to Part 6 of the Act: transparency rules

2.—(1) In section 89A of the Act(**5**) (transparency rules)—

(**1**) S.I. 2012/1759.

(**2**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(**3**) 2000 c.8.

(**4**) Part 9A was inserted by the Financial Services Act 2012 (c.21), section 24.

(**5**) Section 89A was inserted by the Companies Act 2006 (c.46), section 1266(1) and amended by the Financial Services Act 2012, section 16.

(a) in subsection (3) omit paragraph (b);

(b) in subsection (4)(b) omit ", or treated by virtue of subsection (3)(b) as held,".

(2) In section 89C of the Act(**6**) (provision of information by issuers of transferable securities), in subsection (2)—

(a) at the end of paragraph (aa) insert "and";

(b) omit "and" at the end of paragraph (b);

(c) omit paragraph (c).

(3) Omit section 89E of the Act(**7**) (notification of proposed amendment of issuer's constitution).

(4) In section 89F of the Act(**8**) (transparency rules: interpretation etc.)—

(a) in subsection (1)—

(i) at the end of paragraph (a) insert "and";

(ii) in paragraph (b) for sub-paragraph (iii) substitute—

"(iii) if he holds, directly or indirectly, a financial instrument which satisfies the conditions set out in Article 13(1)(a) or (b) of the transparency obligations directive(**9**).";

(iii) omit "and" at the end of paragraph (b);

(iv) omit paragraph (c);

(b) omit subsection (2);

(c) in subsection (4) omit the definitions of "Article 13 instrument" and "financial instrument".

(5) In section 89J of the Act(**10**) (power to call for information: supplementary provisions) in subsection (3), in the definition of "voteholder", omit paragraph (b) (and the "or" before it).

Storage of regulated information

3. After section 89V of the Act(**11**) (action under section 89U: procedure) (but before the italic heading following that section) insert—

"**Storage of regulated information**

89W.—(1) The FCA must ensure that there is at least one mechanism for the central storage of regulated information meeting the requirements of Article 21(2) of the transparency obligations directive and any directly applicable EU regulation made under Article 21(4) of that directive.

(2) In this section, "regulated information" has the meaning given by Article 2(1)(k) of the transparency obligations directive.".

(**6**) Section 89C was inserted by the Companies Act 2006, section 1266(1) and amended by the Financial Services Act 2012, section 16 and S.I. 2014/3293.
(**7**) Section 89E was inserted by the Companies Act 2006, section 1266(1) and amended by the Financial Services Act 2012, section 16.
(**8**) Section 89F was inserted by the Companies Act 2006, section 1266(1) and amended by S.I. 2008/3053.
(**9**) OJ L 390, 31.12.2004, p.38.
(**10**) Section 89J was inserted by the Companies Act 2006, section 1267 and amended by the Financial Services Act 2012, section 16.
(**11**) Section 89V was inserted by the Financial Services Act 2012, section 19(1).

Amendments to the Act: sanctions

4.—(1) After section 89N of the Act(**12**) (right to refer matters to the Tribunal) (but before the italic heading following that section) insert—

"**Voting rights suspension orders**

89NA.—(1) The court may, on the application of the FCA and in accordance with this section, make a voting rights suspension order in respect of a person who is a voteholder in relation to shares in a particular company which are admitted to trading on a regulated market and identified in the application.

(2) A voting rights suspension order is an order which suspends the person's exercise of voting rights attaching to the shares to which the order relates.

(3) The court may make a voting rights suspension order in respect of a person only if it is satisfied—

(a) that the person has contravened one or more relevant transparency provisions in respect of any of the shares identified in the application or any other shares in the same company which are admitted to trading on a regulated market, and

(b) that the contravention is serious enough to make it appropriate to make the order.

(4) For the purposes of subsection (3)(b), the court may, in particular, have regard to—

(a) whether the contravention was deliberate or repeated;

(b) the time taken for the contravention to be remedied;

(c) whether the voteholder ignored warnings or requests for compliance from the FCA;

(d) the size of the holding of shares to which the contravention relates;

(e) any impact of the contravention on the integrity of the UK financial system;

(f) the effect of the contravention on any company merger or takeover.

(5) A voting rights suspension order may be made in relation to some or all of the shares to which the application relates.

(6) A voting rights suspension order may be made for a specified period or an indefinite period.

(7) A voting rights suspension order takes effect—

(a) on the date specified in the order, or

(b) if no date is specified, at the time it is made.

(8) Where a voting rights suspension order has been made, the FCA, the person to whom it applies or the company which issued the shares to which it relates, may apply to the court for—

(a) a variation of the order so as to alter the period for which it has effect or the shares in relation to which it has effect, or

(b) the discharge of the order.

(9) The FCA must consult the PRA before making an application to the court under this section in relation to—

(a) a person who is a PRA-authorised person, or

(b) shares issued by a PRA-authorised person.

(10) The jurisdiction conferred by this section is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(**12**) Section 89N was inserted by the Companies Act 2006, section 1268.

(b) in Scotland, by the Court of Session.

(11) In this section—

"relevant transparency provision" means—

(a) a provision of the transparency rules which implements Article 9, 10, 12, 13 or 13a of the transparency obligations directive, or

(b) a provision otherwise made in accordance with that directive which implements any of those Articles;

"voteholder" has the meaning given by section 89J(3).".

(2) In section 91 of the Act(**13**) (penalties for breach of Part 6 rules)—

(a) in subsection (2) for "(1B)" substitute "(1B)(a)(ii) or (b)";

(b) after subsection (2) insert—

"(2A) If—

(a) a person has contravened a provision mentioned in subsection (1B)(a)(i), and

(b) the FCA considers that another person ("A"), who was at the material time a relevant officer of the person, was knowingly concerned in the contravention,

the FCA may impose upon A a penalty of such amount as it considers appropriate.

(2B) In subsection (2A) "relevant officer" of a person means—

(a) a director or other similar officer of the person, or

(b) if the affairs of the person are managed by its members, a member of the person.".

(3) In section 97 of the Act(**14**) (appointment by FCA of persons to carry out investigations)—

(a) in subsection (1)—

(i) in paragraph (b), for "(1A) or (1B)" substitute "or (1A), or section 91(1B)(**15**) (ignoring paragraph (a)(i) of that provision),";

(ii) after paragraph (b) insert—

"(ba) a person who was at the material time a relevant officer of a person mentioned in section 91(1B) (ignoring paragraphs (a)(ii) and (b) of that provision) has been knowingly concerned in a contravention by that person of—

(i) a provision of the transparency rules, or

(ii) a provision otherwise made in accordance with the transparency obligations directive;";

(b) after subsection (3) insert—

"(4) In this section "relevant officer" has the meaning given by section 91(2B).".

(4) In section 380 of the Act(**16**) (injunctions), in subsection (6)(a)—

(a) omit the "or" at the end of sub-paragraph (iii);

(b) at the end of sub-paragraph (iv) insert "or";

(**13**) Section 91(2) was amended by the Companies Act 2006, Schedule 15 paragraphs 1 and 6, the Financial Services Act 2012, sections 16 and 20 and S.I. 2005/381 and 1433.

(**14**) Section 97 was amended by the Companies Act 2006, Schedule 15 paragraph 8, the Financial Services Act 2012, section 16 and Schedule 18 paragraph 7 and S.I. 2005/381.

(**15**) Section 91(1B) was inserted by the Companies Act 2006, Schedule 15 paragraph 6, and amended by the Financial Services Act 2012, section 16.

(**16**) Section 380 was amended by the Financial Services Act 2012, Schedule 9 paragraph 19 and the Financial Services (Banking Reform) Act 2013 (c.33), Schedule 10 paragraph 3; there are other amendments but none is relevant.

(c) after sub-paragraph (iv) insert—

"(v) which is imposed by a provision made in accordance with the transparency obligations directive (within the meaning of section 103(1));".

(5) In section 391 of the Act(**17**) (publication), in subsection (4A) for "section 391A" substitute "sections 391A and 391B".

(6) For the heading of section 391A of the Act(**18**) (publication: special provisions relating to certain penalties) substitute "Publication: special provisions relating to the capital requirements directive".

(7) After section 391A of the Act (but before the italic heading) insert—

"**Publication: special provisions relating to the transparency obligations directive**

391B.—(1) This section applies where a decision notice, final notice or notice under section 89M(**19**) relates to the imposition of a sanction or measure to which Article 29(1) of the transparency obligations directive applies.

(2) Where the FCA publishes information under section 391(4) or subsection (3) about a matter to which a decision notice or a notice under section 89M relates and the person to whom the notice is given refers the matter to the Tribunal—

(a) the FCA must include information to that effect in the publication at the time of the publication, or,

(b) if the matter is referred to the Tribunal after the publication, the FCA must update the publication or publish that information separately.

(3) Subject to subsection (4), where the FCA gives a final notice or a notice under section 89M, it must publish information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Information about a matter to which a final notice or a notice under section 89M relates may be published anonymously where—

(a) the sanction is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

(b) failing to publish anonymously would seriously jeopardise the stability of the financial system or an ongoing official investigation; or

(c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate and serious damage to the persons involved.

(5) Where subsection (4) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(6) In this section, the "transparency obligations directive" has the same meaning as in section 103(1)(**20**).".

(**17**) Section 391 was amended by S.I. 2013/3115; there are other amendments but none is relevant.
(**18**) Section 391A was inserted by S.I. 2013/3115.
(**19**) Section 89M was inserted by the Companies Act 2006, section 1268, and amended by the Financial Services Act 2012, section 16.
(**20**) Section 103 was substituted by S.I. 2005/1433, and the definition of the "transparency obligations directive" was inserted by the Companies Act 2006, section 1265 and amended by S.I. 2012/1538.