

Chapter 19

Non-FSMA powers

19.33 The Small and Medium Sized Business (Finance Platforms) Regulations 2015

- 19.33.1** The *Small and Medium Sized Business (Finance Platforms) Regulations* were made under the *Small Business, Enterprise and Employment Act*. The *Small and Medium Sized Business (Finance Platforms) Regulations* require *designated banks* to provide *specified information* about rejected loan applications made by small and medium sized business customers (with their consent) to *designated finance platforms* which must then provide such information to *finance providers* on request. The Treasury is the body that has the power to designate a bank or *finance platform* and may revoke such a designation.
- 19.33.2** 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.
- 19.33.3** **Information gathering and investigation powers**.....
Regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies many of the provisions of the *Act* in relation to the *FCA's* investigation and information-gathering powers in respect of *designated banks* and *designated finance platforms*. The effect of this 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 (Finance Platforms) Regulations*.
- 19.33.4** 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 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
(Finance Platforms) Regulations**

19.33.5 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 (Finance Platforms) 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.

19.33.6 Regulation 43 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies to the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and regulation 41 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies to Part 26 of the *Act* to *warning* and *decision notices* given under the *Small and Medium Sized Business (Finance Platforms) Regulations*.

**Public censures, imposition of penalties and the impositions of
restrictions under the Small and Medium Sized Business
(Finance Platforms) Regulations**

19.33.7 When determining whether to take action to impose a penalty or to issue a public censure under the *Small and Medium Sized Business (Finance Platforms) 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.

19.33.8 As with cases under the *Act*, the FCA may settle or mediate appropriate cases involving breaches of the *Small and Medium Sized Business (Finance Platforms) 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.

19.33.9 When determining whether to take action to impose a restriction under regulation 27 of the *Small and Medium Sized Business (Finance Platforms) Regulations*, the FCA's policy includes having regard to the relevant factors in ■ DEPP 6A.2 and ■ 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.

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