



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART VI

OFFICIAL LISTING

Penalties

91 [F¹Penalties for breach of Part 6 rules]

[F²[F³(1) If the [F⁴FCA] considers that—

- (a) an issuer of listed securities, or
- (b) an applicant for listing,

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.

(1ZA) If the [F⁴FCA] considers that—

- (a) an issuer who has requested or approved the admission of a financial instrument to trading on a regulated market,
- (b) a person discharging managerial responsibilities within such an issuer, or
- (c) a person connected with such a person discharging managerial responsibilities,

has contravened any provision of disclosure rules, it may impose on him a penalty of such amount as it considers appropriate.]

[F⁵(1A) If the [F⁴FCA] considers that—

- (a) an issuer of transferable securities,
- (b) a person offering transferable securities to the public or requesting their admission to trading on a regulated market,
- (c) an applicant for the approval of a prospectus in relation to transferable securities,
- (d) a person on whom a requirement has been imposed under section 87K or 87L, or

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- (e) any other person to whom a provision of the prospectus directive applies, has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement imposed on him under such a provision, it may impose on him a penalty of such amount as it considers appropriate.]

[^{F6}(1B) If the [^{F4}FCA] considers—

- (a) that a person has contravened—
- (i) a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive, or
 - (ii) a provision of corporate governance rules, or
- (b) that a person on whom a requirement has been imposed under section 89L (power to suspend or prohibit trading of securities in case of infringement of applicable transparency obligation), has contravened that requirement,

it may impose on the person a penalty of such amount as it considers appropriate.]

- (2) If, in the case of a contravention [^{F7}by a person] referred to in subsection [^{F8}(1), (1ZA) (a), (1A) or [^{F9}(1B)(a)(i) or (b)]] [^{F10}“P”], the [^{F4}FCA] considers that [^{F11}another person] who was at the material time a director of [^{F12}P] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.]

[^{F13}(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) If the [^{F4}FCA] is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.

- (4) Nothing in this section prevents the [^{F4}FCA] from taking any other steps which it has power to take under this Part.

- (5) A penalty under this section is payable to the [^{F4}FCA].

- (6) The [^{F4}FCA] may not take action against a person under this section after the end of the period of [^{F14}3 years] beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.

(7) For the purposes of subsection (6)—

- (a) the [^{F4}FCA] is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
- (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

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Textual Amendments

- F1** S. 91 heading substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(4\)](#)
- F2** S. 91(1)(2) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, [Sch. 1 para. 4](#)
- F3** S. 91(1)(1ZA) substituted for s. 91(1) (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 6\(2\)](#)
- F4** Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss.16\(2\)\(3\)\(g\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F5** S. 91(1A) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(2\)](#)
- F6** S. 91(1B) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 6\(3\)](#)
- F7** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(a\)](#)
- F8** Words in s. 91(2) substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 6\(4\)](#)
- F9** Words in s. 91(2) substituted (26.11.2015) by [The Transparency Regulations 2015 \(S.I. 2015/1755\)](#), regs. 1(3), [4\(2\)\(a\)](#)
- F10** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(b\)](#)
- F11** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(c\)](#)
- F12** Word in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(d\)](#)
- F13** S. 91(2A)(2B) inserted (26.11.2015) by [The Transparency Regulations 2015 \(S.I. 2015/1755\)](#), regs. 1(3), [4\(2\)\(b\)](#)
- F14** Words in s. 91(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 20](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Modifications etc. (not altering text)

- C1** S. 91(6)(7) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), [arts. 1](#), [11\(4\)-\(6\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

92 Procedure.

- (1) If the [^{F4}FCA] proposes to take action against a person under section 91, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.
- (4) If the [^{F4}FCA] decides to take action against a person under section 91, it must give him a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.

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- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the [F⁴FCA] decides to take action against a person under section 91, he may refer the matter to the Tribunal.

Textual Amendments

F4 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss.16\(2\)\(3\)\(g\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

Modifications etc. (not altering text)

C2 S. 92(1)(3)(4)(6)(7) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), [arts. 1, 11\(3\), 12, 13](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

93 Statement of policy.

- (1) The [F⁴FCA] must prepare and issue a statement (“its policy statement”) of its policy with respect to—
 - (a) the imposition of penalties under section 91; and
 - (b) the amount of penalties under that section.
- (2) The [F⁴FCA's] policy in determining what the amount of a penalty should be must include having regard to—
 - (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
 - (b) the extent to which that contravention was deliberate or reckless; and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The [F⁴FCA] may at any time alter or replace its policy statement.
- (4) If its policy statement is altered or replaced, the [F⁴FCA] must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the [F⁴FCA] must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.
- (6) The [F⁴FCA] must publish a statement issued under this section in the way appearing to the [F⁴FCA] to be best calculated to bring it to the attention of the public.
- (7) The [F⁴FCA] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The [F⁴FCA] must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

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94 Statements of policy: procedure.

- (1) Before issuing a statement under section 93, the [^{F4}FCA] must publish a draft of the proposed statement in the way appearing to the [^{F4}FCA] to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the [^{F4}FCA] within a specified time.
- (3) Before issuing the proposed statement, the [^{F4}FCA] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [^{F4}FCA] issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2); and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the [^{F4}FCA], significant, the [^{F4}FCA] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The [^{F4}FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

Textual Amendments

F4 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss.16\(2\)\(3\)\(g\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

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