

Chapter 19

Non-FSMA powers



19.31 The Small and Medium Sized Business (Credit Information) Regulations

19.31.1 The *Small and Medium Sized Business (Credit Information) Regulations* were made under the *Small Business, Enterprise and Employment Act*. The *Small and Medium Sized Business (Credit Information) Regulations* impose a duty on *designated banks* to provide information about their small and medium sized business customers (with the consent of those businesses) to designated credit reference agencies. The Treasury is the body that has the power to designate a bank or credit reference agency and may revoke such a designation.

19.31.2 As the provision of credit data on companies is not a regulated activity under the *Act*, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*. The *FCA's* approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the *Act*, as set out in ■ EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers.

Information gathering and investigation powers

19.31.3 Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies many of the provisions of the *Act* regarding the *FCA's* investigation and information-gathering powers to *designated banks* and *designated credit reference agencies*. The effect is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *Small and Medium Sized Business (Credit Information) Regulations*.

19.31.4 For example, the *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA's* policy in regulatory investigations under the *Small and Medium Sized Business (Credit Information) Regulations* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Small and Medium Sized Business (Credit Information) Regulations

19.31.5 The RDC is the FCA's decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Credit Information) Regulations*, as set out in ■ DEPP 2 Annex 1G. The RDC will make its decisions following the procedure in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3. For decisions made by executive procedures, the procedure to be followed will be those described in ■ DEPP 4.

19.31.6 Regulation 46 of the *Small and Medium Sized Business (Credit Information) Regulations* applies the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and regulation 44 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 26 of the *Act* to *warning* and *decision notices* given under the *Regulations*.

Public censures, imposition of penalties and the impositions of restrictions under the Small and Medium Sized Business (Credit Information) Regulations

19.31.7 When determining whether to take action to impose a penalty or to issue a public censure under the *Small and Medium Sized Business (Credit Information) Regulations*, the FCA's policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. When determining the level of financial penalty, the FCA's policy includes having regard to the relevant principles and factors in ■ DEPP 6.5, ■ DEPP 6.5A, ■ DEPP 6.5D and ■ DEPP 6.7.

19.31.8 As with cases under the *Act*, the FCA may settle or mediate appropriate cases involving breaches of the *Small and Medium Sized Business (Credit Information) Regulations* to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the FCA's settlement process and the settlement discount scheme.

19.31.9 When determining whether to take action to impose a restriction under regulation 30 of the *Small and Medium Sized Business (Credit Information) Regulations*, the FCA's policy includes having regard to the relevant factors in ■ DEPP 6A.2 and ■ DEPP 6A.4. When determining the length of the period of restriction, the FCA's policy includes having regard to the relevant principles and factors in ■ DEPP 6A.3.

19.31.10 The FCA will apply the approach to publicity that is outlined in ■ EG 6.