

Chapter 19

Non-FSMA powers

19.38 UK Securitisation Regulations

19.38.1 The *UK Securitisation Regulations* implemented the *Securitisation Regulation* (before it was brought into *UK law*). The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *UK Securitisation Regulations*, *Securitisation Regulation* and any onshored regulation which was an EU regulation made under the *Securitisation Regulation*.

19.38.2 The *Securitisation Regulation* and the *UK Securitisation Regulations* seek to make the securitisation market work more effectively. They aim to address some of the harms to investors identified in these markets following the financial crisis, including the lack of adequate disclosure, and the misalignment between issuers' and investors' interests. The new framework consolidates existing requirements and strengthens the legislation on securitisation. The *Securitisation Regulation* and the *UK Securitisation Regulations* promote transparency and appropriate due diligence by investors for securitisation investments. They create a framework for simple, transparent and standardised (STS) securitisations. This framework will help to reduce the harm from investors making badly-informed decisions because they fail to understand and appropriately analyse the risks in their securitisation investments.

19.38.3 The *FCA's* approach to enforcement under the *UK Securitisation Regulations*, whether the person is authorised or not, will mirror our general approach to enforcing the *Act*, as set out in ■ EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally we will aim to change the behaviour of the person who is the subject of our action in order to:

- (1) deter future non-compliance by others;
- (2) eliminate any financial gain or benefit from non-compliance; and
- (3) remedy the harm caused by the non-compliance.

19.38.4 The regulatory powers which the *UK Securitisation Regulations* provide to the *FCA* include the power:

- (1) to require information and appoint investigators;
- (2) of entry and inspection;

- (3) to publicly censure;
- (4) to impose financial penalties;
- (5) to apply for an injunction or restitution order;
- (6) to require restitution;
- (7) to impose temporary prohibitions on individuals holding management functions; and
- (8) to impose a suspension, condition, limitation or other restriction.

19.38.5 In addition, the *UK Securitisation Regulations* provide the power for the *FCA* to take criminal or non-criminal action for misleading the *FCA*.

19.38.6 The *UK Securitisation Regulations*, for the most part, mirror the *FCA*'s investigative, sanctioning and regulatory powers under the *Act*. The *FCA* has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the *Act*. Key features of the *FCA*'s approach are described below.

The conduct of investigations under the UK Securitisation Regulations

19.38.7 The *UK Securitisation Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Securitisation Regulation* and the *UK Securitisation Regulations*.

19.38.8 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *UK Securitisation Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in non-criminal investigations under the *UK Securitisation Regulations* is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the *Act*.

Decision making under the UK Securitisation Regulations

19.38.9 The decision-making procedures for those decisions under the *UK Securitisation Regulations* requiring the giving of a *warning notice*, *decision notice* or a *supervisory notice* are dealt with in *DEPP*.

19.38.10 The *UK Securitisation Regulations* do not require the *FCA* to have published procedures for commencing criminal prosecutions. However, in these situations the *FCA* expects that we will normally follow our decision-making procedures for the equivalent decisions under the *Act*, as set out in ■ EG 12.

19.38.11 The *UK Securitisation Regulations* do not require the *FCA* to have published procedures to apply to the court for an injunction or restitution order. However, the *FCA* will normally follow our decision-making procedures for the equivalent decisions under the *Act*, as set out in ■ EG 10 and ■ EG 11.

19.38.12 The *UK Securitisation Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *UK Securitisation Regulations*.

19.38.13 Certain *FCA* decisions may be referred to the Tribunal by an aggrieved party.

Imposition of penalties under the UK Securitisation Regulations

19.38.14 When determining whether to take action to impose a penalty or to issue a public censure under the *UK Securitisation Regulations* the *FCA*'s policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to ■ DEPP 6.5 to ■ DEPP 6.5B and ■ DEPP 6.5D.

19.38.15 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *UK Securitisation Regulations* to assist us to exercise our functions under the *UK Securitisation Regulations* in the most efficient and economic way. See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the *settlement discount scheme*.

Imposition of disciplinary prohibitions under the UK Securitisation Regulations

19.38.16 The *FCA* may impose under the *UK Securitisation Regulations* a temporary prohibition in respect of an individual holding an office or position involving responsibility for taking decisions about the management of an *originator*, *sponsor* or *SSPE*. When determining whether to impose a temporary prohibition and what the length of any temporary prohibition would be the *FCA* will have regard to the factors set out in ■ DEPP 6A.

Statement of policy in section 169(7) (as implemented by the UK Securitisation Regulations)

19.38.17 The *UK Securitisation Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to request from overseas regulators. For the purposes of the *UK Securitisation Regulations* the *FCA* will follow the procedures described in ■ DEPP 7.