

Chapter 19

Non-FSMA powers

19.14 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

19.14.1 The *FCA* has investigation and sanctioning powers in relation to both criminal and civil breaches of the *Money Laundering Regulations*. The *Money Laundering Regulations* impose requirements including, amongst other things, obligations to apply customer due diligence measures and conduct ongoing monitoring of business relationships on designated types of business.

19.14.2 The *FCA* is responsible for monitoring and enforcing compliance with the *Money Laundering Regulations* not only by authorised firms who are within the *Money Laundering Regulations*' scope, but also by what the Regulations describe as "Annex I financial institutions", and *cryptoasset exchange providers* and *custodian wallet providers*. These are businesses which are not otherwise authorised by us but which carry out certain of the activities which were listed in Annex I of the Banking Consolidation Directive²⁸, then in Annex I of the Capital Requirements Directive, the relevant text of which is set out in Schedule 2 of the *Money Laundering Regulations*. The activities include lending (e.g. forfaiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the *FCA*.

²⁸ Money service businesses are also outside the definition of "Annex I financial institution", which is set out in Regulation 55(2) of the *Money Laundering Regulations*.

[Note: Directive 2013/36/EU]

19.14.2A The *FCA* is also responsible for monitoring and enforcing compliance with the Funds Transfer Regulation by payment service providers specified under regulation 62(1) of the *Money Laundering Regulations*.

[Note: Regulation (EU) No 2015/847 on information accompanying transfer of funds as amended by the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018 (SI 2019/253)]

19.14.3 The *Money Laundering Regulations* add to the range of options available to the *FCA* for dealing with anti-money laundering and anti-terrorist financing failures. These options include:

- to prosecute a relevant person, including but not limited to an authorised firm or an Annex I financial institution or an *auction platform*,

a *cryptoasset exchange provider* or a *custodian wallet provider*, as well as any responsible officer;

- to fine or censure a relevant person, including but not limited to an authorised firm or an Annex I financial institution or an *auction platform*, a *cryptoasset exchange provider* or a *custodian wallet provider*, as well as any officer knowingly concerned in the breach, under regulation 76 of the *Money Laundering Regulations*;
- to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the *Money Laundering Regulations*; and
- to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an authorised firm or Annex I financial institution, a payment service provider, a *cryptoasset exchange provider* or a *custodian wallet provider* under regulation 78 of the *Money Laundering Regulations*.

In addition to the powers available under the *Money Laundering Regulations*, the *FCA* will have the power to take regulatory action against authorised firms for failures which breach the *FCA's rules* and requirements (for example, under *Principle 3*, ■ SYSC 3.2.6R or ■ SYSC 6.1.1R).

19.14.4

This means that there will be situations in which the *FCA* has powers to investigate and take action under both the *Act* and the *Money Laundering Regulations*. The *FCA* will consider all the circumstances of the case when deciding what action to take and, if it is appropriate to notify the subject about the investigation, will in doing so inform them about the basis upon which the investigation is being conducted and what powers it is using. The *FCA* will adopt the approach outlined in ■ EG 12 when prosecuting *Money Laundering Regulations* offences. In the majority of cases where both the *Regulations* and the *FCA rules* apply and regulatory action, as opposed to criminal proceedings, is appropriate, the *FCA* generally expects to continue to discipline authorised firms under the *Act*.

19.14.4A

The *FCA* also has powers under regulation 74C to impose a direction on a *cryptoasset business* or Annex 1 financial institution to:

- remedy a failure to comply with a requirement under the *Money Laundering Regulations*;
- prevent a failure to comply, or continued non-compliance with a requirement under the *Money Laundering Regulations*; or
- prevent the *cryptoasset business* or Annex 1 financial institution from being used for money laundering, terrorist financing or proliferation financing.

The *FCA* may impose a direction requiring or prohibiting the taking of specified action. *Cryptoasset businesses* or Annex 1 financial institutions can also apply for a direction to be imposed, varied or rescinded.

19.14.5

The *Money Laundering Regulations* also provide investigation powers that the *FCA* can use when investigating whether breaches have taken place. These powers include:

- the power to require information from, and attendance of, relevant persons, payment service providers and connected persons (regulation 66); and
- powers of entry and inspection without or under warrant (regulations 69 and 70).

The use of these powers will be limited to those cases in which the *FCA* is exercising functions under the *Money Laundering Regulations*. In addition, the *FCA* may use its powers to require information or attendance at the request of foreign authorities.

19.14.6

The *FCA* will adopt a risk-based approach to its enforcement under the *Money Laundering Regulations*. Failures in anti-money laundering or counter-terrorist financing controls will not automatically result in disciplinary sanctions, although enforcement action is more likely where a firm has not taken adequate steps to identify its risks or put in place appropriate controls to mitigate those risks, and failed to take steps to ensure that controls are being effectively implemented.

19.14.7

However, the *Money Laundering Regulations* say little about the way in which investigation and sanctioning powers should be used, so the *FCA* has decided to adopt enforcement and decision making procedures which are broadly akin to those under the *Act*. Key features of the *FCA*'s approach are described in ■ EG 19.15.