

Chapter 19

Non-FSMA powers

19.38A Securitisation (Amendment) (EU Exit) Regulations 2019

19.38A.1 Supervisory and enforcement functions in respect of *securitisation repositories* under the *Securitisation Regulation* were transferred from *ESMA* to the *FCA* through the *Securitisation (Amendment) (EU Exit) Regulations* on *IP completion day*. The *Securitisation (Amendment) (EU Exit) Regulations* amend the *Securitisation Regulation* to, amongst other reasons, apply the *Trade Repositories (EU Exit) Regulations*. In places, these regulations in turn apply provisions of the *Act*.

19.38A.2 The *FCA's* approach to enforcement under the *Securitisation Regulation* in relation to *securitisation repositories* will mirror our general approach to enforcing the *Act*, as set out in *EG*. 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, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy harm caused by non-compliance.

19.38A.3 The regulatory powers which the *Securitisation (Amendment) (EU Exit) 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; and
- to apply for an injunction.

Conduct of investigations under the *Securitisation Regulation* as amended by the *Securitisation (Amendment) (EU Exit) Regulations*

19.38A.4 The *Securitisation (Amendment) (EU Exit) Regulations* and the *Trade Repositories (EU Exit) 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*.

19.38A.5 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *Securitisation Regulation* 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 *Securitisation Regulation* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

Decision making under the Securitisation Regulation as amended by the Securitisation (Amendment) (EU Exit) Regulations

19.38A.6 The decision-making procedures for those decisions under the *Securitisation Regulation* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with in *DEPP*.

19.38A.7 The *Securitisation Regulation* requires 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 *Securitisation Regulation* and the *Trade Repositories (EU Exit) Regulations*.

Imposition of penalties under the Securitisation Regulation as amended by the Securitisation (Amendment) (EU Exit) Regulations

19.38A.8 When determining whether to take action to impose a penalty or to issue a public censure under the *Securitisation Regulation*, 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, ■ *DEPP* 6.5A, ■ *DEPP* 6.5B and ■ *DEPP* 6.5D.

19.38A.9 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Securitisation Regulation* to assist us to exercise our functions under the *Securitisation Regulation* in the most efficient and economical way. See ■ *DEPP* 5, ■ *DEPP* 6.7 and ■ *EG* 5 for further information on the settlement process and the *settlement discount scheme*.

19.38A.10 The *FCA* will apply the approach to publicity that is outlined in ■ *EG* 6, read in light of regulation 76 of the *Trade Repositories (EU Exit) Regulations* as applied by article 15 of the *Securitisation Regulation*.

Statement of policy in section 169(7) interviews (as implemented by the Securitisation (Amendment) (EU Exit) Regulations)

19.38A.11 The *Securitisation (Amendment) (EU Exit) Regulations* amend the *Securitisation Regulation* to apply regulation 75 of the *Trade Repositories (EU Exit) Regulations*, which in turn applies section 169 of the *Act*. This

requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from *overseas regulators*. For the purposes of the *Securitisation Regulation*, the *FCA* will follow the procedures described in ■ DEPP 7.