

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.

Information gathering and investigation powers.....

19.33.3 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.