

Senior arrangements, Systems and Controls

Chapter 18

Whistleblowing

18.6 Whistleblowing obligations under the MiFID regime and other sectoral legislation

Whistleblowing obligations under the MiFID regime

- 18.6.1** **R** (1) A *MiFID investment firm* (except a *collective portfolio management investment firm*) must have appropriate procedures in place for its employees to report a potential or actual breach of:
- (a) any rule which implemented *MiFID*; or
 - (b) a requirement imposed by *MiFIR* or any *onshored regulation* which was previously an *EU regulation* adopted under *MiFID* or *MiFIR*.
- (2) The procedures in (1) must enable employees to report internally through a specific, independent and autonomous channel.
- (3) The channel referred to in (2) may be provided through arrangements made by social partners, subject to the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 to the extent that they apply.

[Note: article 73(2) of *MiFID*]

- 18.6.2** **R** ■ SYSC 18.6.1R applies to a *third country investment firm* as if it were a *MiFID investment firm* (unless it is a *collective portfolio management investment firm*) when the following conditions are met:
- (1) it carries on *MiFID* or *equivalent third country business*; and
 - (2) it carries on the business in (1) from an establishment in the *United Kingdom*.

- 18.6.3** **G** When considering what procedures may be appropriate for the purposes of ■ SYSC 18.6.1R(1), a *UK MiFID investment firm* or a *third country investment firm* may wish to consider the arrangements in ■ SYSC 18.3.1R(2).

Whistleblowing obligations under other sectoral legislation

- 18.6.4** **G** In addition to obligations under the *MiFID* regime, similar whistleblowing obligations apply to miscellaneous *persons* subject to regulation by the *FCA* under the following non-exhaustive list of legislation:

- (1) article 32(3) of the *Market Abuse Regulation*, as implemented in section 131AA of the Act;
- (2) the UK provisions which implemented article 71(3) of the CRD (see ■ IFPRU 2.4.1R in respect of *IFPRU investment firms*);
- (3) the UK provisions which implemented article 99d(5) of the *UCITS Directive* (see ■ SYSC 4.1.1ER in respect of *UK UCITS management companies*, and ■ COLL 6.6B.30R in respect of *depositories*);
- (4) article 24(3) of the *securities financing transactions regulation*; and
- (5) section 97A of the Act, as regards obligations under the *Prospectus Regulation*, the *PR Regulation*, and the *Prospectus RTS Regulation*.

18.6.5

G Depending on the nature of its business, in addition to ■ SYSC 18.6.1R, a *MiFID investment firm* may, for example, be subject to one or more of the requirements in ■ SYSC 18.6.4G.