Chapter 10

Injunctions

10.4 Other relevant powers

10.4.1 The *FCA* has a range of powers it can use to take remedial, protective and disciplinary action against a *person* who has contravened a relevant requirement or engaged in *market abuse*, as well as its powers to seek injunctions under sections 380 and 381 of the *Act* and under the courts' inherent jurisdiction. Where appropriate, the *FCA* may exercise these other powers before, at the same time as, or after it applies for an *injunction* against a *person*.

10.4.2 When, in relation to *firms*, the *FCA* applies the broad test outlined in paragraph ■ 10.2.2, it will consider the relative effectiveness of the other powers available to it, compared with injunctive relief. For example, where the *FCA* has concerns about whether a *firm* will comply with restrictions that the *FCA* could impose by exercising its *own-initiative powers*, it may decide it would be more appropriate to seek an *injunction*. This is because breaching any requirement imposed by the court could be punishable for contempt. Alternatively, where, for example, the *FCA* has already imposed requirements on a *firm* by exercising its *own-initiative powers* and these requirements have not been met, the *FCA* may seek an *injunction* to enforce those requirements.

10.4.3 The *FCA's own-initiative powers* do not apply to unauthorised persons. This means that an application for an *injunction* is the only power by which the *FCA* may seek directly to prevent *unauthorised persons* from actual or threatened breaches or *market abuse*. The *FCA* will decide whether an application against an *unauthorised person* is appropriate, in accordance with the approach discussed in paragraph ■ 10.2.2. The *FCA* may also seek an *injunction* to secure assets where it intends to use its insolvency powers against an *unauthorised person*.

10.4.4 In certain cases, conduct that may be the subject of an *injunction* application will also be an offence which the *FCA* has power to prosecute under the *Act*. In those cases, the *FCA* will consider whether it is appropriate to prosecute the offence in question, as well as applying for injunctions under section 380, section 381, or both.

10.4.5 Where the *FCA* exercises its powers under section 380, section 381 and/or invokes the court's inherent jurisdiction to obtain an order restraining the disposal of assets, it may also apply to the court for a restitution order for the distribution of those assets.