Chapter 1

Introduction

1.1 Overview

1.1.1 This guide describes the *FCA's* approach to exercising the main enforcement powers given to it by the Financial Services and Markets Act 2000 (the *Act)* and by other legislation. It is broken down into two parts. The first part provides an overview of enforcement policy and process, with chapters about the *FCA's* approach to enforcement (■ chapter 2), the use of its main information gathering and investigation powers under the *Act* and the *CRA* (■ chapter 3), the conduct of investigations (■ chapter 4), settlement (■ chapter 5) and publicity (■ chapter 6). The second part contains an explanation of the *FCA's* policy concerning specific enforcement powers such as its powers to: vary a *firm's Part 4A permission* and impose requirements on its own initiative (■ chapter 8); make *prohibition orders* (■ chapter 9); prosecute criminal offences (■ chapter 12); and powers which the *FCA* has been given under legislation other than the *Act* (■ chapter 19).

1.1.2 In the areas set out below, the *Act* expressly requires the *FCA* to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*.

(1) section 63C requires the *FCA* to publish a statement of its policy on the imposition, and amount, of financial penalties on *persons* that perform a *controlled function* without approval;

(1-A) section 63ZD requires the *FCA*, among other things, to publish a statement of its policy on the exercise of its power to vary an approval under section 63ZB;

(1A) sections 69 and 210 require the *FCA* to publish statements of policy on the imposition of financial penalties, suspensions, restrictions, conditions or limitations on *firms*, individuals and *unauthorised persons* to whom section 404C applies, the amount of financial penalties imposed, the period for which suspensions, restrictions or conditions are to have effect, and the period for which approvals under section 59 are to have effect as a result of a limitation;

(1B) section 88C requires the *FCA* to publish a statement of policy on the imposition of financial penalties, suspensions or restrictions on *sponsors*, the amount of financial penalties imposed, and the period for which suspensions or restrictions are to have effect;

(1C) section 89S requires the *FCA* to publish a statement of policy on the imposition of financial penalties, suspensions or restrictions on *primary information providers*, the amount of financial penalties imposed, the time period for any suspensions or restrictions, and the

matters in relation to which, suspensions or restrictions are to have effect;

(2) section 93 requires the *FCA* to publish a statement of its policy on the imposition, and amount, of financial penalties under section 91 of the *Act* (penalties for breach of Part 6 rules);

(3) section 124 requires the *FCA* to publish a statement of its policy on the type and level or period of administrative sanctions it may impose under Part VIII of the *Act*;

(3-A) section 131FA requires the *FCA* to publish a statement of its policy on the conduct of certain interviews in response to requests from *overseas regulators*; and

(3A) section 131J requires the *FCA* to publish a statement of its policy on the imposition, and amount, of financial penalties imposed under section 131G;

(4) section 169 requires the *FCA* to publish a statement of its policy on the conduct of certain interviews in response to requests from *overseas regulators*; and

(4A) section 192N requires the *FCA* to publish a statement of its policy on the imposition, and amount, of financial penalties on qualifying parent undertakings under section 192K of the *Act*;

(4B) section 312J requires the *FCA* to publish a statement of its policy on the imposition, and amount, of financial penalties on *recognised investment exchanges* under section 312F of the *Act*;

(4C) section 345D requires the *FCA* to publish a statement of its policy on the imposition, and amount, of financial penalties on *auditors* and actuaries under sections 249 and 345 of the *Act*; and

(5) section 395 requires the *FCA* to issue a statement of procedures relating to:

(a) the giving of *supervisory notices*, *warning notices* and *decision notices*;

(b) the giving of consent to the *PRA* in respect of applications made to the *PRA* for *Part 4A permission*, variation of *Part 4A permission* and approval to hold *controlled functions*; and

(c) the publishing of information about matters to which certain *warning notices* relate.

These policies are set out in the Decision Procedure and Penalties manual (*DEPP*), a module of the *FCA Handbook*. References to the policies are made at appropriate places in the guide.

1.1.3 This guide includes material on the investigation, disciplinary and criminal prosecution powers that are available to the *FCA* when it is performing functions as the competent authority under *Part VI* of the *Act* (Official listing). The *Act* provides a separate statutory framework within which the *FCA* must operate when it acts in that capacity. When determining whether to exercise its powers in its capacity as competent authority under *Part VI*,

the *FCA* will have regard to the matters and objectives which apply to the competent authority function.

1.1.4 The *FCA* has a range of enforcement powers, and in any particular enforcement situation, the *FCA* may need to consider which power to use and whether to use one or more powers. So in any particular case, it may be necessary to refer to a number of chapters of the guide.

1.1.5 Since most of the *FCA's* enforcement powers are derived from it, this guide contains a large number of references to the *Act.* Users of the guide should therefore refer to the *Act* as well as to the guide where necessary. In the event of a discrepancy between the *Act,* or other relevant legislation, and the description of an enforcement power in the guide, the provisions of the *Act* or the other relevant legislation prevail. Defined terms used in the text are shown in italic type. Where a word or phrase is in italics, its definition will be the one used for that word or phrase in the glossary to the *FCA Handbook* .

1.1.6 [deleted]

1.1.7 This guide will be kept under review and amended as appropriate in the light of further experience and developing law and practice.

1.1.8 The material in this guide does not form part of the *FCA Handbook* and is not *guidance* on *rules*, but it is 'general guidance' as defined in section 139B of the *Act.* If you have any doubt about a legal or other provision or your responsibilities under the *Act* or other relevant requirements, you should seek appropriate legal advice from your legal adviser.