

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:

In this issue

New power for the FCA to suspend shareholder voting rights for DTR 5 breaches 1

The Co-op Bank plc - FCA Final Notice..... 2

- 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.

Author: Sarah Debney

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2015.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications. We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms. If any of your details are incorrect, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com.

Linklaters LLP (www.linklaters.com) is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm regulated by the Solicitors Regulation Authority (www.sra.org.uk). The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications.

A list of Linklaters LLP members together with a list of those non-members who are designated as partners and their professional qualifications, may be inspected at our registered office, One Silk Street, London EC2Y 8HQ and such persons are either solicitors, registered foreign lawyers or European lawyers.

Contacts

For further information please contact:

Lucy Fergusson
Partner

(+44) 20 7456 3386

lucy.fergusson@linklaters.com

Sarah Debney
Managing Associate

(+44) 20 7456 4945

sarah.debney@linklaters.com

One Silk Street
London EC2Y 8HQ

Telephone (+44) 20 7456 2000
Facsimile (+44) 20 7456 2222

Linklaters.com