

Chapter 19

Non-FSMA powers

19.40 Trade Repositories (EU Exit) Regulations

19.40.1 Supervisory and enforcement functions in respect of *trade repositories* under *EU EMIR* were transferred from *ESMA* to the *FCA* through the *Trade Repositories (EU Exit) Regulations* on *IP completion day*.

19.40.2 The *FCA's* approach to enforcing under the *Trade Repositories (EU Exit) Regulations* 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, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

Conduct of investigations under the Trade Repositories (EU Exit) Regulations

19.40.3 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 *Trade Repositories (EU Exit) Regulations*, *EMIR* and the *Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018*.

19.40.4 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *Trade Repositories (EU Exit) 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 *Trade Repositories (EU Exit) Regulations* 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 Trade Repositories (EU Exit) Regulations

19.40.5 The decision-making procedures for those decisions under the *Trade Repositories (EU Exit) Regulations* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.

19.40.6 The *Trade Repositories (EU Exit) 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 *Trade Repositories (EU Exit) Regulations*.

Imposition of penalties under the Trade Repositories (EU Exit) Regulations

19.40.7 When determining whether to take action to impose a penalty or to issue a public censure under the *Trade Repositories (EU Exit) 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, ■ DEPP 6.5A, ■ DEPP 6.5B and ■ DEPP 6.5D.

19.40.8 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Trade Repositories (EU Exit) Regulations* to assist us to exercise our functions under the *Trade Repositories (EU Exit) Regulations* 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*.

19.40.9 The *FCA* will apply the approach to publicity that is outlined in ■ EG 6, read in the light of regulation 76 of the *Trade Repositories (EU Exit) Regulations*.

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

19.40.10 The *Trade Repositories (EU Exit) 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 requests from overseas regulators. For the purposes of the *Trade Repositories (EU Exit) Regulations* the *FCA* will follow the procedures described in ■ DEPP 7.