

19 August 2015

UK Corporate Update.

New power for the FCA to suspend shareholder voting rights for DTR 5 breaches

HM Treasury has published draft Regulations to amend the Financial Services and Markets Act 2000 by introducing new sanctions powers for breaches of the Transparency Rules. The most significant change is a new power for the Financial Conduct Authority to apply to court for an order suspending a shareholder's voting rights.

The changes are being made in order to implement into UK law certain parts of the directive which amended the EU Transparency Directive in 2013. Member states have until 26 November 2015 to implement those amendments into national law. The UK has already implemented some of the changes ahead of time. The draft Regulations will make some of the required changes and the remaining changes will be implemented by amendments to the DTRs, which the FCA will publish separately.

Power to suspend shareholder voting rights

The most noteworthy change is a new section 89NA FSMA which will allow the FCA to apply to court for an order suspending the voting rights of a shareholder, in the event of a breach of the obligation to notify changes in major shareholdings in the Transparency Directive. In deciding whether the breach is serious enough to warrant making the order the court may have regard to:

- whether the contravention was deliberate or repeated;
- whether the voteholder ignored warnings or requests for compliance from the FCA;
- the size of the holding of shares to which the contravention relates;
- any impact of the contravention on the integrity of the UK financial system; and
- the effect of the contravention on any company merger or takeover.

Publicity of sanctions

Under a new section 391B FSMA, the FCA will have discretion to delay publication of any sanctions it has imposed for breaches of the Transparency Rules or to make the information anonymous where:

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- the sanction is imposed on an individual and publication of personal data is found to be disproportionate;
- failing to publish anonymously would seriously jeopardise the stability of the financial system or an ongoing official investigation; or
- failing to publish anonymously would cause, insofar as it can be determined, disproportionate and serious damage to the persons involved.

Other provisions

Other provisions in the draft Regulations make minor or technical changes to FSMA.

The draft Regulations are available from HM Treasury on request.

The closing date for any comments is 4 September 2015.

The Co-op Bank plc - FCA Final Notice

The FCA has issued a public censure against The Co-op Bank plc for breaches of LR 1.3.3R (misleading information not to be published) and Principle 11 of the Principles for Business (dealing with regulators in an open and honest way). The investigation into Co-op Bank was conducted jointly by the FCA and the PRA and they have each published their own final notices. The PRA found that Co-op Bank was also in breach of Principle 3 of the Principles for Business,

Breach of LR 1.3.3R

In its financial statements for the year ending 31 December 2012 Co-op Bank stated that it could maintain “adequate capitalisation” even in the “most severe stress scenarios”. It also stated that “a capital buffer was being maintained to cover the bank’s regulatory minimum requirements. However, there was no reasonable basis for these statements at the time they were made as the Co-op Bank did not have sufficient capital to maintain a buffer nor did it have adequate capital in the most severe stress scenarios. This latter statement had already been removed from another section of the financial statements after concerns about its accuracy.

In the Final Notice the FCA emphasises how important statements about capital are: they are “crucial to readers of banks’ financial statements” as “they are a key guide to the health and future stability of a firm”.

Breach of Principle 11

The breach of Principle 11 of the Principles for Business arose due to the failure to notify the FCA, in a timely manner, of changes in relation to key individuals at the Co-op bank. From April to May 2013 two separate discussions took place amongst senior individuals at Co-op Bank and as a result it was determined that the holders of these two positions would change.

The FCA were not informed of the changes until some time after, at which point one of the individuals had already left. In addition the FCA was provided with incorrect assurances in response to its questions in relation to one of the individuals.

The FCA states that the breaches are serious enough to merit a substantial financial penalty but highlights the fact that Co-op Bank is engaged in a turnaround plan to ensure it meets its capital requirements. The FCA considers the success of this plan is of “great importance” so does not wish to divert Co-op Bank’s resources away from that goal. Consequently, the final notice states that a public censure is appropriate and proportionate.

PRA Final Notice

The PRA also found that Co-op Bank breached Principle 3 of the Principles for Business in that it failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management controls. Its final notice states that the Co-op Bank’s control framework was flawed in both design and operation which meant that it did not consider, adequately, the level of risk it assumed.

Click [here](#) for the FCA Final Notice.

Click [here](#) for the FCA press release.

Click [here](#) for the PRA Final Notice.

Click [here](#) for the PRA press release.

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