

Chapter 19

Non-FSMA powers



19.35 Data Reporting Services Regulations 2017

19.35.1 The *DRS Regulations* implement *MiFID*. The *FCA* has investigation and enforcement powers in relation to both criminal and non-criminal breaches of the *DRS Regulations* (including requirements imposed on *persons* subject to the *DRS Regulations* by *MiFIR* and any directly applicable EU regulation made under *MiFIR* or *MiFID*). The *DRS Regulations* impose requirements on *data reporting services providers* ("DRSPs") which are entities authorised or verified to provide services of:

- (1) publishing trade reports ("APA");
- (2) reporting details of transactions ("ARM"); and
- (3) collecting trade reports ("CTP").

19.35.2 The *FCA's* approach to enforcing the *DRS Regulations* will mirror our general approach to enforcing the *Act*, as set out in ■ EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.

19.35.3 The regulatory powers which the *DRS Regulations* provide to the *FCA* include:

- (1) the power to require information and appoint investigators;
- (2) powers of entry and inspection;
- (3) the power of public censure;
- (4) the power to impose financial penalties;
- (5) the power to impose a limitation or other restrictions;
- (6) the power to apply for an *injunction*;
- (7) the power to require restitution; and
- (8) the power to prosecute unauthorised providers.

- 19.35.4 In addition, the *DRS Regulations* provide the power for the *FCA* to take criminal or non-criminal action for misleading the *FCA*.
- 19.35.5 The *DRS Regulations*, for the most part, mirror the *FCA's* investigative, sanctioning and regulatory powers under the *Act*. The *FCA* has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the *Act*. Key features of the *FCA's* approach are described below.
- The conduct of investigations under the DRS Regulations**.....
- 19.35.6 The *DRS Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *DRS Regulations*.
- 19.35.7 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *DRS Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA's* policy in non-criminal investigations under the *DRS Regulations* is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the *Act*.
- Decision making under the DRS Regulations**.....
- 19.35.8 The decision making procedures for those decisions under the *DRS Regulations* requiring the giving of a *warning notice*, *decision notice* or a *supervisory notice* are dealt with in *DEPP*.
- 19.35.9 For decisions made by *executive procedures* the procedures to be followed will be those described in ■ *DEPP* 4.
- 19.35.10 The *DRS Regulations* do not require the *FCA* to have published procedures for commencing criminal prosecutions. However, in these situations the *FCA* expects that we will normally follow our decision making procedures for the equivalent decisions under the *Act*, as set out in ■ *EG* 12.
- 19.35.11 The *DRS Regulations* do not require the *FCA* to have published procedures to apply to the court for an *injunction* or restitution order. However, the *FCA* will normally follow our decision making procedure for the equivalent decisions under the *Act*, as set out in ■ *EG* 10 and ■ *EG* 11.
- 19.35.12 The *DRS Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act*.
- 19.35.13 Certain *FCA* decisions (for example the publication of a statement and the imposition of a penalty) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the DRS Regulations

- 19.35.14** When determining whether to take action to impose a penalty or to issue a public censure under the *DRS Regulations* the *FCA's* policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. The *FCA's* policy in relation to determining the level of a financial penalty includes having regard, where relevant, to ■ DEPP 6.5 to ■ DEPP 6.5D.
- 19.35.15** As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *DRS Regulations* to assist us to exercise our functions under the *DRS Regulations* in the most efficient and economic way.
- [**Note:** See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the *settlement discount scheme*.]
- 19.35.16** The *FCA* will apply the approach to publicity that is outlined in ■ EG 6, read in light of applicable publicity provisions in section 391D of the *Act*.

Statement of policy in section 169(7) (as implemented by the DRS Regulations)

- 19.35.17** The *DRS Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *DRS Regulations* the *FCA* will follow the procedures described in ■ DEPP 7.