

**LEGAL CUTOVER (DECISION PROCEDURE AND PENALTIES MANUAL)
INSTRUMENT 2013**

WHEREAS:

- A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of designating or modifying a Relevant Instrument and the functions of making rules and issuing guidance and statements of policy and procedure.
- B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.
- C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.
- D. Article 2(1)(c) of the Early Commencement Order commenced certain of the Financial Conduct Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

Interpretation

- 1 In this Instrument (including the Recitals):
 - (1) "Designation Order" means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);
 - (2) "Early Commencement Order" means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);
 - (3) "the 2000 Act" means the Financial Services and Markets Act 2000;
 - (4) "the 2012 Act" means the Financial Services Act 2012;
 - (5) "the Authority" means the Financial Services Authority;
 - (6) "Financial Conduct Authority" means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act;
 - (7) "Handbook" means the Authority's Handbook of Rules and Guidance (and including for this purpose the Handbook Guides and Regulatory Guides published by the Authority alongside the Handbook of Rules and Guidance) in each case as published on the Authority's Handbook website at 11h59 pm on 27 February 2013;
 - (8) "Relevant Instrument" has the meaning in section 119(6)(b) of the 2012 Act;
 - (9) "FSA Instrument" means an instrument published by the Authority, by which the Authority made, issued, gave, imposed or amended a Relevant Instrument; and
 - (10) "FCA Relevant Instrument" means a Relevant Instrument designated by the Financial Conduct Authority under paragraph 2.

Designation of rules etc. by the Financial Conduct Authority

- 2 In accordance with Article 3(1) of the Designation Order, the Financial Conduct Authority designates the rules, guidance, requirements, codes, schemes, statements or directions, set out in each FSA Instrument (or part of such instrument) by which the Authority made, issued, gave, imposed or amended each part or provision of the Handbook, identified as:
 - (1) “Designated” in Column 2 of Annex A to this Instrument; and
 - (2) “FCA” in Column 3 of Annex A to this Instrument.
- 3 As required by Article 3(1)(c) and (d) of the Designation Order, the Financial Conduct Authority specifies that:
 - (1) The FCA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;
 - (2) The FCA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 10 of Schedule A to this Instrument; and
 - (3) The FCA Relevant Instruments collectively are treated as made, issued, given or imposed by the Financial Conduct Authority under the corresponding provisions set out in column 2 of Parts 1 to 10 of Schedule A to this Instrument.
- 4 In accordance with Article 2(2)(a) of the Designation Order, each FCA Relevant Instrument is treated as having been made, issued, given or imposed by the Financial Conduct Authority.

Modification of rules etc. by the Financial Conduct Authority

- 5 In accordance with Article 3(1) of the Designation Order, the Financial Conduct Authority modifies each FCA Relevant Instrument (or part of such instrument) as specified in Annex C to this Instrument.

Rules etc. made, given or amended by the Financial Conduct Authority

- 6 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9, the Financial Conduct Authority makes, amends, issues, gives, or imposes:
 - (1) Each provision in Annex B to this Instrument;
 - (2) Each provision in Annex C to this Instrument that meets all of the conditions in paragraph 7; and
 - (3) Any amendment that is not a modification made in accordance with paragraph 5 specified in a provision in Annex C that meets all of the conditions in paragraph 8.
- 7 The conditions referred to in paragraph 6 are that a provision is:
 - (1) Identified as “Made” in Column 2 of Annex A to this Instrument; and
 - (2) Identified as “FCA” in Column 3 of Annex A to this Instrument.
- 8 The conditions referred to in paragraph 6(3) are that a provision is:
 - (1) Identified as “Designated” in column 2 of Annex A to this Instrument, and

- (2) Identified as “FCA” in column 3 of Annex A to this Instrument.
- 9 The Financial Conduct Authority makes, amends, issues, gives or imposes the provisions in paragraph 6 in exercise of the following powers and related provisions of the 2000 Act, as amended by the 2012 Act:
- (1) Section 88C (Action under s.88A: statement of policy);
 - (2) Section 89S (Action under s.89Q: statement of policy);
 - (3) Section 139A (Power of the FCA to give guidance);
 - (4) Section 192N (Imposition of penalties under section 192K: statement of policy);
 - (5) Section 249 (Disciplinary measures);
 - (6) Section 312J (Statement of policy);
 - (7) Section 345D (Imposition of penalties on auditors or actuaries: statement of policy); and
 - (8) section 395 (The FCA’s and PRA’s procedures).
- 10 The rule-making powers in paragraph 8 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

Commencement: Financial Conduct Authority

- 11 As required by Article 3(1) of the Designation Order, the Financial Conduct Authority specifies that the designation (in paragraph 2) and the modification (in paragraph 5) of each FCA Relevant Instrument comes into effect on 1 April 2013.
- 12 The Financial Conduct Authority directs that paragraph 6 of this Instrument comes into force on 1 April 2013.
- 13 The Financial Conduct Authority directs that paragraph 6 of this Instrument comes into force immediately after the coming into force of the designations in paragraph 2 and the modifications in paragraph 5.

Amendments to the Handbook

- 14 The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed in column (2).

| (1) | (2) |
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| Glossary of definitions | Annex B |
| Decision Procedure and Penalties manual (DEPP) | Annex C |

Citation

- 15 This Instrument may be cited as the Legal Cutover (Decision Procedure and Penalties Manual) Instrument 2013.

By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body

19 March 2013

Annex A

Designation of the Decision Procedure and Penalties Manual (DEPP)

In addition to identifying provisions Designated or Made by this Instrument, Column 2 also identifies, for convenience and without operative effect, those provisions of the Handbook that will no longer have effect after “legal cutover”.

| Handbook Provision | Made, designated or no longer in force after legal cutover | Relevant regulator |
|---------------------------|---|---------------------------|
| DEPP 1.1.1 | Designated | FCA |
| DEPP 1.1.2 | Designated | FCA |
| DEPP 1.2.1 | Designated | FCA |
| DEPP 1.2.2 | Designated | FCA |
| DEPP 1.2.3 | Designated | FCA |
| DEPP 1.2.4 | Designated | FCA |
| DEPP 1.2.4A | Made | FCA |
| DEPP 1.2.4B | Made | FCA |
| DEPP 1.2.4C | Made | FCA |
| DEPP 1.2.4D | Made | FCA |
| DEPP 1.2.4E | Made | FCA |
| DEPP 1.2.5 | Designated | FCA |
| DEPP 1.2.6 | Designated | FCA |
| DEPP 1.2.6A | Designated | FCA |
| DEPP 1.2.7 | Designated | FCA |
| DEPP 1.2.8 | Designated | FCA |
| DEPP 1.2.9 | Designated | FCA |
| | | |
| DEPP 2.1.1 | Designated | FCA |
| DEPP 2.1.2 | Designated | FCA |
| DEPP 2.1.3 | Designated | FCA |
| DEPP 2.1.4 | Designated | FCA |
| DEPP 2.2.1 | Designated | FCA |
| DEPP 2.2.2 | Designated | FCA |
| DEPP 2.2.3 | Designated | FCA |
| DEPP 2.2.4 | Designated | FCA |
| DEPP 2.2.5 | Designated | FCA |
| DEPP 2.3.1 | Designated | FCA |
| DEPP 2.3.2 | Designated | FCA |
| DEPP 2.3.3 | Designated | FCA |
| DEPP 2.3.4 | Designated | FCA |
| DEPP 2.3.5 | Designated | FCA |
| DEPP 2.3.6 | Designated | FCA |
| DEPP 2.4.1 | Designated | FCA |
| DEPP 2.5.1 | Designated | FCA |

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| DEPP 2.5.2 | Designated | FCA |
| DEPP 2.5.3 | Designated | FCA |
| DEPP 2.5.4 | Designated | FCA |
| DEPP 2.5.5 | Designated | FCA |
| DEPP 2.5.5A | Made | FCA |
| DEPP 2.5.6 | Designated | FCA |
| DEPP 2.5.6A | Made | FCA |
| DEPP 2.5.7 | Designated | FCA |
| DEPP 2.5.7A | Designated | FCA |
| DEPP 2.5.8 | Designated | FCA |
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| DEPP 2.5.9 | Designated | FCA |
| DEPP 2.5.10 | Designated | FCA |
| DEPP 2.5.11 | Designated | FCA |
| DEPP 2.5.11A | Made | FCA |
| DEPP 2.5.11B | Made | FCA |
| DEPP 2.5.11C | Made | FCA |
| DEPP 2.5.11D | Made | FCA |
| DEPP 2.5.12 | Designated | FCA |
| DEPP 2.5.13 | Designated | FCA |
| DEPP 2.5.14 | Designated | FCA |
| DEPP 2.5.15 | Designated | FCA |
| DEPP 2.5.16 | Designated | FCA |
| DEPP 2.5.17 | Designated | FCA |
| DEPP 2.5.18 | Designated | FCA |
| DEPP 2 Annex 1 | Designated | FCA |
| DEPP 2 Annex 2 | Designated | FCA |
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| DEPP 3.1.1 | Designated | FCA |
| DEPP 3.1.2 | Designated | FCA |
| DEPP 3.1.3 | Designated | FCA |
| DEPP 3.2.1 | Designated | FCA |
| DEPP 3.2.2 | Designated | FCA |
| DEPP 3.2.3 | Designated | FCA |
| DEPP 3.2.4 | Designated | FCA |
| DEPP 3.2.5 | Designated | FCA |
| DEPP 3.2.6 | Designated | FCA |
| DEPP 3.2.7 | Designated | FCA |
| DEPP 3.2.8 | Designated | FCA |
| DEPP 3.2.9 | Designated | FCA |
| DEP 3.2.10 | Designated | FCA |
| DEPP 3.2.11 | Designated | FCA |
| DEPP 3.2.12 | Designated | FCA |
| DEPP 3.2.13 | Designated | FCA |
| DEPP 3.2.14 | Designated | FCA |
| DEPP 3.2.14A | Made | FCA |
| DEPP 3.2.14B | Made | FCA |
| DEPP 3.2.14C | Made | FCA |

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| DEPP 3.2.14D | Made | FCA |
| DEPP 3.2.14E | Made | FCA |
| DEPP 3.2.14F | Made | FCA |
| DEPP 3.2.14G | Made | FCA |
| DEPP 3.2.14H | Made | FCA |
| DEPP 3.2.15 | Designated | FCA |
| DEPP 3.2.16 | Designated | FCA |
| DEPP 3.2.17 | Designated | FCA |
| DEPP 3.2.18 | Designated | FCA |
| DEPP 3.2.19 | Designated | FCA |
| DEPP 3.2.20 | Designated | FCA |
| DEPP 3.2.21 | Designated | FCA |
| DEPP 3.2.22 | Designated | FCA |
| DEPP 3.2.23 | Designated | FCA |
| DEPP 3.2.24 | Designated | FCA |
| DEPP 3.2.25 | Designated | FCA |
| DEPP 3.2.26 | Designated | FCA |
| DEPP 3.2.27 | Designated | FCA |
| DEPP 3.3.1 | Designated | FCA |
| DEPP 3.3.2 | Designated | FCA |
| DEPP 3.3.3 | Designated | FCA |
| DEPP 3.4.1 | Designated | FCA |
| DEPP 3.4.2 | Designated | FCA |
| DEPP 3.4.3 | Designated | FCA |
| DEPP 3.4.4 | Designated | FCA |
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| DEPP 4.1.1 | Designated | FCA |
| DEPP 4.1.2 | Designated | FCA |
| DEPP 4.1.2A | Made | FCA |
| DEPP 4.1.3 | Designated | FCA |
| DEPP 4.1.4 | Designated | FCA |
| DEPP 4.1.5 | Designated | FCA |
| DEPP 4.1.6 | Designated | FCA |
| DEPP 4.1.7 | Designated | FCA |
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| DEPP 4.1.9 | Designated | FCA |
| DEPP 4.1.10 | Designated | FCA |
| DEPP 4.1.11 | Designated | FCA |
| DEPP 4.1.12 | Designated | FCA |
| DEPP 4.1.13 | Designated | FCA |
| DEPP 4.1.14 | Made | FCA |
| DEPP 4.2.1 | Designated | FCA |
| DEPP 4.2.2 | Designated | FCA |
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| DEPP 5.1.1 | Designated | FCA |
| DEPP 5.1.2 | Designated | FCA |
| DEPP 5.1.3 | Designated | FCA |
| DEPP 5.1.4 | Designated | FCA |

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| DEPP 5.1.5 | Designated | FCA |
| DEPP 5.1.6 | Designated | FCA |
| DEPP 5.1.7 | Designated | FCA |
| DEPP 5.1.8 | Designated | FCA |
| DEPP 5.1.9 | Designated | FCA |
| DEPP 5.1.10 | Designated | FCA |
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| DEPP 6.1.1 | Designated | FCA |
| DEPP 6.1.2 | Designated | FCA |
| DEPP 6.2.1 | Designated | FCA |
| DEPP 6.2.2 | Designated | FCA |
| DEPP 6.2.2A | Designated | FCA |
| DEPP 6.2.3 | Designated | FCA |
| DEPP 6.2.4 | Designated | FCA |
| DEPP 6.2.5 | Designated | FCA |
| DEPP 6.2.6 | Designated | FCA |
| DEPP 6.2.7 | Designated | FCA |
| DEPP 6.2.8 | Designated | FCA |
| DEPP 6.2.9 | Designated | FCA |
| DEPP 6.2.9A | Designated | FCA |
| DEPP 6.2.10 | Designated | FCA |
| DEPP 6.2.11 | Designated | FCA |
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| DEPP 6.2.22 | Designated | FCA |
| DEPP 6.2.23 | Designated | FCA |
| DEPP 6.2.24 | Designated | FCA |
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| DEPP 6.2.26 | Designated | FCA |
| DEPP 6.2.27 | Designated | FCA |
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| DEPP 6.3.1 | Designated | FCA |
| DEPP 6.3.2 | Designated | FCA |
| DEPP 6.4.1 | Designated | FCA |
| DEPP 6.4.2 | Designated | FCA |
| DEPP 6.5.1 | Designated | FCA |
| DEPP 6.5.2 | Designated | FCA |
| DEPP 6.5.3 | Designated | FCA |
| DEPP 6.5A.1 | Designated | FCA |
| DEPP 6.5A.2 | Designated | FCA |

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| DEPP 6.5A.3 | Designated | FCA |
| DEPP 6.5A.4 | Designated | FCA |
| DEPP 6.5A.5 | Designated | FCA |
| DEPP 6.5B.1 | Designated | FCA |
| DEPP 6.5B.2 | Designated | FCA |
| DEPP 6.5B.3 | Designated | FCA |
| DEPP 6.5B.4 | Designated | FCA |
| DEPP 6.5B.5 | Designated | FCA |
| DEPP 6.5C.1 | Designated | FCA |
| DEPP 6.5C.2 | Designated | FCA |
| DEPP 6.5C.3 | Designated | FCA |
| DEPP 6.5C.4 | Designated | FCA |
| DEPP 6.5C.5 | Designated | FCA |
| DEPP 6.5D.1 | Designated | FCA |
| DEPP 6.5D.2 | Designated | FCA |
| DEPP 6.5D.3 | Designated | FCA |
| DEPP 6.5D.4 | Designated | FCA |
| DEPP 6.5D.4A | Designated | FCA |
| DEPP 6.5D.5 | Designated | FCA |
| DEPP 6.6.1 | Designated | FCA |
| DEPP 6.6.2 | Designated | FCA |
| DEPP 6.6.3 | Designated | FCA |
| DEPP 6.6.4 | Designated | FCA |
| DEPP 6.6.5 | Designated | FCA |
| DEPP 6.7.1 | Designated | FCA |
| DEPP 6.7.2 | Designated | FCA |
| DEPP 6.7.3 | Designated | FCA |
| DEPP 6.7.4 | Designated | FCA |
| DEPP 6.7.5 | Designated | FCA |
| DEPP 6.7.6 | Designated | FCA |
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| DEPP 6A.1.1 | Designated | FCA |
| DEPP 6A.1.2 | Designated | FCA |
| DEPP 6A.1.3 | Designated | FCA |
| DEPP 6A.1.4 | Designated | FCA |
| DEPP 6A.2.1 | Designated | FCA |
| DEPP 6A.2.2 | Designated | FCA |
| DEPP 6A.2.3 | Designated | FCA |
| DEPP 6A.2.4 | Designated | FCA |
| DEPP 6A.2.5 | Made | FCA |
| DEPP 6A.3.1 | Designated | FCA |
| DEPP 6A.3.2 | Designated | FCA |
| DEPP 6A.3.3 | Designated | FCA |
| DEPP 6A.3.4 | Designated | FCA |
| DEPP 6A.4.1 | Designated | FCA |
| DEPP 6A.4.2 | Designated | FCA |
| DEPP 6A.4.3 | Designated | FCA |
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| DEPP 7.1.1 | Designated | FCA |
| DEPP 7.1.2 | Designated | FCA |
| DEPP 7.1.3 | Designated | FCA |
| DEPP 7.1.4 | Designated | FCA |
| DEPP 7.2.1 | Designated | FCA |
| DEPP 7.2.2 | Designated | FCA |
| DEPP 7.2.3 | Designated | FCA |
| DEPP 7.2.4 | Designated | FCA |
| DEPP 7.2.5 | Designated | FCA |
| DEPP 7.2.6 | Designated | FCA |
| DEPP 7.2.7 | Designated | FCA |
| DEPP 7.2.8 | Designated | FCA |
| DEPP 7.2.9 | Designated | FCA |
| DEPP 7.2.10 | Designated | FCA |
| DEPP 7.2.11 | Designated | FCA |
| DEPP 7.2.12 | Designated | FCA |
| DEPP 7.2.13 | Designated | FCA |
| DEPP 7.2.14 | Designated | FCA |
| DEPP 7.2.15 | Designated | FCA |
| DEPP 7.2.16 | Designated | FCA |
| DEPP 7.2.17 | Designated | FCA |
| DEPP 7.2.18 | Designated | FCA |
| DEPP 7.2.19 | Designated | FCA |
| DEPP 7.2.20 | Designated | FCA |
| | | |
| Sch 1 | Designated | FCA |
| Sch 2 | Designated | FCA |
| Sch 3 | Designated | FCA |
| Sch 4 | Designated | FCA |
| TP1 | Designated | FCA |

Annex B

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

primary information provider a person approved by the *FCA* under section 89P of the *Act*.

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

breach in *DEPP*:

(1) misconduct in respect of which the ~~FSA~~ FCA is empowered to take action pursuant to section 66 (Disciplinary powers) of the *Act*; or

(2) a contravention in respect of which the ~~FSA~~ FCA is empowered to impose a penalty pursuant to section 91 (Penalties for breach of listing rules) of the *Act*; or

...

(4) behaviour amounting to *market abuse*, or to *requiring or encouraging market abuse*, in respect of which the ~~FSA~~ FCA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the *Act*;

(5) a contravention of any directly applicable *EU* regulation made under *MiFID*; ~~or~~

(6) a contravention in respect of which the ~~FSA~~-FCA is empowered to take action pursuant to section 131G (Breach of short selling regulation: Power to impose penalty or issue censure) of the *Act*;

(7) a contravention in respect of which the FCA is empowered to take action pursuant to section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the Act;

(8) a contravention in respect of which the FCA is empowered to take action pursuant to section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or

(d) of the Act;

- (9) a contravention in respect of which the FCA is empowered to take action pursuant to section 192K (Power to impose penalty or issue censure) of the Act;
- (10) a contravention in respect of which the FCA is empowered to take action pursuant to section 249 (Disciplinary measures) of the Act;
- (11) a contravention in respect of which the FCA is empowered to take action pursuant to section 312E (Public censure) or section 312F (Financial penalties) of the Act; or
- (12) a contravention in respect of which the FCA is empowered to take action pursuant to section 345 (Disciplinary measures: FCA) of the Act.

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1.1 Application and Purpose

Application

- 1.1.1 G This manual (*DEPP*) is relevant to *firms, approved persons* and other *persons*, whether or not they are regulated by the ~~FSA~~ FCA. It sets out:
- (1) the ~~FSA~~ FCA's decision-making procedure for giving *statutory notices*. These are *warning notices, decision notices* and *supervisory notices* (*DEPP* 1.2 to *DEPP* 5);
 - (1A) the FCA's decision-making procedure in cases where the PRA is required to seek the FCA's consent before approving an application (a) for Part 4A permission; (b) for the variation of a Part 4A permission; or (c) to perform a controlled function (see DEPP 2.5.6AG);
 - (1B) the FCA's decision-making procedure where it is deciding under section 391(1)(c) of the Act to publish information about the matter to which a warning notice relates (see DEPP 3.2.14AG to DEPP 3.2.14HG);
 - (2) the ~~FSA~~ FCA's policy with respect to the imposition and amount of penalties under the *Act* (see *DEPP* 6);
 - (2A) the ~~FSA~~ FCA's policy with respect to the imposition of suspensions or restrictions, and the period for which those suspensions or restrictions are to have effect, under the *Act* (see *DEPP* 6A);
 - (3) the ~~FSA~~ FCA's policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator or an *EEA regulator* (*DEPP* 7).

Purpose

- 1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 69(1), 88C(1), 89S(1), 93(1), 124(1), 131FA, 131J(1), 169(9), 192N(1), 210(1), 312J(1), 345D(1) and 395 of the *Act* that the ~~FSA~~ FCA publish the statements of procedure or policy referred to in *DEPP* 1.1.1G.

1.2 Introduction to statutory notices

Statutory and related notices

1.2.1 G Section 395 of the *Act* (The *FSA's FCA's* and *PRA's* procedures) requires the *FSA FCA* to publish a statement of its procedure for the giving of *statutory notices*. The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a *statutory notice* is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence. The types of *statutory notices* and related notices, and the principal references to them in the *Act* and *DEPP* are set out in *DEPP* 1.2.2G.

1.2.2 G Table: Summary of statutory and related notices

| Notice | Description | Act reference | Further information |
|---------------------------|---|-----------------|-------------------------------------|
| <i>Warning notice</i> | Gives the recipient details about action that the <i>FSA FCA</i> proposes to take and about the right to make representations. | Section 387 | <i>DEPP</i> 2.2 |
| <i>Decision notice</i> | Gives the recipient details about action that the <i>FSA FCA</i> has decided to take. The <i>FSA FCA</i> may also give a further <i>decision notice</i> if the recipient of the original <i>decision notice</i> consents. | Section 388 | <i>DEPP</i> 2.3 |
| ... | | | |
| <i>Final notice</i> | Sets out the terms of the action that the <i>FSA FCA</i> is taking. | Section 390 | <i>DEPP</i> 1.2.4G |
| <i>Supervisory notice</i> | Gives the recipient details about action that the <i>FSA FCA</i> has taken or proposes to take, for example to vary a <i>Part IV Part 4A permission</i> . | Section 395(13) | <i>DEPP</i> 2.2 and <i>DEPP</i> 2.3 |

...

Decisions relating to applications for authorisation or approval made to the PRA

1.2.4A G Section 395 of the *Act* also requires the *FCA* to publish a statement of its procedure for decisions which gives rise to an obligation for the PRA to include a statement under section 387(1A) in a *warning notice* or a

statement under section 388(1A) in a *decision notice* as follows:

- (1) Section 387(1A) provides that where the *FCA* proposes to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5) or 55I(8), the *warning notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s proposal.
- (2) Section 388(1A) provides that where the *FCA* has decided to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5) or 55I(8), the *decision notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s decision.

- 1.2.4B G Where an application for *Part 4A* permission is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (section 55F of the *Act*). *FCA* consent can be conditional on the *PRA* imposing limitations or specifying the permission is for certain regulated activities only.
- 1.2.4C G Where an application to vary a *Part 4A* permission is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (section 55I of the *Act*). The *FCA* may withhold its consent to a proposed variation if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives. *FCA* consent can be conditional on the *PRA* imposing limitations, or the *PRA* specifying the permission is for certain regulated activities only.
- 1.2.4D G Where an application to perform a *controlled function* is made to the *PRA* as the appropriate regulator, the *PRA* can only approve a person to perform a *controlled function* with the consent of the *FCA* (section 59(4)(b)) of the *Act*.
- 1.2.4E G The procedure must be designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based, or by two or more persons who include a person not directly involved in establishing that evidence.

The decision makers

- 1.2.5 G Decisions on whether to give a *statutory notice* will be taken by a 'decision maker'. The ~~*FSA*~~ *FCA*'s assessment of who is the appropriate decision maker is subject to the requirements of section 395 of the *Act* and will depend upon the nature of the decision, including its complexity, importance and urgency. References to the 'decision maker' in *DEPP* are to:
- (1) the *Regulatory Decisions Committee (RDC)*; or

- (2) ~~FSA~~ FCA staff under *executive procedures*; or
 - (3) ~~FSA~~ FCA staff under the *settlement decision procedure*.
- 1.2.6 G The decision maker will also take decisions associated with a *statutory notice* (a '*statutory notice associated decision*'). *Statutory notice associated decisions* include decisions:
- (1) to set or extend the period for making representations;
 - (2) on whether the ~~FSA~~ FCA is required to give a copy of the *statutory notice* to any third party and, if so, the period for the third party to make representations; and
 - (3) on whether to refuse access to ~~FSA~~ FCA material, relevant to the relevant *statutory notice*, under section 394 of the *Act*.
- ...
- 1.2.7 G In each case, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law, and ~~FSA~~ FCA priorities and policies (including on matters of legal interpretation).
- 1.2.8 G The ~~FSA~~ FCA will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision makers.
- 1.2.9 G *DEPP 2* to *DEPP 5* set out:
- ...
- (3) the procedure for decision making by ~~FSA~~ FCA staff under *executive procedures* (*DEPP 4*);
 - (4) the procedure for decision making by ~~FSA~~ FCA staff under the *settlement decision procedure* (*DEPP 5*).

2 Statutory notices and the allocation of decision making

2.1 Statutory notices

...

- 2.1.3 G *DEPP 2 Annex 1G* and *DEPP 2 Annex 2G* identify the provisions of the *Act* or other enactment giving rise to the need for the relevant notice, and whether the decision maker is the *RDC* or ~~FSA~~ FCA staff under *executive procedures* in each case.

Consistent decision making

- 2.1.4 G ~~FSA~~ FCA staff responsible for the taking of a *statutory notice* decision under *executive procedures* may refer the matter to the *RDC* for the *RDC* to decide whether to give the statutory notice if:

...

- (2) the relevant ~~FSA~~ FCA staff believe, having regard to all the circumstances, that the *RDC* should have responsibility for the decision. The relevant considerations might include:

- (a) the desirability of consistency in ~~FSA~~ FCA decision making;

...

2.2 Warning notices and first supervisory notices

- 2.2.1 G If ~~FSA~~ FCA staff consider that action requiring a *warning notice* or first *supervisory notice* is appropriate, they will recommend to the relevant decision maker that the notice be given.

- 2.2.2 G For first *supervisory notices*, the ~~FSA~~ FCA staff will recommend whether the action should take effect immediately, on a specified date, or when the matter is no longer open to review (see *DEPP* 2.2.5G).

- 2.2.3 G The decision maker will:

- (1) consider whether the material on which the recommendation is based is adequate to support it; the decision maker may seek additional information about or clarification of the recommendation, which may necessitate additional work by the relevant ~~FSA~~ FCA staff;
- (2) satisfy itself that the action recommended is appropriate in all the circumstances;
- (3) decide whether to give the notice and the terms of any notice given.

- 2.2.4 G If the ~~FSA~~ FCA decides to take no further action and the ~~FSA~~ FCA had previously informed the *person* concerned that it intended to recommend action, the ~~FSA~~ FCA will communicate this decision promptly to the *person* concerned.

...

2.3 Decision notices and second supervisory notices

Approach of decision maker

- 2.3.1 G If a decision maker is asked to decide whether to give a *decision notice* or second *supervisory notice*, it will:

...

- (2) consider any representations made (whether written, oral or both) and any comments by ~~FSA~~ FCA staff or others in respect of those representations;

...

Default procedures

- 2.3.2 G If the ~~FSA~~ FCA receives no response or representations within the period specified in a *warning notice*, the decision maker may regard as undisputed the allegations or matters in that notice and a *decision notice* will be given accordingly. A *person* who has received a *decision notice* and has not previously made any response or representations to the ~~FSA~~ FCA, may nevertheless refer the ~~FSA~~ FCA's decision to the *Tribunal*.

- 2.3.3 G If the ~~FSA~~ FCA receives no response or representations within the period specified in a first *supervisory notice*, the ~~FSA~~ FCA will not give a second *supervisory notice*. The outcome depends on when the relevant action took or takes effect (as stated in the notice). If the action:

...

...

Further decision notice

- 2.3.5 G Under section 388(3) of the *Act*, following the giving of a *decision notice* but before the ~~FSA~~ FCA takes action to which the *decision notice* relates, the ~~FSA~~ FCA may give the *person* concerned a further *decision notice* relating to different action concerning the same matter. Under section 388(4) of the *Act*, the ~~FSA~~ FCA can only do this if the *person* receiving the further *decision notice* gives its consent. In these circumstances the following procedure will apply:

- (1) ~~FSA~~ FCA staff will recommend to the decision maker that a further *decision notice* be given, either before or after obtaining the *person's* consent;

...

- (3) if the decision maker decides that the action proposed is inappropriate, he will decide not to give the further *decision notice*. In this case, the original *decision notice* will stand and

the *person's* rights in relation to that notice will be unaffected. If the *person's* consent has already been obtained, the ~~FSA~~ FCA will notify the *person* of the decision not to give the further *decision notice*;

...

- 2.3.6 G For the purpose of establishing whether the *person* receiving the further *decision notice* gives its consent, the ~~FSA~~ FCA will normally require consent in writing.

2.4 Third party rights and access to ~~FSA~~ FCA material

- 2.4.1 G Sections 393 (Third party rights) and 394 (Access to ~~FSA~~ FCA material) of the *Act* confer additional procedural rights relating to third parties and to disclosure of ~~FSA~~ FCA material. These rights apply in certain *warning notice* and *decision notice* cases referred to in section 392 of the *Act* (Application of sections 393 and 394). The cases in which these additional rights apply are identified in *DEPP 2* Annex 1G by asterisks; these are generally cases in which the *warning notice* or *decision notice* is given on the ~~FSA~~ FCA's own initiative rather than in response to an application or notification made to the ~~FSA~~ FCA.

2.5 Provision for certain categories of decision

...

Different decision makers

- 2.5.2 G The decision to give a *warning notice* and a *decision notice* in a particular matter will often not be taken by the same decision maker. Certain types of action require that the *warning notice* decision be taken by ~~FSA~~ FCA staff under *executive procedures* and the *decision notice* decision be taken by the *RDC*. Similarly, in enforcement cases the *RDC* might take the decision to give a *warning notice*, but the decision to give a *decision notice* could be taken by the *settlement decision makers* on the basis that the *person* concerned does not contest the action proposed (see *DEPP 5*).

Decisions relating to applications for FCA authorisation or approval

- 2.5.3 G ~~FSA~~ FCA staff under *executive procedures* will take the decision to give a *warning notice* if the ~~FSA~~ FCA proposes to:
- (1) refuse an application for a ~~Part IV~~ Part 4A permission or to refuse an application to cancel a ~~Part IV~~ Part 4A permission;

- (2) impose a limitation or a requirement which was not applied for, or specify a narrower description of regulated activity than that applied for, on the grant of a ~~Part IV~~ Part 4A permission;
- (3) refuse an application to vary a ~~Part IV~~ Part 4A permission, or to restrict a ~~Part IV~~ Part 4A permission on the grant of a variation (by imposing a limitation or a requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for);
- (3A) refuse an application to vary a requirement imposed under section 55L of the Act, or to impose a new requirement;
- (3B) exercise its power under section 55L(1) of the Act in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission;

...

...

2.5.5A G If representations are made in response to a warning notice proposing the action set out at DEPP 2.5.3G(3B), FCA staff under executive procedures will take the decision to give a decision notice.

2.5.6 G If representations are made in response to a *warning notice* proposing the action set out at ~~DEPP 2.5.3G~~, *DEPP 2.5.3G(2)*, *DEPP 2.5.3G(3)*, *DEPP 2.5.3G(3A)*, or *DEPP 2.5.3G(6)*, then the RDC will take the decision to give a *decision notice* if the action involves a fundamental change variation or requirement (see *DEPP 2.5.8G*) ~~to the nature of a permission~~. Otherwise, the decision to give the *decision notice* will be taken by ~~FSA~~ FCA staff under *executive procedures*.

Decisions relating to applications for PRA authorisation or approval

2.5.6A G FCA staff under executive procedures will take the decision where the FCA is proposing or deciding to:

- (1) refuse its consent to the granting by the PRA of an application for a Part 4A permission, or give its consent subject to conditions;
- (2) refuse its consent to the granting by the PRA of an application for the variation of a Part 4A permission, or give its consent subject to conditions; or
- (3) refuse its consent to the granting by the PRA of an application to perform a controlled function.

~~FSA~~ FCA's own-initiative powers

- 2.5.7 G The RDC will take the decision to give a *supervisory notice* exercising the ~~FSA FCA's own-initiative power powers~~ (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental change variation or requirement (see DEPP 2.5.8G) ~~to the nature of a permission~~. Otherwise, the decision to give the ~~decision~~ *supervisory notice* will be taken by ~~FSA FCA~~ staff under *executive procedures*.
- 2.5.7A G Notwithstanding DEPP 2.5.7G, ~~FSA FCA~~ staff under *executive procedures* will be the decision maker whenever a *firm* agrees not to contest the ~~FSA FCA's~~ exercise of its *own-initiative power powers*, including where the ~~FSA FCA's~~ action involves a fundamental variation or requirement change to the nature of a permission.
- 2.5.8 G A fundamental variation or requirement change to the nature of a permission means:
- ...
- (3) ~~restricting a firm from taking on new business, dealing with a particular category of client or handling client money by imposing a limitation or requirement, or refusing an application to vary or cancel such a limitation or requirement; or [deleted]~~
- (4) imposing or varying an assets requirement (as defined in section 48(3) ~~55P~~ of the *Act* (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.

Decisions relating to listing of securities

- 2.5.9 G ~~FSA FCA~~ staff under *executive procedures* will take the following *statutory notice* decisions:
- ...
- (2) the suspension of *listing* on the ~~FSA FCA's~~ own initiative or at the request of the issuer;
- ...
- 2.5.10 G The RDC will take *statutory notice decisions* relating to the discontinuance of listing of securities on the ~~FSA FCA's~~ own initiative.
- 2.5.11 G If securities have matured or otherwise ceased to exist the ~~FSA FCA~~ will remove any reference to them from the official list. This is a purely administrative process, and not a discontinuance of listing in the sense used in Part 6 of the *Act*.

Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers

- 2.5.11 A G Under section 88(4)(aa) of the Act, if the FCA proposes to impose limitations or other restrictions on the services to which a sponsor's approval relates, it must give him a warning notice. If, after considering any representations made in response to the warning notice, the FCA decides to impose limitations or other restrictions on the services to which a sponsor's approval relates, it must give him a decision notice. Where the sponsor has requested or otherwise agrees to the limitation or other restriction, FCA staff under executive procedures will take the decision to give the warning notice and decision notice. Otherwise, the RDC will take the decision to give the warning notice and decision notice.
- 2.5.11 B G If the FCA is proposing or deciding to refuse a sponsor's application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates under section 88(8)(d) of the Act, the decision maker will be FCA staff under executive procedures where FCA staff decided to impose the limitation or other restriction. Otherwise, the RDC will take the decision to give the warning notice and decision notice.
- 2.5.11 C G Under section 89P(5)(b) of the Act, if the FCA proposes to impose limitations or other restrictions on the dissemination of regulated information to which a primary information provider's approval relates, it must give him a warning notice. If, after considering any representations made in response to the warning notice, the FCA decides to impose limitations or other restrictions on the dissemination of regulated information to which a primary information provider's approval relates, it must give him a decision notice. Where the primary information provider has requested or otherwise agrees to the limitation or other restriction, FCA staff under executive procedures will take the decision to give the warning notice and decision notice. Otherwise, the RDC will take the decision to give the warning notice and decision notice.
- 2.5.11 D G Under section 89P(9)(d) of the Act, if the FCA is proposing or deciding to refuse a primary information provider's application for the withdrawal or variation of a limitation or other restriction on the dissemination of regulated information to which a primary information provider's approval relates, the decision maker will be FCA staff under executive procedures where FCA staff decided to impose the limitation or other restriction. Otherwise, the RDC will take the decision to give the warning notice and decision notice.

Modified procedures in collective investment scheme and certain other cases

- 2.5.12 G FSA FCA staff will usually inform or discuss with the person concerned any action they contemplate before they recommend to the RDC that the FSA FCA takes formal action. The FSA FCA may also be invited to exercise certain powers by the persons who would be affected by the exercise of those powers. In these circumstances if the person

concerned has agreed to or accepted the action proposed then the decisions referred to in *DEPP* 2.5.13G will be taken by ~~FSA~~ FCA staff under *executive procedures* rather than by the *RDC*.

2.5.13 G The decisions referred to in *DEPP* 2.5.12G are:

...

- (3) the decision to give a *supervisory notice* in accordance with regulation 27(3), (8) or 9(b) of the *OEIC Regulations*; and
- (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC Regulations*;
- (5) ~~the decision to give a direction under section 42B(1) of the Building Societies Act 1986 that a building society transfers all its engagements to one or more other building societies or that it transfers its business to an existing company (under section 94 or section 97 respectively of the Building Societies Act 1986); and [deleted]~~
- (6) ~~the decision to give a decision notice under section 93(6) of the Building Societies Act 1986 (permission for successor society on amalgamation) where the terms of the permission have been agreed with the successor building society. [deleted]~~

...

2.5.15 G A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a unit trust scheme to be an *AUT* or *ICVC* will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the *operator* of an existing *AUT* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by ~~FSA~~ FCA staff under *executive procedures*.

2.5.16 G A notice under paragraph 15A(4) of Schedule 3 to the *Act* relating to the application by an *EEA firm* for approval to manage a *UCITS scheme* is not a *warning notice*, but the ~~FSA~~ FCA will operate a procedure for this notice which will be similar to the procedure for a *warning notice*.

Notices under ~~the Building Societies Act 1986~~ and other enactments

2.5.17 G The ~~FSA~~ FCA expects to adopt a procedure in respect of notices under enactments other than the *Act* which is similar to that for *statutory notices* under the *Act*, but which recognises any differences in the legislative framework and requirements. *DEPP* 2 Annex 1G and *DEPP* 2 Annex 2G therefore identify notices to be given pursuant to other enactments and the relevant ~~FSA~~ FCA decision maker.

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:
- (1) ~~Building Societies Act 1986, section 36A: There is no right to refer a decision to issue a prohibition order under section 36A to the *Tribunal*. Accordingly, a *decision notice* under section 36A(5A) is not required to give an indication of whether any such rights exists. A *decision notice* under section 36A(5A) may only relate to the issue of a prohibition order under section 36A. Where such a *decision notice* is given, no *final notice* is required under section 390 of the *Act* and the *FSA* may issue the order at the same time as or after giving the *decision notice*. For the purposes of section 391 of the *Act* (Publication), the *decision notice* is treated as if it were a *final notice*. [deleted]~~
 - (2) ~~Building Societies Act 1986, section 93(6): the *FSA* notifies the successor of the *permission* by giving it a *decision notice*. The *decision notice* is not preceded by the giving of a *warning notice*. No *final notice* is required under section 390 of the *Act* and for the purposes of section 391 of the *Act* (Publication, the *decision notice* is treated as if it were a *final notice*. The giving of *permission* is treated for the purposes of section 55 of the *Act* (Right to refer matters to the *Tribunal* as if it were the determination of an application made by the successor under Part IV of the *Act*. Part IX of the *Act* (Hearings and appeals) accordingly applies, but with the omission of section 133(9), which would otherwise prevent the *FSA* from giving the *permission* on the terms notified in the *decision notice* until after any reference and appeal. [deleted]~~
 - (3) Friendly Societies Act 1992, section 58A: The *warning notice* and *decision notice* must set out the terms of the direction which the ~~*FSA*~~ *FCA* proposes or has decided to give and any specification of when the friendly society is to comply with it. A *decision notice* given under section 58A(3) must give an indication of the society's right, given by section 58A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 58A(3) may only relate to action under the same section of the Friendly Societies Act 1992 as the action proposed in the *warning notice*. A *final notice* under section 390 of the *Act* must set out the terms of the direction and state the date from which it takes effect. Section 392 of the *Act* is to be read as if it included references to a *warning notice* given under section 58A(1) and a *decision notice* given under section 58A(3).

1

- G Note: Third party rights and access to ~~FSA~~ FCA material apply to the powers listed in this Annex where indicated by an asterisk * (see *DEPP* 2.4)

| Section of the Act | Description | Handbook reference | Decision maker |
|---|---|--------------------|-----------------------------|
| 52(6)(a) <u>55X(1)(a) and(b)</u> | when the FSA <u>FCA</u> is proposing to grant an application for a Part IV <u>Part 4A</u> permission with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for | SUP 6 | <i>Executive procedures</i> |
| 52(6)(b) <u>55X(1)(c) and (d)</u> | when the FSA <u>FCA</u> is proposing to grant an application to vary a <i>firm's</i> Part IV <u>Part 4A</u> permission but, other than as part of the application, to restrict the Part IV <u>Part 4A</u> permission (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for) | | <i>Executive procedures</i> |
| <u>55X(1)(e)</u> | <u>when the <i>FCA</i> is proposing to exercise its power under section 55L(1) in connection with an application to the <i>PRA</i> for a <i>Part 4A</i> permission or the variation of a <i>Part 4A</i> permission</u> | | <i>Executive procedures</i> |
| 52(7) <u>55X(2)</u> | when the FSA <u>FCA</u> is proposing to refuse an application for a Part IV <u>Part 4A</u> permission | | <i>Executive procedures</i> |
| 52(7) <u>55X(2)</u> | when the FSA <u>FCA</u> is proposing to refuse an application to vary a <i>firm's</i> Part IV <u>Part 4A</u> permission | SUP 6 | <i>Executive procedures</i> |

| | | | |
|---|--|-------|--|
| <u>52(7)</u> <u>55X(2)</u> | when the FSA <u>FCA</u> is proposing to refuse an application to cancel a <i>firm's Part IV Part 4A permission</i> | SUP 6 | <i>Executive procedures</i> |
| <u>55X(2)</u> | when the <u>FCA</u> is proposing to refuse an application for the variation of a <u>requirement imposed under section 55L</u> or for the imposition of a new <u>requirement</u> | | <i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> |
| <u>52(9)(a)</u> <u>55X(4)(a)</u> <u>55X(4)(b)</u> | when the FSA <u>FCA</u> is deciding to grant an application for a Part IV <u>Part 4A permission</u> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for | | <i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> |
| <u>52(9)(b)</u> <u>55X(4)(c)</u> <u>55X(4)(d)</u> | when the FSA <u>FCA</u> is deciding to grant an application to vary a <i>firm's Part IV Part 4A permission</i> but, other than as part of the application, to restrict the Part IV <u>Part 4A permission</u> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for) | SUP 6 | <i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> |
| <u>55X(4)(e)</u> | when the <u>FCA</u> is deciding to exercise its power under section 55L(1) in connection with an application to the <u>PRA</u> for a <u>Part 4A permission</u> or the variation of a <u>Part 4A permission</u> | | <i>Executive procedures</i> |
| <u>52(9)(e)</u> <u>55X(4)(f)</u> | when the FSA <u>FCA</u> is deciding to refuse an application for a Part IV <u>Part 4A permission</u> | | <i>RDC or executive procedures</i> See <i>DEPP</i> |

| | | | |
|-------------------------------|--|--------|--|
| | | | 2.5.5G |
| 52(9)(e) 55X(4)(f) | when the FSA <u>FCA</u> is deciding to refuse an application to vary a <i>firm's Part IV Part 4A permission</i> | SUP 6 | RDC or executive procedures See DEPP 2.5.6G |
| 55X(4)(f) 52(9)(e) | when the FSA <u>FCA</u> is deciding to refuse an application to cancel a <i>firm's Part IV Part 4A permission</i> | SUP 6 | RDC or executive procedures See DEPP 2.5.5G |
| 55X(4)(f) | When the <u>FCA</u> is deciding to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a <i>new requirement</i> | | RDC or executive procedures See DEPP 2.5.6G |
| 54(1)/(2) 55Z(1) 55Z(2) | when the FSA <u>FCA</u> is proposing or deciding to cancel a <i>firm's Part IV Part 4A permission</i> otherwise than at its request * | | RDC |
| 57(1)/(3) | when the FSA <u>FCA</u> is proposing or deciding to make a <i>prohibition order</i> against an individual* | | RDC |
| 58(3)/(4) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for the variation or revocation of a <i>prohibition order</i> | | RDC |
| 62(2) | when the FSA <u>FCA</u> is proposing to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> | SUP 10 | Executive procedures |
| 62(3) | when the FSA <u>FCA</u> is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> | SUP 10 | RDC or executive procedures See DEPP 2.5.5G |

| | | | |
|----------------|---|----------------------|-----------------------------|
| 63(3)/(4) | when the FSA <u>FCA</u> is proposing or deciding to withdraw approval from an <i>approved person</i> * | | <i>RDC</i> |
| 63B(1)/(3) | when the FSA <u>FCA</u> is proposing or deciding to impose a penalty on a <i>person</i> under section 63A * | | <i>RDC</i> |
| 67(1)/(4) | when the FSA <u>FCA</u> is proposing or deciding to take action against an <i>approved person</i> by exercising the disciplinary powers conferred by section 66* | | <i>RDC</i> |
| 76(4)/(5) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for <i>listing</i> of securities | <i>LR 2 and LR 3</i> | <i>Executive procedures</i> |
| 78(10)/(11)(a) | when the FSA <u>FCA</u> has suspended, on its own initiative, the <i>listing</i> of securities and is proposing or deciding to refuse an application by an issuer for cancellation of the suspension | <i>LR 5</i> | <i>Executive procedures</i> |
| 78A(4)/(5) | When the FSA <u>FCA</u> is proposing or deciding to refuse an application by the <i>issuer</i> of the securities for the discontinuance or suspension of the <i>listing</i> of the securities | <i>LR 5</i> | <i>Executive procedures</i> |
| 78A(7)/(8)(a) | When the FSA <u>FCA</u> has suspended the <i>listing</i> of securities on the application of the <i>issuer</i> of the securities and is proposing or deciding to refuse an application by the <i>issuer</i> for the cancellation of the suspension | <i>LR 5</i> | <i>Executive procedures</i> |

| | | | |
|--|--|------|--|
| 87M(2)/(3) | when the FSA <u>FCA</u> is proposing or deciding to publish a statement censuring an issuer of <i>transferable securities</i> , a <i>person</i> offering <i>transferable securities</i> to the public or a <i>person</i> requesting the admission of <i>transferable securities</i> to trading on a <i>regulated market</i> | | <i>RDC</i> |
| 88(4)/(6) 88(4)(a) 88(6)(a) 88(8)(a) | when the FSA <u>FCA</u> is proposing or deciding to (1) refuse a <i>person's</i> application for approval as a <i>sponsor</i> ; or (2) <u>on its own initiative</u> , cancel a <i>person's</i> approval as a <i>sponsor</i> | LR 8 | <i>RDC</i> |
| 88(4)(a) 88(6)(a) 88(8)(b) | when the <u>FCA</u> is <u>proposing or deciding to refuse a <i>sponsor's</i> application for the suspension of an approval as a <i>sponsor</i></u> | | <u><i>Executive procedures</i></u> |
| 88(4)(a) 88(6)(a) 88(8)(c) | when the <u>FCA</u> is <u>proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal of the suspension of an approval as a <i>sponsor</i></u> | | <u><i>Executive procedures</i></u> |
| 88(4)(a) 88(6)(a) 88(8)(d) | when the <u>FCA</u> is <u>proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal or variation of a limitation, or other restriction on the services to which a <i>sponsor's</i> approval relates</u> | | <u><i>RDC or executive procedures</i></u> <u><i>See DEPP 2.5.11BG</i></u> |
| 88(4)(aa) 88(6)(aa) | when the <u>FCA</u> is <u>proposing or deciding to impose limitations or restrictions on the services to which a <i>sponsor's</i> approval relates</u> | | <u><i>RDC or executive procedures</i></u> <u><i>See DEPP 2.5.11AG</i></u> |
| 88(4)(b) | when the <u>FCA</u> is <u>proposing</u> | | <u><i>RDC</i></u> |

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| 88(6)(b) | or deciding to cancel a <i>sponsor's</i> approval as a <i>sponsor</i> otherwise than at the <i>sponsor's</i> request* | | |
| 88B(1) 88B(5) | when the <i>FCA</i> is proposing or deciding to take action against a <i>sponsor</i> by exercising the disciplinary powers conferred by section 88A* | | <i>RDC</i> |
| 89(2)/(3) | when the <i>FSA</i> is proposing or deciding to publish a statement censuring a <i>sponsor</i> * | | <i>RDC</i> |
| 89K(2)/(3) | when the <i>FSA</i> <i>FCA</i> is proposing or deciding to publish a statement that an <i>issuer</i> of <i>securities</i> admitted to trading on a <i>regulated market</i> is failing or has failed to comply with an applicable transparency obligation | | <i>RDC</i> |
| 89P(5)(a) 89P(7)(a) 89P(9)(a) | when the <i>FCA</i> is proposing or deciding to refuse a <i>person's</i> application for approval as a <i>primary information provider</i> | | <i>RDC</i> |
| 89P(5)(a) 89P(7)(a) 89P(9)(b) | when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the suspension of an approval as a <i>primary information provider</i> | | <i>Executive procedures</i> |
| 89P(5)(a) 89P(7)(a) 89P(9)(c) | when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the withdrawal of the suspension of an approval as a <i>primary information provider</i> | | <i>Executive procedures</i> |

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| 89P(5)(a) 89P(7)(a) 89P(9)(d) | when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the withdrawal or variation of a limitation or other restriction on the dissemination of <i>regulated information</i> to which a <i>primary information provider's</i> approval relates | | <i>RDC</i> or <i>executive procedures</i> <i>See DEPP 2.5.11DG</i> |
| 89P(5)(b) 89P(7)(b) | when the <i>FCA</i> is proposing or deciding to impose <i>limitations</i> or other restrictions on the dissemination of <i>regulated information</i> to which a <i>primary information provider's</i> approval relates. | | <i>RDC</i> or <i>executive procedures</i> <i>See DEPP 2.5.11AG</i> |
| 89P(5)(c) 89P(7)(c) | when the <i>FCA</i> is proposing or deciding to cancel a <i>person's</i> approval as a <i>primary information provider</i> otherwise than at the <i>primary information provider's</i> request | | <i>RDC</i> |
| 89R(1) 89R(5) | when the <i>FCA</i> is proposing or deciding to take action against a <i>primary information provider</i> by exercising the disciplinary powers conferred by section 89Q | | <i>RDC</i> |
| 92(1)/(4) | when the <i>FSA</i> <i>FCA</i> is proposing or deciding to take action against any person under section 91 for breach of <i>Part 6 rules</i> * | | <i>RDC</i> |
| 126(1)/ 127(1) | when the <i>FSA</i> <i>FCA</i> is proposing or deciding to impose a sanction for <i>market abuse</i> * | | <i>RDC</i> |
| 131H(1)/ (4) | when the <i>FSA</i> <i>FCA</i> is proposing or deciding to | | <i>RDC</i> |

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| | take action against a <i>person</i> under section 131G* | | |
| 189(4)/(7) | when the FSA <u>FCA</u> is proposing or deciding to object to a change in <i>control</i> following receipt of a <i>section 178 notice</i> | SUP 11 | <i>Executive procedures</i> |
| 189(4)/(7) | when the FSA <u>FCA</u> is proposing or deciding to approve a change in <i>control</i> with conditions, following receipt of a <i>section 178 notice</i> | SUP 11 | <i>Executive procedures</i> |
| 187(1)/(3) 188(1) 191A(4)/(6) | when the FSA <u>FCA</u> is proposing or deciding to object to a <i>person</i> who has acquired or increased control without giving a <i>section 178 notice</i> | SUP 11 | <i>Executive procedures</i> |
| 191A(4)/(6) | when the FSA <u>FCA</u> is proposing or deciding to object to a <i>person's control</i> on the basis of the matters in section 186 | SUP 11 | <i>Executive procedures</i> |
| 191A(4)/(6) | when the FSA <u>FCA</u> is proposing or deciding to object to a <i>person's control</i> on the grounds that he is in breach of a condition imposed under section 187 | SUP 11 | <i>Executive procedures</i> |
| <u>192L(1)</u> <u>192L(4)</u> | when the <u>FCA</u> is <u>proposing or deciding to take action against a qualifying parent undertaking by exercising the disciplinary powers conferred by section 192K*</u> | | <u>RDC</u> |
| 200(4)/(5) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an <i>EEA incoming firm</i> | | <i>RDC or executive procedures</i> See DEPP 2.5.6G |

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| 207(1)/ 208(1) | when the FSA <u>FCA</u> is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a <i>permission</i> or impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A) . This applies in respect of an <i>authorised person</i> , or an <i>unauthorised person</i> to whom section 404C applies.* | | <i>RDC</i> |
| 245(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for an <i>authorisation</i> order declaring a <i>unit trust scheme</i> to be an <i>AUT</i> | <i>COLL 2</i> | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.15G |
| <u>249</u> 345B(1)/(4) | when the <u>FCA</u> is <u>proposing or deciding to take action against an auditor by exercising the disciplinary powers conferred by section 249*</u> | | <u>RDC</u> |
| 252(1)/(4) | when the FSA <u>FCA</u> is proposing or deciding to refuse approval of a proposal to replace the <i>trustee</i> or <i>manager</i> of an <i>AUT</i> | <i>COLL 2</i> | <i>Executive procedures</i> |
| 252A(4)(b)/(6)(a) | when the FSA <u>FCA</u> is proposing or deciding to refuse approval of a proposal by the <i>manager</i> of a <i>feeder UCITS</i> to make an alteration to the <i>trust deed</i> to enable the <i>feeder UCITS</i> to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i> | <i>COLL 11</i> | <i>Executive procedures</i> |
| 255(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to make an order under section | None, but see Chapter 14 | <i>RDC</i> |

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| | 254 revoking the <i>authorisation order</i> of an <i>AUT</i> * | of the Regulatory Guide <i>EG</i> . | |
| 256(4)/(5) | when the FSA <u>FCA</u> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>AUT</i> | | <i>RDC</i> |
| 260(1)/(2) | when the FSA <u>FCA</u> , on an application to revoke or vary a direction under section 257, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application | | <i>RDC</i> |
| 264(2)/ 265(4) | [deleted] | | |
| 269(1)/(2) | when the FSA <u>FCA</u> , on an application under section 267(4) or (5) by an <i>operator</i> of a section 264 <i>recognised scheme</i> to revoke or vary a direction that the promotion of the <i>scheme</i> be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application | | <i>RDC</i> |
| 271(1)/(3) | when the FSA <u>FCA</u> is proposing or deciding to refuse approval of a <i>collective investment scheme</i> as a <i>recognised scheme</i> under section 270 | <i>COLL 9</i> | <i>Executive procedures</i> |

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| 276(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for an order declaring a <i>collective investment scheme</i> to be a <i>recognised scheme</i> under section 272 | COLL 9 | <i>Executive procedures</i> |
| 280(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to direct that a section 270 <i>recognised scheme</i> is to cease to be recognised or to revoke a section 272 order in respect of a <i>recognised scheme</i> * | | <i>RDC</i> |
| 301G(3)(b)/(5) | when the FSA <u>FCA</u> is proposing or deciding to object to a proposed acquisition of a <i>UK RIE</i> following receipt of a section 301A notice . | REC 4.2C | <i>Executive procedures</i> |
| 301I(3)/(4) | when the FSA <u>FCA</u> is proposing or deciding to object to a <i>person</i> who has acquired or increased <i>control</i> in a <i>UK RIE</i> without giving a section 301 notice | REC 4.2C | <i>Executive procedures</i> |
| 301I(3)/(4) | when the FSA <u>FCA</u> is proposing or deciding to object to a <i>person's</i> control in a <i>UK RIE</i> on the basis of the approval requirement in section 301F(4) | REC 4.2C | <i>Executive procedures</i> |
| 312G(1) 312H(1) | when the <u>FCA</u> is proposing or deciding to take action against a <i>recognised investment exchange</i> by exercising the disciplinary powers conferred by sections 312E and 312F* | | <i>RDC</i> |
| 313B(9) | [deleted] | | |
| 313B(10)/(11) | [deleted] | | |

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| 313BB(5) 313BC(5) | when, upon the application of an institution, the FSA <u>FCA</u> is proposing or deciding not to revoke a requirement imposed on an institution under section 313A or is proposing or deciding that a requirement imposed on a class of institutions under section 313A will continue to apply to the applicant | REC 4.2D | <i>Executive procedures</i> |
| 313BD(5) 313BE(4) | when, upon the application of an <i>issuer</i> , the FSA <u>FCA</u> is proposing or deciding not to revoke a requirement imposed on an institution or a class of institutions under section 313A or to revoke a requirement imposed on a class of institutions under section 313A in relation to the class apart from one or more specified members of it, or one or more specified members of the class only | REC 4.2D | <i>Executive procedures</i> |
| 321(8)/(9) | when the FSA is proposing or deciding to refuse an application for variation or revocation of a direction or a requirement imposed on a former underwriting member of Lloyd's* | | <i>RDC</i> |
| 331(1)/(3) | when the FSA <u>FCA</u> is proposing or deciding to make an order disapplying the exemption from the <i>general prohibition</i> under section 327* | | <i>RDC</i> |
| 331(7)/(8) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329* | | <i>RDC</i> |

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| 345(2)/(3) 345B(1) 345B(4) | when the FSA <u>FCA</u> is proposing or deciding to disqualify an auditor or <i>actuary</i> from being the auditor of, or acting as an <i>actuary</i> for, any <i>authorised person</i> or class of <i>authorised person</i> or from being the auditor of any <i>AUT</i> or <i>ICVC</i> * | | <i>RDC</i> |
| 345B(1) 345B(4) | when the <i>FCA</i> is <u>proposing or deciding to disqualify an auditor from being the auditor of any <i>recognised investment exchange</i> or any class of <i>recognised investment exchange</i>*</u> | | <i>RDC</i> |
| 345B(1) 345B(4) | when the <i>FCA</i> is <u>proposing or deciding to take action against an auditor or <i>actuary</i> by exercising the disciplinary powers conferred by sections 345(2)(c) or (d)*</u> | | <i>RDC</i> |
| 385(1) 386(1) | when the FSA <u>FCA</u> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution* | | <i>RDC</i> |
| 404A(8)(a) | In connection with a <i>consumer redress scheme</i> , when the <i>FCA</i> is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a <i>consumer</i> , or what the redress should be in respect of the failure | <i>CONRED</i> | <i>Executive procedures</i> |
| 404A(8)(a) | In connection with a <i>consumer redress scheme</i> , when the <i>FCA</i> is deciding to make a determination of whether a failure by a | <i>CONRED</i> | <i>Executive procedures</i> |

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| | relevant firm has caused (or may cause) loss or damage to a <i>consumer</i> , or what the redress should be in respect of the failure | | |
| 412B(2)/(3) | when the FSA <i>FCA</i> is proposing/deciding to refuse to approve a relevant system as defined in section 412A(9) of the <i>Act</i> | | <i>Executive procedures</i> |
| 412B(4)/(5) | when the FSA <i>FCA</i> is proposing/deciding to suspend or withdraw its approval in relation to a relevant system as defined in section 412A(9) of the <i>Act</i> * | | <i>Executive procedures</i> |
| 412B(8)/(9) | when the FSA <i>FCA</i> is proposing/deciding to refuse an application to cancel the suspension of approval in relation to a relevant system as defined in section 412A(9) of the <i>Act</i> * | | <i>Executive procedures</i> |
| Paragraph 15A(4) of Schedule 3 | when the FSA <i>FCA</i> is notifying an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i> | <i>SUP 13A</i> <i>See DEPP 2.5.16G</i> | <i>Executive procedures</i> |
| Paragraph 15A(5) of Schedule 3 | [deleted] | | |
| Paragraph 15B(3) (2)(a) of Schedule | when the FSA <i>FCA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> | <i>SUP 13A</i> | <i>Executive procedures</i> |

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| 3 | wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i> | | |
| Paragraph 19(8)/(12) of Schedule 3 | when the <i>FSA FCA</i> is proposing or deciding to refuse to give a <i>consent notice</i> to a <i>UK firm</i> wishing to establish a <i>branch</i> under an <i>EEA right</i> | <i>SUP 13</i> | <i>RDC</i> |

| Section of the Building Societies Act 1986 | Description | Handbook reference | Decision maker |
|---|---|---------------------------------------|-----------------------|
| 36A(5)/(5A) | when the <i>FSA</i> is proposing or deciding to issue a prohibition order under section 36A prohibiting the continuance or carrying on of an activity and requiring the disposal of assets acquired or otherwise in a <i>building society's</i> possession by virtue of the activity, where the society has failed to carry into effect a restructuring plan which it has been directed to carry out by the <i>FSA</i> under section 36(8) | See <i>DEPP 2.5.18G(1)</i> | <i>RDC</i> |
| 46A(1)(a)/(3)(a) | when the <i>FSA</i> is proposing or deciding to give a direction under section | | <i>RDC</i> |

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| | 36(3), (5), (6), (7) or (10) requiring a <i>building society</i> to submit for its approval a restructuring plan or to submit to the society's members the requisite transfer resolutions for a transfer of the society's business to a company or (if such a direction is given) imposing limitations on the issue of shares, acceptance of deposits or making of loans or requiring the society to take certain steps or refrain from certain action or requiring the removal of a director or other officer* | | |
| 46A(1)(b)/(3)(b) | when the FSA is proposing or deciding to give a direction under section 42B(1) (other than a direction varying a previous direction with the agreement of the <i>building society</i> concerned) that a <i>building society</i> transfers all its engagements to one or more other <i>building societies</i> under section 94 or that it transfers its business to an existing company under section 97* | | <i>RDC or executive procedures</i> <i>See DEPP 2.5.12G</i> |
| 93(6) | when the FSA on an amalgamation between <i>building societies</i> , each of which has a <i>Part IV Part 4A permission</i> to accept deposits, notifies the successor society of the terms of its <i>Part IV Part 4A permission</i> | <i>DEPP 2.5.18G(2)</i> | <i>executive procedures</i> <i>see DEPP 2.5.12G</i> |

| Section of the Credit Unions Act 1979 | Description | Handbook reference | Decision maker |
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| 20 | where the <i>FSA FCA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i> | | <i>RDC</i> |

| Articles of the Credit Unions (Northern Ireland) Order 1985 | Description | Handbook reference | Decision maker |
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| 60(1), 61(1) and 63 | where the <i>FSA FCA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending the registration of a <i>Northern Ireland credit union</i> , or petitioning for the winding up of a <i>Northern Ireland credit union</i> | | <i>RDC</i> |

| Section of the Friendly Societies Act 1992 | Description | Handbook reference | Decision maker |
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| 58A(1)(a)/(3)(a) | when the <i>FSA FCA</i> is proposing or deciding to give a direction under section 54 or section 55 requiring a <i>friendly society</i> to take or refrain from taking steps where certain activities have become disproportionate to those of the <i>friendly society</i> group or, as the case may be, the society, or varying such a direction other than at the | See <i>DEPP</i> 2.5.18G(3) | <i>RDC</i> |

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| | request of the society* | | |
| 58A(1)(b)/(3)(b) | when the FSA <u>FCA</u> is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i> * | | <i>RDC</i> |
| 85(4A) | when the FSA <u>FCA</u> , on an amalgamation between <i>friendly societies</i> each of which has a Part IV <u>Part 4A</u> <i>permission</i> , notifies the successor society of the terms of its Part IV <u>Part 4A</u> <i>permission</i> | | <i>RDC or executive procedures</i> See <i>DEPP</i> 2.5.12G |

| OEIC Regulations reference | Description | Handbook reference | Decision maker |
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| Regulation 16(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i> | <i>COLL 2</i> | <i>RDC or executive procedures</i> See <i>DEPP</i> 2.5.15G |
| Regulation 22(1)/(2)/(4)/(5) | when the FSA <u>FCA</u> is proposing to refuse approval of (or, having given a <i>warning notice</i> , deciding to refuse) a proposal to replace the <i>depository</i> or director of an <i>ICVC</i> , or any other proposal or decision falling within regulation 21 | <i>COLL 2</i> | <i>Executive procedures</i> |

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| Regulation 22A(5)(b)/(8)(a) | when the FSA <u>FCA</u> is proposing or deciding to refuse approval of a proposal by an <i>ICVC</i> which is a <i>feeder UCITS</i> to make an alteration to its <i>instrument of incorporation</i> to enable it to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i> | COLL 11 | <i>Executive procedures</i> |
| Regulation 24(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)* | | <i>RDC</i> |
| Regulation 28(1)/(2) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application to revoke or vary a direction in accordance with a request under regulation 25(7) or to vary the direction in accordance with the application | | <i>RDC</i> |
| Paragraph 20 of Schedule 5 | when the FSA <u>FCA</u> is proposing or deciding to use the disqualification powers under section 249(1)* | | <i>RDC</i> |

| Regulated Activities Order | Description | Handbook reference | Decision maker |
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| Article 95(2)/(3) | when the FSA <u>FCA</u> is proposing or deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> * | <i>SUP</i> 12.4.10G | <i>RDC</i> |
| Article 95(7)/(8) | when the FSA <u>FCA</u> is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> * | <i>SUP</i> 12.4.10G | <i>RDC</i> |

| Payment Services Regulations | Description | Handbook reference | Decision maker |
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| Regulations 9(7) and 14 | when the FSA <u>FCA</u> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation | | <i>Executive procedures</i> |
| Regulations 9(8)(a) and 14 | when the FSA <u>FCA</u> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Regulations 10(2) and 10(3)(a) and 14 | when the FSA <u>FCA</u> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution's</i> registration, otherwise than at that institution's own request* | | <i>RDC</i> |
| Regulations 11(6), 11(9), 11(10)(b) and 14 | When the FSA is exercising its powers to vary a person's authorisation on its own initiative | | <i>RDC</i> or <i>Executive procedures</i> See also <i>DEPP</i> 3.4 (Note 1) |
| Regulation 24(2) | when the FSA <u>FCA</u> is proposing to refuse to register an <i>EEA branch</i> | | <i>Executive procedures</i> |
| Regulation 24(3)(a) | when the FSA <u>FCA</u> is deciding to refuse to register an <i>EEA branch</i> | | <i>Executive procedures</i> where no representations |

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| | | | are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Regulations 24(2) and 24(3)(a) | when the <i>FSA FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch</i> * | | <i>RDC</i> |
| Regulation 29(9) | when the <i>FSA FCA</i> is proposing to refuse an application for registration as an <i>agent</i> | | <i>Executive procedures</i> |
| Regulation 29(10)(a) | when the <i>FSA FCA</i> is deciding to refuse an application for registration as an <i>agent</i> | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Regulations 30(2) and 30(3)(a) | when the <i>FSA FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>FSA Financial Services Register</i> otherwise than at the request of a <i>payment institution</i> * | | <i>RDC</i> |
| Regulations 86(1) and 86(3) | when the <i>FSA FCA</i> is proposing, or deciding, to impose a financial penalty* | | <i>RDC</i> |
| Regulations 86(1) and 86(3) | when the <i>FSA FCA</i> is proposing, or deciding, to publish a statement that a <i>payment service provider</i> has contravened the <i>Payment Services Regulations</i> * | | <i>RDC</i> |
| Regulations 89(1) and 89(3) | when the <i>FSA FCA</i> is proposing or deciding to exercise its powers to require restitution* | | <i>RDC</i> |

| | | | |
|------------------------|---|--|--|
| Regulation 121(7) | when the FSA <u>FCA</u> is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation | | <i>Executive Procedures</i> |
| Regulation 121(8) | when the FSA <u>FCA</u> is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Schedule 5 paragraph 1 | when the FSA <u>FCA</u> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Payment Services Regulations</i> (Note 2) | | <i>RDC</i> |
| Schedule 5 paragraph 1 | when the FSA <u>FCA</u> is proposing or deciding to impose a financial penalty against a relevant person (Note 3) | | <i>RDC</i> |

Notes:

~~(1) The *RDC* will take the decision to give a notice exercising the FSA own initiative power if the action involves:~~

- ~~(a) removing a type of activity from an authorisation or registration; or
(b) refusing an application to include a type of activity in an authorisation or registration; or
(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or
(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.~~

~~For all other types of action the decision to give a notice will be taken by FSA staff under *executive procedures*.~~

(2) The *Payment Services Regulations* do not require third party rights and access to ~~FSA~~ FCA material when the ~~FSA~~ FCA exercises this

power. However, the *FSA FCA* generally intends to allow for third party rights and access to material when exercising this power.

(3) The *Payment Services Regulations* do not require third party rights and access to *FSA FCA* material when the *FSA FCA* exercises this power. However, the *FSA FCA* generally intends to allow for third party rights and access to material when exercising this power.

| Regulated Covered Bonds Regulations 2008 | Description | Handbook reference | Decision maker |
|---|---|---------------------------|-----------------------------|
| Regulation 13(4)/(5)(a) | when the <i>FSA FCA</i> is proposing or deciding to refuse an application under regulation 8 | <i>RCB 6</i> | <i>Executive procedures</i> |
| Regulation 20(5)/(6)(a) | when the <i>FSA FCA</i> is proposing or deciding not to approve a material change | <i>RCB 6</i> | <i>Executive procedures</i> |
| Regulation 25(5)/(6)(a) | when the <i>FSA FCA</i> is proposing or deciding not to approve a change of ownership | <i>RCB 6</i> | <i>Executive procedures</i> |
| Regulation 32(1)(a)/ (2)(a) | before the <i>FSA FCA</i> gives a direction under regulation 30 or when it decides to make the direction | <i>RCB 6</i> | <i>Executive procedures</i> |
| Regulation 32(1)(b)/(2)(b) | before the <i>FSA FCA</i> removes an <i>issuer</i> from the register of <i>issuers</i> under regulation 31 or when it decides to remove the <i>issuer</i> from the register of <i>issuers</i> * | <i>RCB 6</i> | <i>Executive procedures</i> |
| Regulation 35(1)/(3) | when the <i>FSA FCA</i> is proposing or deciding to impose a penalty on a person under regulation 34* | <i>RCB 6</i> | <i>RDC</i> |

| Cross-Border Payments in Euro Regulations 2010 | Description | Handbook reference | Decision maker |
|---|--|---------------------------|-----------------------|
| Regulations 7(1) and 7(3) | when the <i>FSA FCA</i> is proposing or deciding to impose a financial penalty* | | RDC |
| Regulations 7(1) and 7(3) | when the <i>FSA FCA</i> is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> * | | RDC |
| Regulations 10(1) and 10(3) | when the <i>FSA FCA</i> is proposing or deciding to exercise its powers to require restitution* | | RDC |
| Schedule paragraph 1 | when the <i>FSA FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1) | | RDC |
| Schedule paragraph 1 | when the <i>FSA FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 1) | | RDC |
| <p>Note:</p> <p>(1) The <i>Cross-Border Payments in Euro Regulations</i> do not require third party rights and access to <i>FSA FCA</i> material when the <i>FSA FCA</i> exercises this power. However, the <i>FSA FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</p> | | | |

| Electronic Money Regulations | Description | Handbook reference | Decision maker |
|-------------------------------------|-----------------------------|---------------------------|-----------------------|
| Regulations | where the <i>FSA FCA</i> is | | <i>Executive</i> |

| | | | |
|--|---|--|--|
| 9(6) and 15 | proposing to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or impose a requirement, or refuse to vary an authorisation or registration | | <i>procedures</i> |
| Regulations 9(7)(a) and 15 | when the <i>FSA FCA</i> is deciding to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or impose a requirement or refuse to vary an authorisation or registration | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Regulations 10(4), 10(5)(a) and 15 | when the <i>FSA FCA</i> is proposing or deciding to either cancel an <i>authorised electronic money institution's</i> authorisation, or to cancel a <i>small electronic money institution's</i> registration otherwise than at that institution's own request * | | <i>RDC</i> |
| Regulations 11(6), 11(9), 11(10)(b) and 15 | when the <i>FSA FCA</i> is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative | | <i>RDC</i> or <i>Executive procedures</i> (Note 1) |
| Regulation 29(2) | when the <i>FSA FCA</i> is proposing to refuse to register an <i>EEA branch of an authorised electronic</i> | | <i>Executive procedures</i> |

| | | | |
|--|---|--|--|
| | <i>money institution</i> | | |
| Regulation 29(3)(a) | when the <i>FSA FCA</i> is deciding to refuse to register an <i>EEA branch of an authorised electronic money institution</i> | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Regulation 29(2) and Regulation 29(3)(a) | when the <i>FSA FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch of an authorised electronic money institution*</i> | | <i>RDC</i> |
| Regulation 34(9) | when the <i>FSA FCA</i> is proposing to refuse an application for registration as an <i>agent</i> | | <i>Executive procedures</i> |
| Regulation 34(10)(a) | when the <i>FSA FCA</i> is deciding to refuse an application for registration as an <i>agent</i> | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Regulations 35(2) and 35(3)(a) | when the <i>FSA FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>FSA Financial Services Register</i> otherwise than at the request of the <i>electronic money institution *</i> | | <i>RDC</i> |
| Regulations 53(1) and 53(3) | when the <i>FSA FCA</i> is proposing, or deciding, to publish a statement that an <i>electronic money issuer</i> has contravened the <i>Electronic Money Regulations *</i> | | <i>RDC</i> |

| | | | |
|-----------------------------|---|--|--|
| Regulations 53(1) and 53(3) | when the FSA <u>FCA</u> is proposing or deciding, to impose a financial penalty * | | <i>RDC</i> |
| Regulations 53(1) and 53(3) | When the FSA <u>FCA</u> is proposing or deciding to suspend the authorisation of an <i>authorised electronic money institution</i> or registration of a <i>small electronic money institution</i> , or to limit or otherwise restrict the carrying on of <i>electronic money issuance or payment services</i> business by an <i>electronic money institution</i> * | | <i>RDC</i> |
| Regulations 56(1) and 56(3) | when the FSA <u>FCA</u> is proposing or deciding to exercise its powers to require restitution* | | <i>RDC</i> |
| Regulation 74(7) | when the FSA <u>FCA</u> is proposing to decide not to include a person on the register | | <i>Executive procedures</i> |
| Regulation 74(8) (a) | when the FSA <u>FCA</u> is deciding not to include a person on the register | | <i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i> |
| Schedule 3, paragraph 1 | when the FSA <u>FCA</u> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Electronic Money Regulations</i> (Note 2) | | <i>RDC</i> |

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|--|---|--|------------|
| Schedule 3, paragraph 1 | when the <i>FSA FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 2) | | <i>RDC</i> |
| <p>Notes:</p> <p>(1) The <i>RDC</i> will take the decision to give the notice exercising the <i>FSA FCA</i>'s own-initiative power if the action involves: ...</p> <p>(2) The <i>Electronic Money Regulations</i> do not require third party rights and access to <i>FSA FCA</i> material when the <i>FSA FCA</i> exercises this power. However, the <i>FSA FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</p> | | | |

| Recognised Auction Platforms Regulations 2011 | Description | Handbook reference | Decision maker |
|---|--|--------------------|----------------|
| Regulation 5A | where the <i>FCA</i> is proposing or deciding to publish a statement censuring an <i>RAP</i> , or to impose a financial penalty on an <i>RAP</i> . | <i>REC 2A.4</i> | <i>RDC</i> |

2 Supervisory notices

Annex

2

G

| Section of the Act | Description | Handbook reference | Decision maker |
|---|--|--------------------|---|
| 53(4)/(7) (8)(b) 55Y(4) 55Y(7) | when the <i>FSA FCA</i> is exercising its <i>own-initiative variation power</i> to vary a firm's <i>Part IV Part 4A permission</i> | <i>SUP 7</i> | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.7G</i> |

| | | | |
|---|---|-------------|--|
| <u>55Y(8)(b)</u> | | | |
| <u>55Y(4)</u> <u>55Y(7)</u> <u>55Y(8)(b)</u> | when the <i>FCA</i> is exercising its own-initiative requirement power | | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.7G</i> |
| 78(2)/(5) | when the FSA <i>FCA</i> is proposing to discontinue or discontinues the <i>listing</i> of a security | <i>LR 5</i> | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.9G(4)</i> and <i>DEPP 2.5.10G</i> |
| 78(2)/(5) | when the FSA <i>FCA</i> is proposing to suspend or suspends the <i>listing</i> of a security | <i>LR 5</i> | <i>Executive procedures</i> |
| 78A(2)/(8)(b) | when the FSA <i>FCA</i> discontinues or suspends the <i>listing</i> of a security on the application of the issuer of the security | <i>LR 5</i> | <i>Executive procedures</i> |
| 87O(2)/(5) | when the FSA <i>FCA</i> is proposing or deciding to exercise or deciding to maintain, vary or revoke any of the powers in sections 87K or 87L in respect of an infringement of any applicable provision. | <i>PR 5</i> | <i>Executive procedures</i> |
| <u>88F(2)/(5)/(6)(b)</u> | when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a sponsor's approval under section 88E | | <i>Executive procedures</i> |
| <u>89V(2)</u> <u>89V(5)</u> <u>89 V(6)(b)</u> | when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a primary information provider's approval under section 89U | | <i>Executive procedures</i> |

| | | | |
|---|---|---------------|---|
| 96C | when the FSA <u>FCA</u> is proposing to suspend or suspends trading in a <i>financial instrument</i> | <i>DTR</i> | <i>Executive procedures</i> |
| <u>137Q(5)</u> <u>137Q(8)(a)</u> | when the <u>FCA</u> gives a <u>direction under section 137Q</u> | | <u><i>Executive procedures</i></u> |
| 191B(1) | when the FSA <u>FCA</u> gives a <i>restriction notice</i> under section 191B | | <i>Executive procedures</i> |
| 197(3)/ (6)/ (7)(b) | when the FSA <u>FCA</u> is exercising its power of intervention in respect of an <i>incoming firm</i> | <i>SUP 14</i> | <i>RDC or executive procedures</i> See <i>DEPP 2.5.7G</i> and <i>2.5.7AG</i> |
| 259(3)/ (8)/ (9)(b) | when the FSA <u>FCA</u> is exercising its power to give or, on its own initiative, to vary a direction to the <i>manager</i> and <i>trustee</i> of an <i>AUT</i> | <i>COLL</i> | <i>RDC</i> |
| 268(3)/ (7)(a) or (9)(a) (as a result of (8)(b)/(13)) | when the FSA <u>FCA</u> is proposing or deciding to give or, on its own initiative, to vary a direction to the <i>operator</i> of a <i>recognised scheme</i> | <i>COLL</i> | <i>RDC</i> |
| 282 (3)/ (6)/ (7)(b) | when the FSA <u>FCA</u> is exercising its power to give a direction to an <i>operator, trustee</i> or <i>depository</i> of a <i>recognised scheme</i> | <i>COLL</i> | <i>RDC</i> |
| 301J(1) | when the FSA <u>FCA</u> gives a <i>restriction notice</i> under section 301J | | <i>Executive procedures</i> |
| 321(2)/(5) | when the FSA <u>FCA</u> is exercising its power to impose a requirement on a former underwriting | | <i>RDC</i> |

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|--|-------------------|--|--|
| | member of Lloyd's | | |
|--|-------------------|--|--|

| OEIC Regulations reference | Description | Handbook reference | Decision maker |
|-----------------------------------|---|---------------------------|-----------------------|
| Regulation 27 | when the FSA <u>FCA</u> is exercising its power to give or, on its own initiative, to vary a direction to an <i>ICVC</i> and its <i>depository</i> | <i>COLL</i> | <i>RDC</i> |

| <u>Payment Services Regulations</u> | <u>Description</u> | <u>Handbook reference</u> | <u>Decision maker</u> |
|--|--|----------------------------------|--|
| 11(6) 11(9) 11(10)(b) 14 | When the <u>FCA</u> is exercising its powers to vary a person's <u>authorisation on its own initiative</u> | | <i>RDC</i> or <i>Executive procedures</i> See also <i>DEPP 3.4</i> (Note 1) |

Notes:

(1) The *RDC* will take the decision to give a notice exercising the FCA's own initiative power if the action involves:

(a) removing a type of activity from an authorisation or registration; or

(b) refusing an application to include a type of activity in an authorisation or registration; or

(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or

(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.

For all other types of action the decision to give a notice will be taken by FCA staff under *executive procedures*.

3 The nature and procedure of the RDC

3.1 The Regulatory Decisions Committee

3.1.1 G The *Regulatory Decisions Committee (RDC)* is a committee of the

~~FSA FCA~~ Board. It is part of the ~~FSA FCA~~. It exercises certain regulatory powers on behalf of the ~~FSA FCA~~ and is accountable to the ~~FSA FCA~~ Board for its decisions generally.

- 3.1.2 G (1) The *RDC* is separate from the ~~FSA FCA~~'s executive management structure. Apart from its Chairman, none of the members of the *RDC* is an ~~FSA FCA~~ employee.
- (2) All members of the *RDC* are appointed for fixed periods by the ~~FSA FCA~~ Board. The ~~FSA FCA~~ Board may remove a member of the *RDC*, but only in the event of that member's misconduct or incapacity.

- 3.1.3 G The *RDC* has its own legal advisers and support staff. The *RDC* staff are separate from the ~~FSA FCA~~ staff involved in conducting investigations and making recommendations to the *RDC*.

3.2 The operation of the *RDC*

...

Conflicts of interest

...

- 3.2.5 G (1) If a member of the *RDC* has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the *RDC* Office, and disclose it:
- (a) in the case of the Chairman of the *RDC*, to the Chairman or Deputy Chairman of the ~~FSA FCA~~; or
- (b) in the case of a Deputy Chairman of the *RDC*, to the Chairman of the *RDC*, or if he is unavailable to the Chairman or Deputy Chairman of the ~~FSA FCA~~; or

...

...

...

Procedure: general

...

- 3.2.10 G If the *RDC* considers it relevant to its consideration, it may ask ~~FSA FCA~~ staff to explain or provide any or all of the following:
- (1) additional information about the matter (which ~~FSA FCA~~ staff

may seek by further investigation); or

- (2) further explanation of any aspect of the *FSA FCA* staff recommendation or accompanying papers; or
- (3) information about *FSA FCA* priorities and policies (including as to the *FSA FCA*'s view on the law or on the correct legal interpretation of provisions of the *Act*).

- 3.2.11 G The *RDC* has no power under the *Act* to require *persons* to attend before it or provide information. It is not a tribunal and will make a decision based on all the relevant information available to it, which may include views of *FSA FCA* staff about the relative quality of witness and other evidence.

Procedure: warning notices and first supervisory notices

- 3.2.12 G If *FSA FCA* staff consider that action is appropriate in a matter for which the *RDC* is the decision maker, they will make a recommendation to the *RDC* that a *warning notice* or a *supervisory notice* should be given.

...

- 3.2.14 G If the *RDC* decides that the *FSA FCA* should give a *warning notice* or a first *supervisory notice*:

...

- (4) the *RDC* staff will make appropriate arrangements for the disclosure of the substantive communications between the *RDC* and the *FSA FCA* staff who made the recommendation on which the *RDC*'s decision is based. This may include providing copies in electronic format.

- 3.2.14A G If *FCA* staff consider that it is appropriate to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates, they will make a recommendation to the *RDC* that such information should be published.

- 3.2.14B G The *RDC* will consider whether it is appropriate in all the circumstances to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates. The *FCA*'s policy on publishing such information is set out in *EG* 6.

- 3.2.14C G If the *RDC* proposes that the *FCA* should publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates:

- (1) the *RDC* will settle the wording of the statement it proposes the *FCA* should publish (warning notice statement);

- (2) the RDC staff will make appropriate arrangements for the warning notice statement it proposes the FCA should publish to be given to the persons to whom the warning notice was given or copied;
- (3) the proposed warning notice statement will specify the time allowed for the recipient to respond in writing to the RDC. This will normally be 14 days;
- (4) the recipient of a proposed warning notice statement may request an extension of the time allowed for its response. Such a request must normally be made within seven days of the proposed warning notice statement being given; and
- (5) the RDC will not normally grant a request by a person to whom the warning notice statement was given to make his response in person.
- 3.2.14D G If no response to the proposed warning notice statement is received, the FCA will make appropriate arrangements to publish the warning notice statement.
- 3.2.14E G However, if the RDC receives a response from the person to whom the proposed warning notice statement was given, the RDC will consider their response and decide whether it is appropriate in all the circumstances to publish information about the matter to which the warning notice relates.
- 3.2.14F G If the RDC decides that the FCA should publish a warning notice statement:
- (1) the RDC will settle the wording of the warning notice statement; and
- (2) the FCA will make appropriate arrangements for the warning notice statement to be published.
- 3.2.14G G If the RDC decides that the FCA should not publish a warning notice statement the RDC staff will notify the relevant parties (including the relevant FCA staff) in writing of that decision.
- 3.2.14H G References to the RDC in DEPP 3.2.14AG to DEPP 3.2.14GG are to the Chairman of the RDC panel which issued the warning notice or, if he is unavailable, either the Chairman of the RDC or a Deputy Chairman of the RDC.

Procedure: representations

- 3.2.15 G (1) A warning notice or a first supervisory notice will (as required by the Act) specify the time allowed for making representations. This will not be less than ~~28~~ 14 days.

- (2) The ~~FSA~~ FCA will also, when giving a *warning notice* or a first *supervisory notice*, specify a time within which the recipient is required to indicate whether he wishes to make oral representations.
- 3.2.16 G (1) The recipient of a *warning notice* or a first *supervisory notice* may request an extension of the time allowed for making representations. Such a request must normally be made within ~~14~~ seven days of the notice being given.
- (2) If a request is made, the Chairman or a Deputy Chairman of the *RDC* will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making representations. In reaching his decision he may take account of any relevant comments from the ~~FSA~~ FCA staff responsible for the matter.
- (3) The *RDC* staff will notify the relevant party and the ~~FSA~~ FCA staff responsible for the matter of the decision in writing.
- 3.2.17 G ...
- (2) In making those arrangements the *RDC* staff will draw the Chairman's or Deputy Chairman's attention to any particular issues about the timing of the meeting which have been raised by the recipient of the notice or the relevant ~~FSA~~ FCA staff.
- 3.2.18 G The chairman of the relevant meeting will ensure that the meeting is conducted so as to enable:
- (1) the recipient of the *warning notice* or first *supervisory notice* to make representations;
- (2) the relevant ~~FSA~~ FCA staff to respond to those representations;
- (3) the *RDC* members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and
- (4) the recipient of the notice to respond to points made by ~~FSA~~ FCA staff or the *RDC*;
- but the chairman may ask the recipient of the notice or ~~FSA~~ FCA staff to limit their representations or response in length or to particular issues arising from the *warning notice* or first *supervisory notice*.
- ...
- 3.2.21 G The *RDC* will not, after the ~~FSA~~ FCA has given a *warning notice* or a first *supervisory notice*, meet with or discuss the matter whilst it is

still ongoing with the ~~FSA~~ FCA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

Procedure: decision notices and second supervisory notices

- 3.2.22 G If no representations are made in response to the *warning notice* or first *supervisory notice*, the ~~FSA~~ FCA will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply: see *DEPP* 2.3.2G to *DEPP* 2.3.4G.

...

- 3.2.24 G If the *RDC* decides that the ~~FSA~~ FCA should give a *decision notice* or a second *supervisory notice*:

...

- (2) the *RDC* will make any relevant *statutory notice associated decisions*, including whether the ~~FSA~~ FCA is required to give a copy of the notice to a third party; and

...

- 3.2.25 G If the *RDC* decides that the ~~FSA~~ FCA should not give a *decision notice* or a second *supervisory notice* the *RDC* staff will notify the relevant parties (including the relevant ~~FSA~~ FCA staff) in writing of that decision.

Discontinuance of ~~FSA~~ FCA action

- 3.2.26 G ~~FSA~~FCA staff responsible for recommending action to the *RDC* will continue to assess the appropriateness of the proposed action in the light of new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that they decide to give a *notice of discontinuance* to a person to whom a *warning notice* or *decision notice* has been given. The decision to give a *notice of discontinuance* does not require the agreement of the *RDC*, but ~~FSA~~ FCA staff will inform the *RDC* of the discontinuance of the proceedings.

...

3.4 Urgent supervisory notice cases

...

- 3.4.3 G In an exceptionally urgent case the decision to give a *supervisory notice* may be taken by a member of the ~~FSA~~ FCA's executive of at

least director of division level if:

- (1) ~~FSA~~ FCA staff consider that the action should be taken before a recommendation to the Chairman or a Deputy Chairman of the *RDC* can be made; and

...

- 3.4.4 G In the circumstances described in *DEPP* 3.4.3G, the ~~FSA~~ FCA considers that it may be necessary for an ~~FSA~~ FCA director of division to take the decision to give the *supervisory notice* even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the *Act*. Where practicable, however, ~~FSA~~ FCA staff will seek to ensure that the ~~FSA~~ FCA director has not been so involved.

4 Decisions by ~~FSA~~ FCA staff under executive procedures

4.1 Executive decision maker

Who takes the decision

- 4.1.1 G All *statutory notice decisions* under *executive procedures* and decisions referred to in *DEPP* 2.5.6AG will be taken either by a *senior staff committee* or by an individual ~~FSA~~ FCA staff member.
- 4.1.2 G In ~~either the case of a *senior staff committee*~~, the decision will be taken by ~~FSA~~ FCA staff who have not been directly involved in establishing the evidence on which the decision is based or by two or more *FCA* staff who include a person not directly involved in establishing that evidence, except in accordance with section 395(3) of the *Act*.
- 4.1.2A G In the case of an individual *FCA* staff member, the decision will be taken by someone who has not been directly involved in establishing the evidence on which the decision is based, except in accordance with section 395(3) of the *Act*.

Decisions by senior staff committee

- 4.1.3 G The ~~FSA~~ FCA's senior executive committee will from time to time determine that particular categories of *statutory notice decision* to be taken under *executive procedures* and decisions referred to in *DEPP* 2.5.6AG will be taken by a *senior staff committee*.
- 4.1.4 G A *senior staff committee* will consist of such ~~FSA~~ FCA staff members as the ~~FSA~~ FCA's senior executive committee may from time to time determine. The ~~FSA~~ FCA's senior executive committee may authorise the chairman of a *senior staff committee* to select its other members. A *senior staff committee* is accountable for its decisions to the ~~FSA~~ FCA

FCA's senior executive committee and, through it, to the FSA FCA Board.

...

- 4.1.6 G A *senior staff committee* will operate on the basis of a recommendation from an FSA FCA staff member of at least the level of associate, and with the benefit of legal advice from an FSA FCA staff member of at least the level of associate.

Decisions by individual FSA FCA staff members

- 4.1.7 G *Statutory notice decisions* to be taken under *executive procedures* and decisions referred to in DEPP 2.5.6AG, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual FSA FCA staff member. The decision will be:

- (1) made by an executive director of the FSA FCA Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an FSA FCA staff member of at least the level of associate; and
- (3) with the benefit of legal advice from an FSA FCA staff member of at least the level of associate;

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (*CONRED*), where (1) will apply, but not (2) or (3).

- 4.1.8 G The individual who takes a decision under *executive procedures* is accountable to the FSA FCA Board directly (if an executive director) or otherwise through line management responsible for the decision concerned.
- 4.1.9 G An FSA FCA staff member who considers that a *statutory notice decision* or a decision referred to in DEPP 2.5.6AG should be taken above his own level is free to refer that decision to a more senior level. If an FSA FCA staff member consults another staff member about a decision, the decision remains the independent decision of the FSA FCA staff member who consults his colleague, unless it is agreed that the decision should instead be taken by the colleague, and the colleague has the delegated authority to do so.
- 4.1.10 G If an individual responsible for a decision under *executive procedures* (or a more senior FSA FCA staff member with responsibilities in relation to the decision concerned) considers that it warrants collective consideration, the individual may:
- (1) take the decision himself, following consultation with other FSA FCA staff members, as above; or

...

Conflicts of interest

- 4.1.11 G (1) *FSA FCA* staff are required by their contract of employment to comply with a code of conduct which imposes strict rules to cover the handling of conflicts of interest which may arise from personal interests or associations. *FSA FCA* staff subject to a conflict of interest must declare that interest to the *person* to whom they are immediately responsible for a decision.
- (2) If a member of a *senior staff committee* has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the secretariat of the *senior staff committee*, and disclose it:
- (a) in the case of the chairman of the senior staff committee, to a member of the *FSA FCA's* senior executive committee or, if the *person* with the conflict is the chairman of the *FSA FCA's* senior executive committee, to the Chairman of the *FSA FCA*;
- (b) in the case of the deputy chairman of the senior staff committee, to the chairman of the committee, or if he is unavailable, to a member of the *FSA FCA's* senior executive committee;

...

...

Procedure

- 4.1.13 G The procedure for taking decisions under *executive procedures* will generally be less formal and structured than that for decisions by the *RDC*. Broadly, however, *FSA FCA* staff responsible for taking *statutory notice* decisions under *executive procedures* will follow a procedure similar to that described at *DEPP 3.2.7G* to *DEPP 3.2.27G* for the *RDC* except that:

...

- (2) in a case where the decision will be taken by individual members of *FSA FCA* staff, the distinction between the role of the *RDC*, its Chairman and the *RDC* staff has no application;
- (3) the *FSA FCA* staff responsible for taking the *statutory notice decision* may be advised by legal advisers who have also advised *FSA FCA* staff recommending action by the *FSA FCA*;
- (4) the *FSA FCA* will not normally disclose the communications

between the ~~FSA~~ FCA staff recommending that action be taken and those responsible for the decision to give the *statutory notice* unless the ~~FSA~~ FCA has stated publicly that it will adopt a practice of disclosing such communications, or a class of communications, in respect of particular categories of decision taken by ~~FSA~~ FCA staff under *executive procedures*; and

...

- 4.1.14 G Broadly, FCA staff responsible for taking decisions referred to in DEPP 2.5.6AG will follow a procedure similar to that described at DEPP 3.2.7G to DEPP 3.2.27G for the RDC (subject to the exceptions in DEPP 4.1.13G(1) to (5) which also reflects that these decisions are not *statutory notice* decisions.

4.2 Urgent statutory notice cases

- 4.2.1 G If ~~FSA~~ FCA staff recommend that action be taken and they consider that the decision falls within the responsibility of a *senior staff committee*:

- (1) in general the ~~FSA~~ FCA staff's recommendation will go before the *senior staff committee*;

...

- (4) in an exceptionally urgent *statutory notice* case, if in the ~~FSA~~ FCA staff's opinion:

...

- (b) an urgent decision on the proposed action is necessary to protect the interests of consumers;

the decision may be taken by a member of the ~~FSA~~ FCA's executive of at least director of division level (which may include an acting director) or, in the case of a *senior staff committee* which reports directly to the ~~FSA~~ FCA's senior executive committee, by a member of that committee.

- 4.2.2 G In the circumstances described in DEPP 4.2.1G(4) the ~~FSA~~ FCA considers that it may be necessary for an ~~FSA~~ FCA director of division or member of a *senior staff committee* to take the decision to give a *supervisory notice* even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the *Act*. Where practicable, however, ~~FSA~~ FCA staff will seek to ensure that the ~~FSA~~ FCA director or committee member has not been so involved.

5 Settlement decision procedure

5.1 Settlement decision makers

Introduction

- 5.1.1 G (1) A *person* subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the ~~FSA~~ FCA.
- (2) The fact that he does so will not usually obviate the need for a statutory notice recording the ~~FSA~~ FCA's decision to take that action. Where, however, the *person* subject to enforcement action agrees not to contest the content of a proposed *statutory notice*, the decision to give that statutory notice will be taken by senior ~~FSA~~ FCA staff.
- (3) The decision will be taken jointly by two members of the ~~FSA~~ FCA's senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level (the "*settlement decision makers*").
- (4) At least one of the *settlement decision makers* will not be from the Enforcement and Financial Crime Division. The other *settlement decision maker* will usually be, but need not be, from the Enforcement and Financial Crime Division. ~~Consistent with section 395(2) of the Act, a~~ A *settlement decision maker* will not have been directly involved in establishing the evidence on which the decision is based.

...

Procedure: general

- 5.1.2 G A *person* who is or may be subject to enforcement action may wish to discuss the proposed action with ~~FSA~~ FCA staff through settlement discussions.
- 5.1.3 G Settlement discussions may take place at any time during the enforcement process if both parties agree. This might be before the giving of a *warning notice*, before a *decision notice*, or even after referral of the matter to the *Tribunal*. But the ~~FSA~~ FCA would not normally agree to detailed settlement discussions until it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. Settlement after a *decision notice* will be rare.
- 5.1.4 G ~~FSA~~ FCA staff and the *person* concerned may agree that neither the ~~FSA~~ FCA nor the *person* concerned would seek to rely against the other on any admissions or statements made in the course of their

settlement discussions if the matter is considered subsequently by the *RDC* or the *Tribunal*.

Procedure: participation of decision makers in discussions

- 5.1.5 G ...
- (2) If the *settlement decision makers* have not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant *FSA FCA* staff or the *person* concerned in order to assist in the consideration of the proposed settlement.
- 5.1.6 G The terms of any proposed settlement:
- (1) will be put in writing and be agreed by *FSA FCA* staff and the *person* concerned;
- (2) may refer to a draft of the proposed *statutory notices* setting out the facts of the matter and the *FSA FCA*'s conclusions;
- (3) may, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the *person* concerned to:
- (a) waive and not exercise any rights under sections 387 (Warning notices) and 394 (Access to Authority material) of the *Act* to notice of, or access to, material relied upon by the *FSA FCA* and any secondary material which might undermine the *FSA FCA* decision to give the *statutory* notice;
- ...
- (c) not object to the giving of a *decision notice* before the expiry of the 28 14 day period after the giving of a *warning notice* specified under section 387 of the *Act*;
- (d) not dispute with the *FSA FCA* the facts and matters set out in a *warning notice*, *decision notice*, *supervisory notice* or *final notice* and to waive and not exercise any right under section 208 (Decision notice) of the *Act* to refer the matter to the *Tribunal*.
- 5.1.7 G The *settlement decision makers* may:
- ...
- whether or not the *settlement decision makers* have met with the relevant *FSA FCA* staff or the *person* concerned.

- 5.1.8 G (1) Where the *settlement decision makers* decline to issue a *statutory notice* despite the proposed settlement, they may invite ~~FSA~~ FCA staff and the *person* concerned to enter into further discussions to try to achieve an outcome the *settlement decision makers* would be prepared to endorse.
- (2) However, if the proposed action by the ~~FSA~~ FCA has been submitted to the *RDC* for consideration, it will be for the *RDC* to decide:

...

Settlement by mediation

- 5.1.9 G The ~~FSA~~ FCA and other parties may agree to mediation as a way of facilitating settlement in appropriate cases.

Third party rights

- 5.1.10 G (1) *DEPP* 2.4 sets out the ~~FSA~~ FCA's approach to giving third parties copies of *statutory notices* pursuant to section 393 (Third party rights) of the *Act*.

...

6 Penalties

6.1 Introduction

- 6.1.1 G *DEPP* 6 includes the ~~FSA~~ FCA's statement of policy with respect to the imposition and amount of penalties under the *Act*, as required by sections 63C(1), 69(1), ~~88C~~, ~~89S~~, 93(1), 124(1), 131J(1), ~~192N~~, ~~and~~ 210(1), ~~312J~~ and ~~345D~~ of the *Act*.
- 6.1.2 G The principal purpose of imposing a financial penalty or issuing a *public censure* is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. Financial penalties and *public censures* are therefore tools that the ~~FSA~~ FCA may employ to help it to achieve its ~~regulatory objectives~~ statutory objectives.

6.2 Deciding whether to take action

- 6.2.1 G The ~~FSA~~ FCA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or *public censure*. Set out below is a list of factors that may be relevant

for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

...

- (2) The conduct of the *person* after the *breach*, including the following:
- (a) how quickly, effectively and completely the *person* brought the *breach* to the attention of the *FSA FCA* or another relevant regulatory authority;
- ...
- (f) the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the *FSA FCA*.
- (3) The previous disciplinary record and compliance history of the *person* including:
- (a) whether the *FSA FCA* (or any *previous regulator*) has taken any previous disciplinary action resulting in adverse findings against the *person*;
- ...
- (c) whether the *FSA FCA* (or any *previous regulator*) has previously taken protective action in respect of a *firm*, using its own initiative powers, by means of a variation of a ~~Part IV~~ *Part 4A permission* or otherwise, or has previously requested the *firm* to take remedial action, and the extent to which such action has been taken; and
 - (d) the general compliance history of the *person*, including whether the *FSA FCA* (or any *previous regulator*) has previously issued the *person* with a private warning.
- (4) *FSA FCA guidance* and other published materials:

The *FSA FCA* will not take action against a person for *behaviour* that it considers to be in line with *guidance*, other materials published by the *FSA FCA* in support of the *Handbook* or *FSA FCA*-confirmed Industry Guidance which were current at the time of the *behaviour* in question. (The manner in which *guidance* and other published materials may otherwise be relevant to an enforcement case is described in EG 2.)

- (5) Action taken by the *FSA or FCA* in previous similar cases.
- (6) Action taken by other domestic or international regulatory authorities:

Where other regulatory authorities propose to take action in respect of the *breach* which is under consideration by the *FSA FCA*, or one similar to it, the *FSA FCA* will consider whether the other authority's action would be adequate to address the *FSA FCA's* concerns, or whether it would be appropriate for the *FSA FCA* to take its own action.

- 6.2.2 G When deciding whether to take action for *market abuse* or *requiring or encouraging*, the *FSA FCA* may consider the following additional factors:

...

- (2) The impact, having regard to the nature of the *behaviour*, that any financial penalty or *public censure* may have on the financial markets or on the interests of *consumers*:

...

- (c) in the context of a *takeover bid*, the *FSA FCA* may consider that the impact of the use of its powers is likely to have an adverse effect on the timing or outcome of that bid, and therefore it would not be in the interests of financial markets or *consumers* to take action for *market abuse* during the *takeover bid*. If the *FSA FCA* considers that the proposed use of its powers may have that effect, it will consult the *Takeover Panel* and give due weight to its views.

- 6.2.2A G The factors to which the *FSA FCA* will have regard when deciding whether to impose a penalty under regulation 34 of the *RCB Regulations* are set out in *RCB 4.2.3G*.

Discipline for breaches of *FSA FCA* rules on systems and controls against money laundering

- 6.2.3 G The *FSA FCA's* rules on systems and controls against *money laundering* are set out in *SYSC 3.2* and *SYSC 6.3*. The *FSA FCA*, when considering whether to take action for a financial penalty or censure in respect of a breach of those rules, will have regard to whether a *firm* has followed relevant provisions in the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

Action against approved persons under section 66 of the Act

- 6.2.4 G The primary responsibility for ensuring compliance with a *firm's*

regulatory obligations rests with the *firm* itself. However, the *FSA FCA* may take disciplinary action against an *approved person* where there is evidence of personal culpability on the part of that *approved person*. Personal culpability arises where the *behaviour* was deliberate or where the *approved person's* standard of *behaviour* was below that which would be reasonable in all the circumstances at the time of the conduct concerned.

- 6.2.5 G In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an *approved person* (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FSA FCA* to take action against both the *firm* and the *approved person*. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (*SYSC 3.1.1R* or *SYSC 4.1.10R*), and an *approved person* may have taken advantage of those deficiencies to front run orders or misappropriate assets.
- 6.2.6 G In addition to the general factors outlined in *DEPP 6.2.1G*, there are some additional considerations that may be relevant when deciding whether to take action against an *approved person* pursuant to section 66 of the *Act*. This list of those considerations is non-exhaustive. Not all considerations below may be relevant in every case, and there may be other considerations, not listed, that are relevant.
- (1) The *approved person's* position and responsibilities. The *FSA FCA* may take into account the responsibility of those exercising *significant influence functions* in the *firm* for the conduct of the *firm*. The more senior the *approved person* responsible for the misconduct, the more seriously the *FSA FCA* is likely to view the misconduct, and therefore the more likely it is to take action against the *approved person*.
- ...
- 6.2.7 G The *FSA FCA* will not discipline *approved persons* on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see *APER 4.6.13G* and *APER 4.6.14G*). In particular, disciplinary action will not be taken against an *approved person* performing a *significant influence function* simply because a regulatory failure has occurred in an area of business for which he is responsible. The *FSA FCA* will consider that an *approved person* performing a *significant influence function* may have breached *Statements of Principle 5 to 7* only if his conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also *APER 3.1.8G*).

...

- 6.2.9 G Where disciplinary action is taken against an *approved person* the onus will be on the ~~FSA~~ FCA to show that the *approved person* has been guilty of misconduct.

Action under section 63A of the Act against persons that perform a controlled function without approval

- 6.2.9A G In addition to the general factors outlined in *DEPP* 6.2.1G, there are some additional considerations that the ~~FSA~~ FCA will have regard to when deciding whether to take action against a *person* that performs a *controlled function* without approval contrary to section 63A of the *Act*.
- (1) The conduct of the *person*. The ~~FSA~~ FCA will take into consideration whether, while performing *controlled functions* without approval, the *person* committed misconduct in respect of which, if he had been approved, the ~~FSA~~ FCA could have taken action pursuant to section 66 of the *Act* and, if so, the seriousness of that misconduct.
 - (2) The extent to which the *person* could reasonably be expected to have known that he was performing a *controlled function* without approval. The circumstances in which the ~~FSA~~ FCA would expect to be satisfied that a *person* could reasonably be expected to have known that he was performing a *controlled function* without approval include:
 - ...
 - ...
 - (5) The appropriateness of taking action against the *person* instead of, or in addition to, taking action against an *authorised person*. In assessing this, the ~~FSA~~ FCA will take into consideration the extent of the culpability of an *authorised person* for the *person* performing a *controlled function* without approval. For example, a relevant factor may be that an *authorised person* decided that the *person* did not need to obtain approval and it was reasonable for the *person* to rely on the *authorised person's* judgment.
 - (6) The *person's* position and responsibilities. The more senior the *person* that performs a *controlled function* without approval, the more seriously the ~~FSA~~ FCA is likely to view his behaviour, and therefore the more likely it is to take action against the *person*.

Action against directors, former directors and persons discharging managerial responsibilities for breaches under Part VI of the Act

- 6.2.10 G The primary responsibility for ensuring compliance with Part VI of the

Act, the *Part 6 rules*, the *prospectus rules* or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) (Penalties for breach of Part 6 rules) of the *Act* respectively. Normally therefore, any disciplinary action taken by the ~~FSA~~ FCA for contraventions of these obligations will in the first instance be against those persons.

- 6.2.11 G However, in the case of a contravention by a *person* referred to in section 91(1)(a) or section 91(1)(b)(~~†~~) or section 91(1A) of the *Act* ("P"), where the ~~FSA~~ FCA considers that another *person* who was at the material time a *director* of P was knowingly concerned in the contravention, the ~~FSA~~ FCA may take disciplinary action against that *person*. In circumstances where the ~~FSA~~ FCA does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such person), the ~~FSA~~ FCA may nonetheless seek a disciplinary sanction against any other person who was at the material time a *director* of P and was knowingly concerned in the contravention.

...

- 6.2.13 G In deciding whether to take action, the ~~FSA~~ FCA will consider the full circumstances of each case. Factors that may be relevant for this purpose include, but are not limited to, the factors at *DEPP* 6.2.1G.

Discipline for breaches of the Principles for Businesses

- 6.2.14 G The *Principles* are set out in *PRIN* 2.1.1R. The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. The *Principles* derive their authority from the ~~FSA~~ FCA's rule-making powers set out in section ~~138~~ 137A (General rule-making power) of the *Act*. A breach of a *Principle* will make a *firm* liable to disciplinary action. Where the ~~FSA~~ FCA considers this is appropriate, it will discipline a *firm* on the basis of the *Principles* alone.
- 6.2.15 G In determining whether a *Principle* has been breached, it is necessary to look to the standard of conduct required by the *Principle* in question at the time. Under each of the *Principles*, the onus will be on the ~~FSA~~ FCA to show that a *firm* has been at fault in some way.

Discipline for breaches of the Listing Principles

- 6.2.16 G The Listing Principles are set out in *LR* 7. The Listing Principles are a general statement of the fundamental obligations of *listed companies*. The Listing Principles derive their authority from the ~~FSA~~ FCA's rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle will make a *listed company* liable to disciplinary action by the ~~FSA~~ FCA.
- 6.2.17 G In determining whether a Listing Principle has been broken, it is

necessary to look to the standard of conduct required by the Listing Principle in question. Under each of the Listing Principles, the onus will be on the *FSA FCA* to show that a *listed company* has been at fault in some way. This requirement will differ depending upon the Listing Principle.

...

Action involving other regulatory authorities or enforcement agencies

- 6.2.19 G Some types of *breach* may potentially result not only in action by the *FSA FCA*, but also action by other domestic or overseas regulatory authorities or enforcement agencies.
- 6.2.20 G When deciding how to proceed in such cases, the *FSA FCA* will examine the circumstances of the case, and consider, in the light of the relevant investigation, disciplinary and enforcement powers, whether it is appropriate for the *FSA FCA* or another authority to take action to address the *breach*. The *FSA FCA* will have regard to all the circumstances of the case including whether the other authority has adequate powers to address the *breach* in question.
- 6.2.21 G In some cases, it may be appropriate for both the *FSA FCA* and another authority to be involved, and for both to take action in a particular case arising from the same facts. For example, a breach of *RIE* rules may be so serious as to justify the *FSA FCA* varying or cancelling the *firm's Part IV permission*, or withdrawing approval from *approved persons*, as well as action taken by the *RIE*. In such cases, the *FSA FCA* will work with the relevant authority to ensure that cases are dealt with efficiently and fairly, under operating arrangements in place (if any) between the *FSA FCA* and the relevant authority.
- 6.2.22 G In relation to *behaviour* which may have happened or be happening in the context of a *takeover bid*, the *FSA FCA* will refer to the *Takeover Panel* and give due weight to its views. Where the *Takeover Code* has procedures for complaint about any behaviour, the *FSA FCA* expects parties to exhaust those procedures. The *FSA FCA* will not, save in exceptional circumstances, take action under any of section 123 (*FSA's FCA's* power to impose penalties), section 129 (Power of court to impose penalties), section 381 (Injunctions), sections 383 or 384 (Restitution) in respect of *behaviour* to which the *Takeover Code* is relevant before the conclusion of the procedures available under the *Takeover Code*.
- 6.2.23 G The *FSA FCA* will not take action against a *person* over *behaviour* which (a) conforms with the *Takeover Code* or rules of an *RIE* and (b) falls within the terms of any provision of the *Code of Market Conduct* which states that *behaviour* so conforming does not amount to *market abuse*. The *FSA FCA* will seek the *Takeover Panel's* or relevant *RIE's* views on whether *behaviour* complies with the *Takeover Code* or *RIE*

rules and will attach considerable weight to its views.

- 6.2.24 G If any of the circumstances in *DEPP* 6.2.26G apply, and the *FSA FCA* considers that the use of its disciplinary powers under section 123 or section 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the *Takeover Code* applies except in the circumstances set out in *DEPP* 6.2.27G.
- 6.2.25 G In any case where the *FSA FCA* considers that the use of its powers under any of sections 123, 129, 381, 383 or 384 of the *Act* may be appropriate, if that use may affect the timetable or outcome of a *takeover bid* or where it is appropriate in the context of any exercise by the *Takeover Panel* of its powers and authority, the *FSA FCA* will consult the *Takeover Panel* before using any of those powers.
- 6.2.26 G Where the *behaviour* of a *person* which amounts to *market abuse* is *behaviour* to which the *Takeover Code* is relevant, the use of the *Takeover Panel's* powers will often be sufficient to address the relevant concerns. In cases where this is not so, the *FSA FCA* will need to consider whether it is appropriate to use any of its own powers under the *market abuse regime*. The principal circumstances in which the *FSA FCA* is likely to consider such exercise are:
- ...
- (2) where the *FSA FCA's* approach in previous similar cases (which may have happened otherwise than in the context of a *takeover bid*) suggests that a financial penalty should be imposed;
- ...
- (5) where for any other reason the *Takeover Panel* asks the *FSA FCA* to consider the use of any of its powers referred to in *DEPP* 6.2.22G.
- ...
- 6.2.27 G The exceptional circumstances in which the *FSA FCA* will consider the use of powers during a *takeover bid* are listed in *DEPP* 6.2.26G(1), *DEPP* 6.2.26G(3) and *DEPP* 6.2.26G(4), and, depending on the circumstances, *DEPP* 6.2.26G(5).

...

6.3 Penalties for market abuse

- 6.3.1 G Section 123(2) of the *Act* states that the *FSA FCA* may not impose a

penalty on a *person* if there are reasonable grounds to be satisfied that:

...

- 6.3.2 G The factors which the ~~FSA~~ FCA may take into account when deciding whether either of the two conditions in *DEPP* 6.3.1G are met include, but are not limited to:

...

- (2) whether the ~~FSA~~ FCA has published any *guidance* or other materials on the *behaviour* in question and if so, the extent to which the *person* sought to follow that *guidance* or take account of those materials (see the Reader's Guide to the *Handbook* regarding the status of *guidance*.) The ~~FSA~~ FCA will consider the nature and accessibility of any *guidance* or other published materials when deciding whether it is relevant in this context and, if so, what weight it should be given;

...

6.4 Financial penalty or public censure

- 6.4.1 G The ~~FSA~~ FCA will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a *public censure*. As such, the factors set out in *DEPP* 6.4.2G are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

- 6.4.2 G The criteria for determining whether it is appropriate to issue a *public censure* rather than impose a financial penalty include those factors that the ~~FSA~~ FCA will consider in determining the amount of penalty set out in *DEPP* 6.5A to *DEPP* 6.5D. Some particular considerations that may be relevant when the ~~FSA~~ FCA determines whether to issue a *public censure* rather than impose a financial penalty are:

...

- (3) if the *breach* is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the *breach*; other things being equal, the more serious the *breach*, the more likely the ~~FSA~~ FCA is to impose a financial penalty;
- (4) if the *person* has brought the *breach* to the attention of the ~~FSA~~ FCA, this may be a factor in favour of a *public censure*, depending upon the nature and seriousness of the *breach*;
- (5) if the *person* has admitted the *breach* and provides full and immediate co-operation to the ~~FSA~~ FCA, and takes steps to

ensure that those who have suffered loss due to the *breach* are fully compensated for those losses, this may be a factor in favour of a *public censure*, rather than a financial penalty, depending upon the nature and seriousness of the *breach*;

- (6) if the *person* has a poor disciplinary record or compliance history (for example, where the *FSA or FCA* has previously brought disciplinary action resulting in adverse findings in relation to the same or similar *behaviour*), this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
- (7) the *FSA or FCA's* approach in similar previous cases: the *FSA FCA* will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a *public censure*; and
- (8) the impact on the *person* concerned. It would only be in an exceptional case that the *FSA FCA* would be prepared to agree to issue a *public censure* rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include :
 - (a) where the application of the *FSA FCA's* policy on serious financial hardship (set out in *DEPP 6.5D*) results in a financial penalty being reduced to zero;
 - (b) where there is verifiable evidence that the *person* would be unable to meet other regulatory requirements, particularly financial resource requirements, if the *FSA FCA* imposed a financial penalty at an appropriate level; or
 - (c) in Part VI cases in which the *FSA FCA* may impose a financial penalty, where there is the likelihood of a severe adverse impact on a *person's* shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a *person's* shareholders.

6.5 Determining the appropriate level of financial penalty

- 6.5.1 G For the purpose of *DEPP 6.5* to *DEPP 6.5D* and *DEPP 6.6.2G*, the term "firm" means *firms, sponsors, primary information providers, recognised investment exchanges, qualifying parent undertakings, actuaries, auditors* and those *unauthorised persons* who are not individuals.

- 6.5.2 G The ~~FSA~~ FCA's penalty-setting regime is based on the following principles:
- ...
- 6.5.3 G ...
- (3) The ~~FSA~~ FCA recognises that a penalty must be proportionate to the *breach*. The ~~FSA~~ FCA may decrease the level of the penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the *breach* concerned. For cases against firms, the ~~FSA~~ FCA will have regard to whether the firm is also an individual (for example, a sole trader) in determining whether the figure arrived at after applying Step 2 is disproportionate.
- ...
- (5) The ~~FSA~~ FCA may decide to impose a financial penalty on a mutual (such as a *building society*), even though this may have a direct impact on that mutual's *customers*. This reflects the fact that a significant proportion of a mutual's *customers* are shareholder-members; to that extent, their position involves an assumption of risk that is not assumed by *customers* of a firm that is not a mutual. Whether a firm is a mutual will not, by itself, increase or decrease the level of a financial penalty.
- (6) Part III (Penalties and Fees) of Schedule 1ZA to the *Act* specifically provides that the ~~FSA~~ FCA may not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

6.5A The five steps for penalties imposed on firms

Step 1 - disgorgement

- 6.5A.1 G (1) The ~~FSA~~ FCA will seek to deprive a firm of the financial benefit derived directly from the *breach* (which may include the profit made or loss avoided) where it is practicable to quantify this. The ~~FSA~~ FCA will ordinarily also charge interest on the benefit.
- (2) Where the success of a firm's entire business model is dependent on breaching ~~FSA~~ FCA rules or other requirements of the *regulatory system* and the *breach* is at the core of the firm's *regulated activities*, the ~~FSA~~ FCA will seek to deprive the firm of all the financial benefit derived from such activities. Where a firm agrees to carry out a redress programme to

compensate those who have suffered loss as a result of the *breach*, or where the FSA FCA decides to impose a redress programme, the FSA FCA will take this into consideration. In such cases the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

...

Step 2 - the seriousness of the *breach*

- 6.5A.2 G (1) The FSA FCA will determine a figure that reflects the seriousness of the *breach*. In many cases, the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its *breach* may cause, and in such cases the FSA FCA will determine a figure which will be based on a percentage of the firm's revenue from the relevant products or business areas. The FSA FCA also believes that the amount of revenue generated by a firm from a particular product or business area is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. However, the FSA FCA recognises that there may be cases where revenue is not an appropriate indicator of the harm or potential harm that a firm's *breach* may cause, and in those cases the FSA FCA will use an appropriate alternative.
- (2) In those cases where the FSA FCA considers that revenue is an appropriate indicator of the harm or potential harm that a firm's *breach* may cause, the FSA FCA will determine a figure which will be based on a percentage of the firm's "relevant revenue". "Relevant revenue" will be the revenue derived by the firm during the period of the *breach* from the products or business areas to which the *breach* relates. Where the *breach* lasted less than 12 *months*, or was a one-off event, the relevant revenue will be that derived by the firm in the 12 months preceding the end of the *breach*. Where the firm was in existence for less than 12 *months*, its relevant revenue will be calculated on a pro rata basis to the equivalent of 12 *months*' relevant revenue.
- (3) Having determined the relevant revenue, the FSA FCA will then decide on the percentage of that revenue which will form the basis of the penalty. In making this determination the FSA FCA will consider the seriousness of the *breach* and choose a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the *breach*. The more serious the *breach*, the higher the level. For penalties imposed on firms there are the following five levels:
- ...
- (4) The FSA FCA will assess the seriousness of a *breach* to

determine which level is most appropriate to the case.

- (5) In deciding which level is most appropriate to a case involving a firm, the ~~FSA~~ FCA will take into account various factors, which will usually fall into the following four categories:

...

...

- (10) Additional factors to which the ~~FSA~~ FCA will have regard when determining the appropriate level of financial penalty to be imposed under regulation 34 of the *RCB Regulations* are set out in *RCB 4.2.5G*.

...

- (13) In those cases where revenue is not an appropriate indicator of the harm or potential harm that a firm's *breach* may cause, the ~~FSA~~ FCA will adopt a similar approach, and so will determine the appropriate Step 2 amount for a particular *breach* by taking into account relevant factors, including those listed above. In these cases the ~~FSA~~ FCA may not use the percentage levels that are applied in those cases in which revenue is an appropriate indicator of the harm or potential harm that a firm's *breach* may cause.

Step 3 - mitigating and aggravating factors

- 6.5A.3 G (1) The ~~FSA~~ FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *breach*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *breach*:
- (a) the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the *breach* to the ~~FSA~~ FCA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the firm showed during the investigation of the *breach* by the ~~FSA~~ FCA, or any other regulatory authority allowed to share information with the ~~FSA~~ FCA;

...

- (d) any remedial steps taken since the *breach* was identified, including whether these were taken on the firm's own initiative or that of the ~~FSA~~ FCA or another regulatory authority; for example, identifying whether *consumers* or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future. The size and resources of the firm may be relevant to assessing the reasonableness of the steps taken;
- ...
- (f) whether the firm had previously been told about the ~~FSA~~ FCA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- ...
- (k) whether ~~FSA~~ FCA *guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- (l) whether the ~~FSA~~ FCA publicly called for an improvement in standards in relation to the behaviour constituting the *breach* or similar behaviour before or during the occurrence of the *breach*.

Step 4 - adjustment for deterrence

- 6.5A.4 G (1) If the ~~FSA~~ FCA considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the *breach*, or others, from committing further or similar breaches then the ~~FSA~~ FCA may increase the penalty. Circumstances where the ~~FSA~~ FCA may do this include:
- (a) where the ~~FSA~~ FCA considers the absolute value of the penalty too small in relation to the *breach* to meet its objective of credible deterrence;
 - (b) where previous ~~FSA~~ FCA action in respect of similar *breaches* has failed to improve industry standards. This may include similar *breaches* relating to different products (for example, action for mis-selling or claims handling failures in respect of 'x' product may be relevant to a case for mis-selling or claims handling failures in respect of 'y' product);
 - (c) where the ~~FSA~~ FCA considers it is likely that similar

breaches will be committed by the firm or by other firms in the future in the absence of such an increase to the penalty; and

- (d) where the ~~FSA~~ FCA considers that the likelihood of the detection of such a *breach* is low.

Step 5 - settlement discount

- 6.5A.5 G The ~~FSA~~ FCA and the firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the ~~FSA~~ FCA and the firm concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.5B The five steps for penalties imposed on individuals in non-market abuse cases

Step 1 - disgorgement

- 6.5B.1 G The ~~FSA~~ FCA will seek to deprive an individual of the financial benefit derived directly from the *breach* (which may include the profit made or loss avoided) where it is practicable to quantify this. The ~~FSA~~ FCA will ordinarily also charge interest on the benefit. Where the success of a firm's entire business model is dependent on breaching ~~FSA~~ FCA rules or other requirements of the *regulatory system* and the individual's *breach* is at the core of the firm's *regulated activities*, the ~~FSA~~ FCA will seek to deprive the individual of all the financial benefit he has derived from such activities.

...

Step 2 - the seriousness of the breach

- 6.5B.2 G (1) The ~~FSA~~ FCA will determine a figure which will be based on a percentage of an individual's "relevant income". "Relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the *breach* occurred (the "relevant employment"), and for the period of the *breach*. In determining an individual's relevant income, "benefits" includes, but is not limited to, salary, bonus, pension contributions, *share* options and *share* schemes; and "employment" includes, but is not limited to, employment as an adviser, *director*, partner or contractor.

...

(3) This approach reflects the ~~FSA~~ FCA's view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The ~~FSA~~ FCA also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The ~~FSA~~ FCA recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the ~~FSA~~ FCA still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if his employment is not totally related to a *controlled function*.

(4) Having determined the relevant income the ~~FSA~~ FCA will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the ~~FSA~~ FCA will consider the seriousness of the *breach* and choose a percentage between 0% and 40%.

...

(6) The ~~FSA~~ FCA will assess the seriousness of a *breach* to determine which level is most appropriate to the case.

(7) In deciding which level is most appropriate to a case against an individual, the ~~FSA~~ FCA will take into account various factors which will usually fall into the following four categories:

...

...

(9) Factors relating to the nature of a *breach* by an individual include:

...

(n) whether the individual took any steps to comply with ~~FSA~~ FCA rules, and the adequacy of those steps;

...

(q) in relation to a contravention of section 63A of the *Act*, whether the individual performed *controlled functions* without approval and, while doing so, committed misconduct in respect of which, if the individual had been an *approved person*, the ~~FSA~~ FCA would have been empowered to take action pursuant to section 66 of the *Act*; and

- (r) in relation to a contravention of section 63A of the *Act*, the extent to which the individual could reasonably be expected to have known that he was performing a *controlled function* without approval. The circumstances in which the ~~FSA~~ FCA would expect to be satisfied that a *person* could reasonably be expected to have known that he was performing a *controlled function* without approval include:

...

...

Step 3 - mitigating and aggravating factors

- 6.5B.3 G (1) The ~~FSA~~ FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *breach*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *breach*:
- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *breach* to the ~~FSA~~ FCA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the *breach* by the ~~FSA~~ FCA, or any other regulatory authority allowed to share information with the ~~FSA~~ FCA;
- ...
- (d) any remedial steps taken since the *breach* was identified, including whether these were taken on the individual's own initiative or that of the ~~FSA~~ FCA or another regulatory authority;
- ...
- (f) whether the individual had previously been told about the ~~FSA~~ FCA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- ...

- (k) Whether ~~FSA~~ FCA *guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
- (l) whether the ~~FSA~~ FCA publicly called for an improvement in standards in relation to the behaviour constituting the *breach* or similar behaviour before or during the occurrence of the *breach*;
- ...
- (n) in relation to a contravention of section 63A of the *Act*, whether the *person's* ~~firm~~ firm or another ~~firm~~ firm has previously withdrawn an application for the *person* to perform the same or a similar *controlled function* or has had such an application rejected by the ~~FSA~~ FCA.

Step 4 - adjustment for deterrence

- 6.5B.4 G (1) If the ~~FSA~~ FCA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *breach*, or others, from committing further or similar *breaches* then the ~~FSA~~ FCA may increase the penalty. Circumstances where the ~~FSA~~ FCA may do this include:
- (a) where the ~~FSA~~ FCA considers the absolute value of the penalty too small in relation to the *breach* to meet its objective of credible deterrence;
 - (b) where previous ~~FSA~~ FCA action in respect of similar *breaches* has failed to improve industry standards. This may include similar *breaches* relating to different products (for example, action for mis-selling or claims handling failures in respect of 'x' product may be relevant to a case for mis-selling or claims handling failures in respect of 'y' product);
 - (c) where the ~~FSA~~ FCA considers it is likely that similar *breaches* will be committed by the individual or by other individuals in the future;
 - (d) where the ~~FSA~~ FCA considers that the likelihood of the detection of such a *breach* is low; and
 - ...

Step 5 - settlement discount

- 6.5B.5 G The ~~FSA~~ FCA and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides

that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the ~~FSA~~ FCA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.5C The five steps for penalties imposed on individuals in market abuse cases

Step 1 - disgorgement

- 6.5C.1 G The ~~FSA~~ FCA will seek to deprive an individual of the financial benefit derived as a direct result of the *market abuse* (which may include the profit made or loss avoided) where it is practicable to quantify this. The ~~FSA~~ FCA will ordinarily also charge interest on the benefit.

Step 2 - the seriousness of the market abuse

- 6.5C.2 G (1) The ~~FSA~~ FCA will determine a figure dependent on the seriousness of the *market abuse* and whether or not it was referable to the individual's employment. This reflects the ~~FSA~~ FCA's view that where an individual has been put into a position where he can commit *market abuse* because of his employment the fine imposed should reflect this by reference to the gross amount of all benefits derived from that employment.
- (2) In cases where the *market abuse* was referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:
- ...
- (c) for *market abuse* cases which the ~~FSA~~ FCA assesses to be seriousness level 4 or 5, £100,000. How the ~~FSA~~ FCA will assess the seriousness level of the *market abuse* is explained in paragraphs (9) to (16) below. The ~~FSA~~ FCA usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.
- (3) In cases where the *market abuse* was not referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:
- ...
- (b) for *market abuse* cases which the ~~FSA~~ FCA assesses to be seriousness level 4 or 5, £100,000. How the ~~FSA~~ FCA will assess the seriousness level of the *market abuse* is explained in paragraphs (9) to (16) below. The ~~FSA~~ FCA

usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.

...

- (6) In cases where the *market abuse* was referable to the individual's employment:
- (a) the ~~FSA~~ FCA will determine the percentage of relevant income which will apply by considering the seriousness of the *market abuse* and choosing a percentage between 0% and 40%; and
 - (b) the ~~FSA~~ FCA will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.
- (7) In cases where the *market abuse* was not referable to the individual's employment the ~~FSA~~ FCA will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.

...

- (9) The ~~FSA~~ FCA will assess the seriousness of the *market abuse* to determine which level is most appropriate to the case.
- (10) In deciding which level is most appropriate to a *market abuse* case, the ~~FSA~~ FCA will take into account various factors which will usually fall into the following four categories:

...

...

Step 3 - mitigating and aggravating factors

- 6.5C.3 G (1) The ~~FSA~~ FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *market abuse*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *market abuse*:
- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *market abuse* to the ~~FSA~~ FCA's attention (or the attention of other regulatory authorities, where relevant);

- (b) the degree of cooperation the individual showed during the investigation of the *market abuse* by the ~~FSA~~ FCA, or any other regulatory authority allowed to share information with the ~~FSA~~ FCA;
- (c) whether the individual assists the ~~FSA~~ FCA in action taken against other individuals for *market abuse* and/or in criminal proceedings;
- ...
- (e) whether the individual had previously been told about the ~~FSA~~ FCA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- ...
- (h) Whether ~~FSA~~ FCA *guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- ...

Step 4 - adjustment for deterrence

- 6.5C.4 G (1) If the ~~FSA~~ FCA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *market abuse*, or others, from committing further or similar abuse then the ~~FSA~~ FCA may increase the penalty. Circumstances where the ~~FSA~~ FCA may do this include:
- (a) where the ~~FSA~~ FCA considers the absolute value of the penalty too small in relation to the *market abuse* to meet its objective of credible deterrence;
 - (b) where previous ~~FSA~~ FCA action in respect of similar *market abuse* has failed to improve industry standards; and
 - ...

Step 5 - settlement discount

- 6.5C.5 G The ~~FSA~~ FCA and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the ~~FSA~~ FCA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit

calculated at Step 1.

6.5D Serious financial hardship

6.5D.1 G

(1) The ~~FSA~~ FCA's approach to determining penalties described in *DEPP* 6.5 to *DEPP* 6.5C is intended to ensure that financial penalties are proportionate to the *breach*. The ~~FSA~~ FCA recognises that penalties may affect persons differently, and that the ~~FSA~~ FCA should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.

(2) Where an individual or firm claims that payment of the penalty proposed by the ~~FSA~~ FCA will cause them serious financial hardship, the ~~FSA~~ FCA will consider whether to reduce the proposed penalty only if:

...

(b) the individual or firm provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the ~~FSA~~ FCA about their financial position.

(3) The onus is on the individual or firm to satisfy the ~~FSA~~ FCA that payment of the penalty will cause them serious financial hardship.

...

Individuals

6.5D.2 G (1) In assessing whether a penalty would cause an individual serious financial hardship, the ~~FSA~~ FCA will consider the individual's ability to pay the penalty over a reasonable period (normally no greater than three years). The ~~FSA~~ FCA's starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty. Unless the ~~FSA~~ FCA believes that both the individual's income and capital will fall below these respective thresholds as a result of payment of the penalty, the ~~FSA~~ FCA is unlikely to be satisfied that the penalty will result in serious financial hardship.

(2) The ~~FSA~~ FCA will consider all relevant circumstances in determining whether the income and capital threshold levels

should be increased in a particular case.

- (3) The ~~FSA~~ FCA will consider agreeing to payment of the penalty by instalments where the individual requires time to realise his assets, for example by waiting for payment of a salary or by selling property.
- (4) For the purposes of considering whether an individual will suffer serious financial hardship, the ~~FSA~~ FCA will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), *investments* and land. The ~~FSA~~ FCA will normally consider as capital the equity that an individual has in the home in which he lives, but will consider any representations by the individual about this; for example, as to the exceptionally severe impact a sale of the property might have upon other occupants of the property or the impracticability of re-mortgaging or selling the property within a reasonable period.
- (5) The ~~FSA~~ FCA may also consider the extent to which the individual has access to other means of financial support in determining whether he is able to pay the penalty without being caused serious financial hardship.

...

- (7) There may be cases where, even though the individual has satisfied the ~~FSA~~ FCA that payment of the financial penalty would cause him serious financial hardship, the ~~FSA~~ FCA considers the *breach* to be so serious that it is not appropriate to reduce the penalty. The ~~FSA~~ FCA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

...

- (c) Previous ~~FSA~~ FCA action in respect of similar *breaches* has failed to improve industry standards; or
- (d) the individual has spent money or dissipated assets in anticipation of ~~FSA~~ FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the ~~FSA~~ FCA or other authorities.

Prohibition orders and withdrawal of approval

- 6.5D.3 G In cases against individuals, including *market abuse* cases, the ~~FSA~~ FCA may make a *prohibition order* under section 56 of the *Act* or withdraw an individual's approval under section 63 of the *Act*, as well as impose a financial penalty. Such action by the ~~FSA~~ FCA reflects the

~~FS~~ FCA's assessment of the individual's fitness to perform *regulated activity* or suitability for a particular role, and does not affect the ~~FS~~ FCA's assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the ~~FS~~ FCA has made a *prohibition order* against an individual or withdrawn his approval, as a result of which the individual may have less earning potential, may be relevant in assessing whether the penalty will cause the individual serious financial hardship.

Firms

- 6.5D.4 G (1) The ~~FS~~ FCA will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the ~~FS~~ FCA will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency. The ~~FS~~ FCA will also take into account its ~~regulatory objectives~~ statutory objectives, for example in situations where *consumers* would be harmed or market confidence would suffer, the ~~FS~~ FCA may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.
- (2) There may be cases where, even though the firm has satisfied the ~~FS~~ FCA that payment of the financial penalty would cause it serious financial hardship, the ~~FS~~ FCA considers the *breach* to be so serious that it is not appropriate to reduce the penalty. The ~~FS~~ FCA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
- ...
- (c) previous ~~FS~~ FCA action in respect of similar *breaches* has failed to improve industry standards; or
- (d) the firm has spent money or dissipated assets in anticipation of ~~FS~~ FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the ~~FS~~ FCA or other authorities.

Withdrawal of authorisation

- 6.5D.4 G The ~~FS~~ FCA may withdraw a firm's *authorisation* under section 33 of the *Act*, as well as impose a financial penalty. Such action by the ~~FS~~ FCA does not affect the ~~FS~~ FCA's assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the ~~FS~~ FCA has withdrawn a firm's *authorisation*, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.
- A

Transfers of assets

- 6.5D.5 G Where the *FSA FCA* considers that, following commencement of an *FSA FCA* investigation, an individual or firm has reduced their solvency in order to reduce the amount of any disgorgement or financial penalty payable, for example by transferring assets to third parties, the *FSA FCA* will normally take account of those assets when determining whether the individual or firm would suffer serious financial hardship as a result of the disgorgement and financial penalty.

6.6 Financial penalties for late and incomplete submission of reports

- 6.6.1 G (1) The *FSA FCA* attaches considerable importance to the timely submission by *firms* of reports. This is because the information that they contain is essential to the *FSA FCA*'s assessment of whether a *firm* is complying with the requirements and standards of the *regulatory system* and to the *FSA FCA*'s understanding of that *firm's* business.
- (2) *DEPP* 6.6.1G to *DEPP* 6.6.5G set out the *FSA FCA*'s policy in relation to financial penalties for late submission of reports and is in addition to the *FSA FCA*'s policy relating to financial penalties as set out in *DEPP* 6.5 to *DEPP* 6.5D.
- 6.6.2 G In addition to the factors considered in Step 2 for cases against firms (*DEPP* 6.5A) and cases against individuals (*DEPP* 6.5B), the following considerations are relevant.
- (1) In general, the *FSA FCA*'s approach to disciplinary action arising from the late submission of a report will depend upon the length of time after the due date that the report in question is submitted.
- (2) If the *person* concerned is an individual, it is open to him to make representations to the *FSA FCA* as to why he should not be the subject of a financial penalty, or why a lower penalty should be imposed. If he does so, the matters to which the *FSA FCA* will have regard will include the matters set out in *DEPP* 6.5B. It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute a relevant circumstance for this purpose.
- (3) The *FSA FCA* will have regard to repeated failures to submit reports on time. In the majority of cases involving such repeated failure, the *FSA FCA* considers that it will be appropriate to seek more serious disciplinary sanctions or other enforcement action, including seeking to apply for the

cancellation of the *firm's* firm's permission.

- (4) The ~~FSA~~ FCA will also have regard to the submission frequency of the late report when assessing the seriousness of the contravention. For example, a short delay in submitting a weekly or monthly report can have serious implications for the supervision of the *firm* firm in question. Such a delay may therefore be subject to a higher penalty than might otherwise be the case.

...

- 6.6.3 G In addition, in appropriate cases, the ~~FSA~~ FCA may bring disciplinary action against the *approved persons* within the *firm's* management who are ultimately responsible for ensuring that the *firm's* reports are completed and returned to the ~~FSA~~ FCA.
- 6.6.4 G In applying the *guidance* in this section, the ~~FSA~~ FCA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate. For the purposes of the *guidance*, the ~~FSA~~ FCA may also treat a report as not received where the method by which it is submitted to the ~~FSA~~ FCA does not comply with the prescribed method of submission.
- 6.6.5 G In most late reporting cases, it will not be necessary for the ~~FSA~~ FCA to appoint an investigator since the fact of the breach will be clear. It follows that the ~~FSA~~ FCA will not usually send the *firm* concerned a preliminary findings letter for late-reporting disciplinary action.

6.7 Discount for early settlement

- 6.7.1 G *Persons* subject to enforcement action may be prepared to agree the amount of any financial penalty, or the length of any period of suspension or restriction, and other conditions which the ~~FSA~~ FCA seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The ~~FSA~~ FCA recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the ~~FSA~~ FCA itself in contesting the financial penalty, suspension or restriction. The penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *breach* by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.

The settlement discount scheme applied to financial penalties

- 6.7.2 G In appropriate cases the ~~FSA~~ FCA's approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the ~~FSA~~ FCA's statement of policy as set out in *DEPP* 6.5 to *DEPP* 6.5D and *DEPP* 6.6. (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the *breach*. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.
- 6.7.3 G (1) The ~~FSA~~ FCA has identified four stages of an action for these purposes:
- (a) the period from commencement of an investigation until the ~~FSA~~ FCA has:
- ...
- ...
- (2) The communication of the ~~FSA~~ FCA's assessment of the appropriate penalty for the purposes of *DEPP* 6.7.3G(1)(a) need not be in a prescribed form but will include an indication of the *breaches* alleged by the ~~FSA~~ FCA. It may include the provision of a draft *warning notice*.
- ...
- 6.7.4 G (1) Any settlement agreement between the ~~FSA~~ FCA and the *person* concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.
- (2) In certain circumstances the *person* concerned may consider that it would have been possible to reach a settlement at an earlier stage in the action, and argue that it should be entitled to a greater percentage reduction in penalty than is suggested by the table at *DEPP* 6.7.3G(3). It may be, for example, that the ~~FSA~~ FCA no longer wishes to pursue its action in respect of all of the acts or omissions previously alleged to give rise to the *breach*. In such cases, the *person* concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from the discount which would have been available at that time. Equally, ~~FSA~~ FCA staff may consider that greater openness from the *person* concerned could have resulted in an earlier settlement.

...

- (4) However, in exceptional cases the ~~FSA~~ FCA may accept that there has been a substantial change in the nature or seriousness of the action being taken against the *person* concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the ~~FSA~~ FCA and person concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible.

- 6.7.5 G In cases in which the *settlement discount scheme* is applied, the fact of settlement and the level of the discount to the financial penalty imposed by the ~~FSA~~ FCA will be set out in the *final notice*.

The settlement discount scheme applied to suspensions and restrictions

- 6.7.6 G The *settlement discount scheme* which applies to the amount of a financial penalty, described in *DEPP* 6.7.2G to *DEPP* 6.7.5G, also applies to the length of the period of a suspension or restriction, having regard to the ~~FSA~~ FCA's statement of policy as set out in *DEPP* 6A.3.

6A The power to impose a suspension or restriction

6A.1 Introduction

- 6A.1.1 G *DEPP* 6A sets out the ~~FSA~~ FCA's statement of policy with respect to the imposition of suspensions or restrictions, and the period for which those suspensions or restrictions are to have effect, under the *Act*, as required by sections 69(1), 88C(1), 89S(1) and 210(1) of the *Act*.
- 6A.1.2 G (1) For the purposes of *DEPP* 6A, "suspension" refers ~~both~~ to the suspension of:
- (a) any *permission* which an *authorised person* has to carry on a *regulated activity* (under section 206A of the *Act*), ~~and~~
 - (b) ~~the suspension of~~ any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the *Act*),
 - (c) a sponsor's approval (under section 88A(2)(b) of the Act),
 - (d) and a primary information provider's approval (under section 89Q(2)(b) of the Act); and
- (2) "restriction" refers ~~both~~ to limitations or other restrictions in

relation to:

- (i) the carrying on of a *regulated activity* by an *authorised person* (under section 206A of the Act), ~~and~~
- (ii) ~~to limitations or other restrictions in relation to the performance by an *approved person* of any function to which any approval relates (under section 66 of the Act),~~
- (iii) the performance of services to which a *sponsor's* approval relates (under section 88A(2)(c) of the Act), and
- (iv) the dissemination of *regulated information* by a *primary information provider* (under section 89Q(2)(c) of the Act).

6A.1.3 G The power to impose a suspension or a restriction is a disciplinary measure which the ~~FSA~~ FCA may use in addition to, or instead of, imposing a financial penalty or issuing a *public censure*. The principal purpose of imposing a suspension or a restriction is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. Suspensions and restrictions are therefore tools that the ~~FSA~~ FCA may employ to help it to achieve its ~~regulatory~~ statutory objectives. Examples of restrictions that we may impose include:

...

6A.1.4 G ~~As the power~~ The powers to impose a suspension or a restriction in relation to *authorised persons* and *approved persons* is a disciplinary ~~measure,~~ measures; where the ~~FSA~~ FCA considers it necessary to take action, for example, to protect *consumers* from an *authorised person*, the ~~FSA~~ FCA will seek to cancel or vary the *authorised person's permissions*. If the ~~FSA~~ FCA has concerns with a *person's* fitness to be approved, and considers it necessary to take action, the ~~FSA~~ FCA will seek to prohibit the *approved person* or withdraw its approval. While the powers to impose a suspension or a restriction in relation to *sponsors* and *primary information providers* under sections 88A(2)(b)/(c) and 89Q(2)(b)/(c) of the Act are disciplinary measures, the *FCA* can impose suspensions, limitations or other restrictions in relation to *sponsors* and *primary information providers* in other circumstances.

6A.2 Deciding whether to take action

- 6A.2.1 G The *FSA FCA* will consider the full circumstances of each case and determine whether it is appropriate to impose a suspension or restriction. The *FSA FCA* will usually make this decision at the same time as it determines whether or not to impose a financial penalty or a *public censure*.
- 6A.2.2 G The *FSA FCA* will take into account relevant factors in deciding whether it is appropriate to impose a suspension or restriction. These may include factors listed in *DEPP* 6.2. There may also be other factors, not listed in *DEPP* 6.2, that are relevant.
- 6A.2.3 G The *FSA FCA* will consider it appropriate to impose a suspension or restriction where it believes that such action will be a more effective and persuasive deterrent than the imposition of a financial penalty alone. This is likely to be the case where the *FSA FCA* considers that direct and visible action in relation to a particular *breach* is necessary. Examples of circumstances where the *FSA FCA* may consider it appropriate to impose a suspension or restriction include:
- (1) where the *FSA FCA* (or any *previous regulator*) has taken any previous disciplinary action resulting in adverse findings against the *person*;
 - (2) where the *FSA FCA* has previously taken action in respect of similar *breaches* and has failed to improve industry standards;
 - ...
 - (6) if, in accordance with *DEPP* 6.5D, the *FSA FCA* considers that a proposed penalty would cause the subject of enforcement action serious financial hardship and that it is appropriate to reduce the proposed penalty.
- 6A.2.4 G The *FSA FCA* expects usually to suspend or restrict a *person* from carrying out activities directly linked to the *breach*. However, in certain circumstances the *FSA FCA* may also suspend or restrict a *person* from carrying out activities that are not directly linked to the *breach*, for example, where an *authorised person's* relevant business area no longer exists or has been restructured.
- 6A.2.5 G For the purposes of section 89S(1)(d) of the Act, the FCA expects usually to suspend the approval of a *primary information provider*.

6A.3 Determining the appropriate length of the period of suspension or restriction

6A.3.1 G The ~~FSA~~ FCA will consider all the relevant circumstances of a case when it determines the length of the period of suspension or restriction (if any) that is appropriate for the *breach* concerned, and is also a sufficient deterrent. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

6A.3.2 G The following factors may be relevant to determining the appropriate length of the period of suspension or restriction to be imposed on a *person* under the *Act*:

(1) Deterrence

When determining the appropriate length of the period of suspension or restriction, the ~~FSA~~ FCA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches* and helping to deter other *persons* from committing similar *breaches*, as well as demonstrating generally the benefits of compliant business.

(2) The seriousness of the breach

The ~~FSA~~ FCA will have regard to the seriousness of the *breach*. In assessing this, it will consider the impact and nature of the *breach*, and whether it was committed deliberately or recklessly. Where the *breach* was committed by an *authorised person*, relevant factors may include those listed in *DEPP* 6.5A.2G(6) to (9). Where the *breach* was committed by an *approved person*, relevant factors may include those listed in *DEPP* 6.5B.2G(8) to (11). There may also be other factors, not listed in these sections, that are relevant.

(3) Aggravating and mitigating factors

The ~~FSA~~ FCA will have regard to factors that may aggravate or mitigate a *breach*. Where the breach was committed by an *authorised person*, *sponsor* or *primary information provider*, relevant factors may include those listed in *DEPP* 6.5A.3G(2). Where the *breach* was committed by an *approved person*, relevant factors may include those listed in *DEPP* 6.5B.3G(2). There may also be other factors, not listed in these sections, that are relevant.

(4) The impact of suspension or restriction on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person, sponsor or primary information provider*:

- (a) the *authorised person's, sponsor's or primary information provider's* expected lost revenue and profits from not being able to carry out the suspended or restricted activity;
- (b) the cost of any measures the *authorised person, sponsor or primary information provider* must undertake to comply with the suspension or restriction;
- ...
- (d) the effect on other areas of the *authorised person's, sponsor's or primary information provider's* business; and
- (e) whether the suspension or restriction would cause the *authorised person, sponsor or primary information provider* serious financial hardship.

...

...

6A.3.3 G The ~~FSA~~ FCA may delay the commencement of the period of suspension or restriction. In deciding whether this is appropriate, the ~~FSA~~ FCA will take into account all the circumstances of a case. Considerations that may be relevant in respect of an *authorised person, sponsor or primary information provider* include:

...

- (2) any practical measures the *authorised person, sponsor or primary information provider* needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;
- (3) the impact of the suspension or restriction on other costs incurred by the *authorised person, sponsor or primary information provider*, for example, cancelling suppliers or suspending employees.

6A.3.4 G The ~~FSA~~ FCA and the *person* on whom a suspension or restriction is to be imposed may seek to agree the length of the period of suspension or restriction and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the length of a period of suspension or restriction which might otherwise have been imposed will be reduced to reflect the stage at which the ~~FSA~~ FCA

and the *person* concerned reached an agreement.

6A.4 The interaction between the power to impose suspensions or restrictions and the power to impose penalties or public censures

- 6A.4.1 G The deterrent effect and impact on a *person* of a suspension or restriction, by itself or in combination with a financial penalty, may be greater than where only a financial penalty is imposed. The ~~FSA~~ FCA will consider the overall impact and deterrent effect of the sanctions it imposes when determining the level of penalty and the length of suspension or restriction.
- 6A.4.2 G The ~~FSA~~ FCA expects usually to take the following approach in respect of the interaction between a suspension or restriction and a financial penalty or *public censure*:
- (1) The ~~FSA~~ FCA will determine which sanction, or combination of sanctions, is appropriate for the *breach*.
 - (2) If the ~~FSA~~ FCA, following the approach set out in *DEPP* 6.2, considers it appropriate to impose a financial penalty, it will calculate the appropriate level of the financial penalty, following the approach set out in *DEPP* 6.5 to *DEPP* 6.5D.
 - (3) If the ~~FSA~~ FCA, following the approach set out in *DEPP* 6A.2, considers it appropriate to impose a suspension or restriction, it will calculate the appropriate length of the period of suspension or restriction, following the approach set out in *DEPP* 6A.3.
 - (4) Where the ~~FSA~~ FCA considers it appropriate to impose both a financial penalty and a suspension or restriction, it will decide whether the combined impact on the *person* is likely to be disproportionate in respect to the *breach* and the deterrent effect of the sanctions.
 - (5) If the ~~FSA~~ FCA considers the combined impact on the *person* is likely to be disproportionate, it will decide whether to reduce the period of suspension or restriction, the amount of the financial penalty or both, so that the combined impact of the sanctions is proportionate in relation to the *breach* and the deterrent effect of the sanctions. The ~~FSA~~ FCA will decide which sanction to reduce after considering all the circumstances of the case.
 - (6) In deciding the final level of the financial penalty and the length of the period of suspension or restriction, the ~~FSA~~ FCA will also take into account any representations by the *person* that the combined impact will cause them serious financial

hardship. The ~~FSA~~ FCA will take the approach set out in *DEPP* 6.5D in assessing this.

- 6A.4.3 G The ~~FSA~~ FCA may depart from the approach set out in *DEPP* 6A.4.2G. For example, the ~~FSA~~ FCA may at the outset consider that a financial penalty is the only appropriate sanction for a *breach* but, having determined the appropriate level of financial penalty, may consider it appropriate to reduce the amount of the financial penalty for serious financial hardship reasons. In such a situation, the ~~FSA~~ FCA may consider it appropriate to impose a suspension or restriction even if the ~~FSA~~ FCA at the outset did not consider such a sanction to be appropriate. The ~~FSA~~ FCA will take into account whether the *person* would suffer serious financial hardship in deciding the length of the period of suspension or restriction, and may decide not to impose a suspension or restriction if it considers such action would result in serious financial hardship.

7 Statement of policy on section 169(7) interviews conducted on behalf of overseas and EEA regulators

7.1 Application and purpose

Application

- 7.1.1 G *DEPP* 7 applies when the ~~FSA~~ FCA:

...

- 7.1.2 G In *DEPP* 7, a "requested interview" means any interview conducted for the purposes of an investigation under section 169(1)(b) or section 131FA of the *Act* in relation to which the ~~FSA~~ FCA has given a direction under section 169(7) or section 131FA of the *Act*.

Purpose

- 7.1.3 G The purpose of *DEPP* 7 is to set out the ~~FSA~~ FCA's statement of policy on the conduct of interviews to which a direction under section 169(7) or section 131FA has been given or the ~~FSA~~ FCA is considering giving. The ~~FSA~~ FCA is required to prepare and publish this statement of policy by section 169(9) and (11) and section 131FA of the *Act*. As required by section 169(10) and section 131FA of the *Act*, the Treasury has approved the statement of policy.
- 7.1.4 G The ~~FSA~~ FCA is keen to promote co-operation with *overseas regulators* and *EEA regulators*. It views provision of assistance to *overseas regulators* and *EEA regulators* as an essential part of the ~~principles set out in section 2(3)(e) of the Act to which it must have regard in~~ discharging its general functions.

7.2 Interviews

Appointment of investigator and confidentiality of information

- 7.2.1 G Under section 169(1)(b) and section 131FA of the *Act*, the ~~FSA~~ FCA may appoint an investigator to investigate any matter at the request of an *overseas regulator* or *EEA regulator*. The powers of the investigator appointed by the ~~FSA~~ FCA (referred to here as the '~~FSA's~~ FCA's investigator') include the power to require *persons* to attend at a specified time and place and answer questions (the compulsory interview power).
- 7.2.2 G Where the ~~FSA~~FCA appoints an investigator in response to a request from an *overseas regulator* or *EEA regulator* it may, under section 169(7) or section 131FA of the *Act*, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The ~~FSA~~ FCA may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an *overseas regulator* or *EEA regulator* as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the *Act*.

...

Policy on use of investigative powers

- 7.2.4 G The ~~FSA~~ FCA's policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators* and *EEA regulators*, is set out in the ~~FSA~~ FCA's Enforcement Guide (*EG*).

Use of direction powers

- 7.2.5 G The ~~FSA~~ FCA may need to consider whether to use its direction power at two stages of an investigation:
- ...
- 7.2.6 G Before making a direction under section 169(7) or section 131FA the ~~FSA~~ FCA will discuss and determine with the *overseas regulator* or *EEA regulator* how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the ~~FSA~~ FCA will at this stage determine the extent to which the representative of the *overseas regulator* or *EEA regulator* will be able to participate in the interview. The *overseas regulator* or *EEA regulator* will be notified of this determination on the issuing of the direction.

- 7.2.7 G The direction will contain the identity of the representative of the *overseas regulator* or *EEA regulator* that is permitted to attend any interview and the role that he will play in the interview. If the *FSA FCA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

Conduct of interview

- 7.2.8 G In circumstances where an interview is to be conducted as part of the investigation, the *FSA FCA's* investigator will have conduct of the interview. In general, the *FSA FCA's* investigators will be employees of the *FSA FCA*, but in appropriate cases the *FSA FCA* may appoint *persons* who are not its employees. In those cases, the *FSA FCA* may choose to require that an *FSA FCA* employee is present at the interview and may choose to appoint that *person* as an investigator.
- 7.2.9 G The *FSA FCA's* investigator will act on behalf of the *FSA FCA* and under its control. He may be instructed to permit the representative of the *overseas regulator* or *EEA regulator* to assist in the preparation of the interview. Where the *FSA FCA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in *DEPP 7.2.6G*.
- 7.2.10 G If the direction does permit the representative of an *overseas regulator* or *EEA regulator* to attend the interview and ask the interviewee questions, the *FSA FCA's* investigator will retain control of the interview throughout. Control of the interview means the following will apply:
- (1) The *FSA FCA's* investigator instigates and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. The *FSA FCA's* investigator will always ask preliminary questions, such as those establishing the identity of the interviewee.
 - (2) The *FSA FCA's* investigator determines the duration of the interview and when, if at all, there should be any breaks in the course of it.
 - (3) The *FSA FCA's* investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* or *EEA regulator* was either present or not present.

(4) Where the ~~FSA~~ FCA's investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* or *EEA regulator* as to the conduct of the interview and the contents of this statement of policy.

7.2.11 G The ~~FSA~~ FCA will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* or *EEA regulator*. Whether or not the interviewee is the *person* under investigation, the ~~FSA~~ FCA's investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* or *EEA regulator* is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the ~~FSA~~ FCA believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

...

7.2.13 G The ~~FSA~~ FCA's investigator will determine the venue and timing of the interview. The interviewee will be notified of the venue and timing of the interview in advance and in writing.

7.2.14 G When the ~~FSA~~ FCA's investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* or *EEA regulator*. It will also state that in criminal proceedings or proceedings for *market abuse* the ~~FSA~~ FCA will not use as evidence against the interviewee any information obtained under compulsion during the interview.

7.2.15 G The ~~FSA~~ FCA's investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the *documents* before the interview takes place. Where the *overseas regulator* or *EEA regulator* wishes to ask questions about *documents* during the interview and the ~~FSA~~ FCA's investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the ~~FSA~~ FCA's investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.

- 7.2.16 G When the ~~FSA~~ FCA's investigator has exercised the compulsory interview power, the ~~FSA~~ FCA's investigator will require the *person* attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator* or *EEA regulator*. The interviewee will also be required to answer these questions. The ~~FSA~~ FCA's investigator may intervene at any stage during questioning by the representative of the *overseas regulator* or *EEA regulator*.

Language

- 7.2.17 G Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* or *EEA regulator* then the translation costs will normally be met by the *overseas regulator* or *EEA regulator*. Where interviews are being conducted in pursuance of an *EU* law obligation these costs will be met by the ~~FSA~~ FCA. In any event, the meeting of costs in relation to translators and, where applicable, the translation of *documents* will always be agreed in advance with the *overseas regulator* or *EEA regulator*.

Tape-recording

- 7.2.18 G All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the ~~FSA~~ FCA's investigator. Costs will be addressed similarly to that set out in the preceding paragraph. The ~~FSA~~ FCA will not provide the *overseas regulator* or *EEA regulator* with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

Representation

- 7.2.19 G The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the ~~FSA~~ FCA. The presence at the interview of a representative of the *overseas regulator* or *EEA regulator* may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator's jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the ~~FSA~~ FCA reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at

a suitable venue.

- 7.2.20 G In relation to the publication of investigations by *overseas regulators* or *EEA regulators*, the ~~FSA~~ FCA will pursue a policy similar to the policy that relates to its own investigations.

TP 1 Transitional provisions applying to the Decision Procedure and Penalties Manual

Table DEPP TP 1

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision dates in force: | (6) Handbook provision coming into force |
|-----|---|-----|--|---|---|
| ... | | | | | |
| 3 | DEPP | G | DEPP 1 to DEPP 5 take effect on 28 August 2007, save to the extent described below: DEPP 1 to DEPP 5 do not apply to any <i>statutory notice</i> or related notice issued on or after 28 August where a <i>warning notice</i> , first <i>supervisory notice</i> or <i>decision notice</i> was given by the FSA <u>FCA</u> before 28 August in relation to the same matter. The procedure to be followed in respect of such <i>statutory notices</i> or related notices given on or after 28 August will be the same as that described in the Decision making manual (DEC) immediately before DEPP comes into effect. | From 28 August 2007 | 28 August 2007 |
| 4 | DEPP | G | DEPP 6 takes effect on 28 August 2007, save to the extent described below. The FSA's <u>FCA's</u> policy in respect of the imposition | From 28 August 2007 | 28 August 2007 |

| | | | | |
|--|--|---|--|--|
| | | and amount of penalty will continue to be as described in the Enforcement manual (ENF) in relation to any <i>statutory notice</i> or related notice given on or after 28 August where a <i>warning notice</i> , first <i>supervisory notice</i> or <i>decision notice</i> was given by the FSA <u>FCA</u> before 28 August in relation to the same matter. | | |
|--|--|---|--|--|

...

Sch 3 Fees and other required payments

...

Sch 3.2 G

| | |
|--|--|
| | The FSA's <u>FCA's</u> power to impose financial penalties is contained in: |
| | <u>Section 63A (Power to impose penalties) of the Act</u> |
| | <u>Section 66 (Disciplinary powers) of the Act</u> |
| | <u>Section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the Act</u> |
| | <u>Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the Act</u> |
| | <u>Section 91 (Penalties for breach of Part 6 Rules) of the Act</u> |
| | <u>Section 123 (Power to impose penalties in cases of market abuse) of the Act</u> |
| | <u>Section 131G (Power to impose penalty or issue censure) of the Act</u> |
| | <u>Section 192K (Power to impose penalty or issue censure) of the Act</u> |
| | <u>Section 206 (Financial penalties) of the Act</u> |
| | <u>Section 249 (Disciplinary measures) of the Act</u> |
| | <u>Section 312F (Financial penalties) of the Act</u> |

| | |
|--|--|
| | Section 345 (Disciplinary measures) of the <i>Act</i> |
| | Part III of Schedule 4 <u>1ZA</u> (The Financial Services <u>Conduct Authority</u>) to the <i>Act</i> |
| | ... |

Sch 4 Powers Exercised

Sch 4.1 G The following powers and related provisions in or under the *Act* have been exercised by the ~~FSA~~ FCA to make the statements of policy in *DEPP*:

| | |
|--|---|
| | ... |
| | Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and by paragraph 1 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i>) |
| | Section 88C (Action under s.88A: statement of policy) |
| | Section 89S (Action under s. 89Q: statement of policy) |
| | ... |
| | Section 157(1) (Guidance) <u>139A</u> (Power of the FCA to give guidance) |
| | Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i>) |
| | Section 192N (Imposition of penalties under section 192K: statement of policy) |
| | Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> and by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i>) |
| | Section 249 (Disciplinary measures) |
| | Section 312J (Statement of policy) |
| | Section 345D (Imposition of penalties on auditors or actuaries: statement of policy) |

Sch 4.2 G

| | |
|--|-----|
| | ... |
| The following additional powers and related provisions have been exercised by the FSA <i>FCA</i> to make the statements of policy in <i>DEPP</i> : | |
| | ... |

SCHEDULE A

Part 1

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Section 59 (Approval for particular arrangements) | Section 59 | |
| Section 72 (The competent authority) | Part VI | |
| Section 73A (Part 6 Rules) | Section 73A | |
| Section 74 (The official list) | Section 74 | |
| Section 75 (Applications for listing) | Section 75 | |
| Section 77 (Discontinuance and suspension of listing) | Section 77 | |
| Section 79 (Listing particulars and other documents) | Section 79 | |
| Section 80 (General duty of disclosure in listing particulars) | Section 80 | |
| Section 81 (Supplementary listing particulars) | Section 81 | |
| Section 84 (Matters which may be dealt with by prospectus rules) | Section 84 | |
| Section 85 (Prohibition of dealing etc in transferable securities without approved prospectus) | Section 85 | |
| Section 87 (Election to have prospectus) | Section 87 | |
| Section 87A (Criteria for approval of prospectus by competent authority) | Section 87A | |

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Section 87B (Exemptions from disclosure) | Section 87B | |
| Section 87G (Supplementary prospectus) | Section 87G | |
| Section 88 (Sponsors) | Section 88 | |
| Section 89 (Public censure of sponsor) | Sections 88A-88F | |
| Section 89A (Transparency rules) | Section 89A | |
| Section 89B (Provision of voteholder information) | Section 89B | |
| Section 89C (Provision of information by issuers of transferable securities) | Section 89C | |
| Section 89D (Notification of voting rights held by issuer) | Section 89D | |
| Section 89E (Notification of proposed amendment of issuer's constitution) | Section 89E | |
| Section 89F (Transparency rules: interpretation etc) | Section 89F | |
| Section 89G (Transparency rules: other supplementary provisions) | Section 89G | |
| Section 89O (Corporate governance rules) | Section 89O | |
| Section 96 (Obligations of issuers of listed securities) | Section 96 | |
| Section 96A (Disclosure of information requirements) | Section 96A | |
| Section 96C (Suspension of | Section 96C | |

| Column 1 | Column 2 | |
|---|--|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| trading) | | |
| Section 99 (Fees) | Schedule 1ZA, Paragraph 23. | |
| Section 99(1) and (2) (Fees) | Schedule 1ZA, Paragraph 23. | |
| Section 100 (Penalties) | Sections 312J and 312K, and schedule 1ZA, Part 2. | |
| Section 101 (Part 6 rules: general provisions) | Sections 101 and 137T. | |
| Section 118(8) (Market abuse) | Section 118(8) | |
| Section 136(2) (Funding of the legal assistance scheme) | Section 136(2) | |
| Section 138 (General rule-making power) | Section 137A | |
| Section 138(1) (General rule-making power) | Section 137A(1) | |
| Section 139 (Miscellaneous ancillary matters) | Section 137B | |
| Section 139(4) (Miscellaneous ancillary matters) | Section 137B(3) | |
| Section 139A (General rules about remuneration) | Sections 137H and 137I | |
| Section 140 (Restrictions on managers of certain collective investment schemes) | Section 137A(1) | |
| Section 141 (Insurance business rules) | Section 137A(1) | |
| Section 142(2) (Insurance business: regulations supplementing Authority's | Section 137A(1) | |

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| rules) | | |
| Section 144 (Price stabilising rules) | Section 137Q | |
| Section 145 (Financial promotion rules) | Section 137R | |
| Section 146 (Money laundering rules) | Section 137A(1) | |
| Section 147 (Control of information rules) | Section 137P | |
| Section 148(3) (Modification or waiver of rules) | Section 138A(3) | |
| Section 149 (Evidential provisions) | Section 138C | |
| Section 150(2) (Actions for damages) | Section 138D(3) | |
| Section 156 (General supplementary powers) | Section 137T | |
| Section 213 (The compensation scheme) (including as referred to in section 216(5) (Continuity of long-term insurance policies) and section 217(7) (Insurers in financial difficulties) | Section 213 | |
| Section 214 (General) | Section 214 | |
| Section 215 (Rights of the scheme in relevant person's insolvency) | Section 215 | |
| Section 216 (Continuity of long-term insurance policies) | Section 216 | |
| Section 217 (Insurers in financial difficulties) | Section 217 | |

| Column 1 | Column 2 | |
|---|--|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Section 218(2)(b) (Annual report) | Section 218(2)(b) | |
| Section 223 (Management expenses) | Section 223 | |
| Section 223C (Payments in error) | Section 223C | |
| Section 224F (Rules about relevant schemes) | Section 224F | |
| Section 226 (Compulsory jurisdiction) (including as applied by regulation 125 of the Payment Services Regulations 2009 (SI 2009/209)) | Section 226 | |
| Section 226A(7) (Consumer credit jurisdiction) | Section 226A(7) | |
| Section 229 (Awards) | Section 229 | |
| Section 234 (Industry funding) | Section 234 | |
| Section 238(5) (Restrictions on promotion) | Section 238(5) | |
| Section 239 (Single property schemes) | Section 239 | |
| Section 242 (Applications for authorisation of unit trust schemes) | Section 242 | |
| Section 247 (Trust scheme rules) | Section 247 | |
| Section 248 (Scheme particulars rules) | Section 248 | |
| Section 278 (Rules as to scheme particulars) | Section 278 | |

| Column 1 | Column 2 | |
|---|---|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Section 283(1) (Facilities and information in UK) | Section 283(1) | |
| Section 293 (Notification requirements) | Section 293 | |
| Section 293(1) (Notification requirements) | Section 293(1) | |
| Section 295 (Notification: overseas investment exchanges and overseas clearing houses) | Section 295 | |
| Section 300B (Duty to notify proposal to make regulatory provision) | Section 300B | |
| Section 322 (Rules applicable to former underwriting members) | None | |
| Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply) | Section 332(1) | |
| Section 340 (Appointment) | Section 340 | |
| Paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority) | Schedule 1ZA, Paragraph 23. | |
| Paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority) | Schedule 1ZA, Paragraph 23(1). | |
| Paragraph 12 of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body) | Paragraph 12 of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body) | |
| Paragraph 12(1) (Funding of the relevant costs by | Paragraph 12(1) (Funding of the relevant costs by | |

| Column 1 | Column 2 | |
|---|---|--|
| Provisions of the 2000 Act under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| authorised persons or payment service providers) of Part 2 of Schedule 1A (Further provision about the Consumer Financial Education Body) | authorised persons or payment service providers) of Part 2 of Schedule 1A (Further provision about the Consumer Financial Education Body) | |
| Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights) | Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights) | |
| Schedule 7 (The Authority as Competent Authority for Part VI) | Part VI | |
| Paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI) | Part VI and Schedule 1ZA Paragraph 23 | |
| Paragraphs 7(3) (Annual reports), 13 (Authority's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme) | Paragraphs 7(3) (Annual reports), 13 (Authority's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme) | |
| Paragraph 13(4) (Authority's procedural rules) of Schedule 17 (The Ombudsman Scheme) to the Act | Paragraph 13(4) of Schedule 17 | |

SCHEDULE A

Part 2

| Column 1 | Column 2 | |
|---|---|--|
| Provisions of other enactments under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228) | Regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228). | |
| Article 4(1) (Designation of pre-commencement provisions) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001 (SI 2001/1534) | Section 137A(1) | |
| Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman and Complaints Scheme) Order 2001 (SI 2001/2326) | Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman and Complaints Scheme) Order 2001 (SI 2001/2326) | |
| The Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 2001/2507) | None | |
| Articles 4 (Pending applications), 6 (Post-commencement applications), 9 (Article 9 defaults occurring before commencement), 9A | Articles 4 (Pending applications), 6 (Post-commencement applications), 9 (Article 9 defaults occurring before commencement), 9A | |

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of other enactments under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| (Contributions in relation to mesothelioma claims), 10 (Applications in respect of compulsory liability insurance), 12 (Applications under the new scheme) and 23 (Record-keeping and reporting requirements relating to pre-commencement) of the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 (SI 2001/2967). | (Contributions in relation to mesothelioma claims), 10 (Applications in respect of compulsory liability insurance), 12 (Applications under the new scheme) and 23 (Record-keeping and reporting requirements relating to pre-commencement) of the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 (SI 2001/2967). | |
| Articles 9 (Designation of existing provisions to take effect as rules) and 10 (Modifications of existing provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501) | Section 137A(1) | |
| Regulation 3 (Consumer contract requirements: modification of rule-making powers) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775) | Regulation 3 (Consumer contract requirements: modification of rule-making powers) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775) | |
| Regulation 2 (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000) of the | Regulation 2 (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000) of the | |

| Column 1 | Column 2 | |
|--|---|--|
| Provisions of other enactments under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706) | Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706). | |
| Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order (SI 2004/454) | Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order (SI 2004/454). | |
| Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221) | Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221) | |
| Regulation 82 (Reporting requirements) of the Payment Services Regulations 2009 (SI 2009/209) | Regulation 82 (Reporting requirements) of the Payment Services Regulations 2009 (SI 2009/209). | |
| Regulations 86 (Proposal to take disciplinary measures) and 93 (Guidance) of and paragraph 1 of Schedule 5 (Disciplinary powers) to the Payments Services Regulations 2009 (SI 2009/209) | Regulations 86 (Proposal to take disciplinary measures) and 93 (Guidance) of and paragraph 1 of Schedule 5 (Disciplinary powers) to the Payments Services Regulations 2009 (SI 2009/209). | |
| Regulation 92 (Costs of supervision) of the Payment Services Regulations 2009 (SI 2009/209) | Regulation 92 (Costs of supervision) of the Payment Services Regulations 2009 (SI 2009/209). | |

| Column 1 | Column 2 | |
|--|---|--|
| Provisions of other enactments under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| Regulation 49 (Reporting requirements) of the Electronic Money Regulations 2011 (SI 2011/99). | Regulation 49 (Reporting requirements) of the Electronic Money Regulations 2011 (SI 2011/99). | |
| Regulation 59 (Costs of supervision) of the Electronic Money Regulations 2011 (SI 2011/99). | Regulation 59 (Costs of supervision) of the Electronic Money Regulations 2011 (SI 2011/99). | |
| Articles 3 (Further power for Authority to make rules concerning mesothelioma claims) and 4 (Modification of FSMA in relation to FSA rules for mesothelioma claims) of the Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 (SI 2006/3259) | None | |
| Regulations 8 (Applications for registration), 9 (Applications for admission to the register of issuers), 18 (Notification requirements), 20 (Material changes to the regulated covered bond), 24 (Requirements relating to the asset pool), 25 (Change of owner), 36 (financial penalties policy statement), 46 (Modifications of primary and secondary legislation) of, and paragraph 5 (fees) to the Schedule (Modifications to primary and secondary legislation) to, the Regulated Covered Bonds Regulations 2008 (SI 2008/346) | Regulations 8 (Applications for registration), 9 (Applications for admission to the register of issuers), 18 (Notification requirements), 20 (Material changes to the regulated covered bond), 24 (Requirements relating to the asset pool), 25 (Change of owner), 36 (financial penalties policy statement), 46 (Modifications of primary and secondary legislation) of, and paragraph 5 (fees) to the Schedule (Modifications to primary and secondary legislation) to, the Regulated Covered Bonds | |

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of other enactments under which the Authority made rules | Corresponding provisions: Financial Conduct Authority | |
| | Regulations 2008 (SI 2008/346). | |

SCHEDULE A**Part 3**

| Column 1 | Column 2 | |
|---|--|--|
| Provisions of the 2000 Act under which the Authority issued codes | Corresponding provisions: Financial Conduct Authority | |
| Section 64(2) (Conduct: statements and codes) | Section 64(2) | |
| Section 119 (The code) | Section 119 | |
| Section 120 (Provisions included in the Authority's code by reference to the City Code) | Section 120 | |
| Section 121 (Codes: procedure) | Section 121 | |

SCHEDULE A

Part 4

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of the 2000 Act under which the Authority issued statements | Corresponding provisions: Financial Conduct Authority | |
| Section 63C(1) (Statement of policy) | Section 63C(1) | |
| Section 64 (Conduct: statements and codes) | Section 64 | |
| Section 64(1) (Conduct: statements and codes) | Section 64(1) | |
| Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the Payment Services Regulations 2009 (SI 2009/209) and paragraph 1 of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99).) | Section 69 | |
| Section 69(1) (Statement of policy) | Section 69(1) | |
| Section 93 (Statement of policy) | Section 93 | |
| Section 93(1) (Statement of policy) | Section 93(1) | |
| Section 124 (Statement of policy) | Section 124 | |
| Section 124(1) (Statement of policy) | Section 124(1) | |
| Section 131J(1) (Statement of policy) | Section 131J(1) | |
| Section 165B(6) (Safeguards etc in relation to exercise of power under section 165A) | None | |

| Column 1 | Column 2 | |
|---|--|--|
| Provisions of the 2000 Act under which the Authority issued statements | Corresponding provisions: Financial Conduct Authority | |
| Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the Payment Services Regulations 2009 (SI 2009/209) and paragraph 3 of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99).) | Section 169(9) | |
| Section 210 (Statements of policy) (including as applied by regulation 86(6) of the Payment Services Regulations 2009 (SI 2009/209) and regulation 53 (6) of the Electronic Money Regulations 2011 (SI 2011/99).) | Section 210 | |
| Section 210(1) (Statements of policy) | Section 210(1) | |
| Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the Payment Services Regulations 2009 (SI 2009/209) and paragraph 8 of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99).) | Section 395 | |
| Section 395(5) (The Authority's procedures) | Section 395(5) | |
| Section 404(3) (Consumer redress schemes) | Section 404(3) | |
| Section 404A (Rules under s404: supplementary) | Section 404A | |

SCHEDULE A

Part 5

| Column 1 | Column 2 | |
|--|---|--|
| Provisions of other enactments under which the Authority issued statements | Corresponding provisions: Financial Conduct Authority | |
| Regulation 42 (Guidance) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346) | Regulation 42 (Guidance) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346). | |
| Regulation 44 (Warning notices and decision notices) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346) | Regulation 44 (Warning notices and decision notices) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346). | |
| Regulation 93 (Guidance) of the Payment Services Regulations 2009 (SI 2009/209) | Regulation 93 (Guidance) of the Payment Services Regulations 2009 (SI 2009/209). | |
| Regulation 60 (Guidance) of the Electronic Money Regulations 2011 (SI 2011/99). | Regulation 60 (Guidance) of the Electronic Money Regulations 2011 (SI 2011/99). | |

SCHEDULE A

Part 6

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of the 2000 Act under which the Authority directed, required or specified: | Corresponding provisions: Financial Conduct Authority | |
| Section 51 (Applications under this Part) | Section 55U | |
| Section 60 (Applications for approval) | Section 60 | |
| Section 148(3) (Modification or waiver of rules) | Section 138A(3) | |
| Section 182 (Notification) | Section 179 | |
| Section 218A (Authority's power to require information) | Section 218A | |
| Section 242 (Applications for authorisation of unit trust schemes) | Section 242 | |
| Section 250 (Modification or waiver of rules) | Section 250 | |
| Sections 250(4) and (5) (Modification or waiver of rules) | Sections 250(4) and (5) | |
| Section 270(6)(b) (Schemes authorised in designated countries or territories) | Section 270(6)(b) | |
| Section 274 (Applications for recognition of individual schemes) | Section 274 | |
| Section 287 (Application by an investment exchange) | Section 287 | |
| Section 294 (Modification or waiver of rules) | Section 294 | |
| Section 294(2) (Modification or waiver of rules) | Section 294(2) | |

| Column 1 | Column 2 | |
|--|---|--|
| Provisions of the 2000 Act under which the Authority directed, required or specified: | Corresponding provisions: Financial Conduct Authority | |
| Section 316 (Direction by Authority) | Section 316 | |
| Section 317 (The core provisions) | Section 317 | |
| Section 318 (Exercise of powers through Council) | Section 318 | |
| Paragraph 5(4) (Notice to Authority) of Schedule 4 (Treaty Rights) | Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights) | |

SCHEDULE A

Part 7

| Column 1 | Column 2 | |
|--|---|--|
| Provisions of other enactments under which the Authority directed, required or specified | Corresponding provisions: Financial Conduct Authority | |
| Regulations 7(3) and (4) (Modification or waiver of FSA rules) and 12 (Application for authorisation) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228) | Regulations 7(3) and (4) (Modification or waiver of FSA rules) and 12 (Application for authorisation) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228). | |
| Regulation 49 (Reporting requirements) of the Electronic Money Regulations 2011 (SI 2011/99). | Regulation 49 (Reporting requirements) of the Electronic Money Regulations 2011 (SI 2011/99). | |

SCHEDULE A

Part 8

| Column 1 | Column 2 | |
|---|--|--|
| Provisions of the 2000 Act under which the Authority made complaints schemes | Corresponding provisions: Financial Conduct Authority | |
| Paragraph 7 (Arrangements for the investigation of complaints) of Schedule 1 (The Financial Services Authority) | Part 6 of the Financial Services Act 2012 | |

SCHEDULE A

Part 9

| Column 1 | Column 2 | |
|--|--|--|
| Provisions of the 2000 Act under which the Authority gave guidance | Corresponding provisions: Financial Conduct Authority | |
| Section 157 (Guidance) | Section 139A | |
| Section 157(1) (Guidance) | Section 139A(1) | |
| Section 158A (Guidance on outsourcing by investment firms and credit institutions) | None | |

SCHEDULE A

Part 10

| Column 1 | Column 2 | |
|---|---|--|
| Provisions of other enactments under which the Authority gave guidance | Corresponding provisions: Financial Conduct Authority | |
| Article 11(1) (Guidance) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001 (SI 2001/1534) | Section 139A(1) | |
| Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501) | Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501) | |
| Articles 9D (Applications for certificates) and 9F (Revocation of certificate on request) of the Regulated Activities Order | Articles 9D (Applications for certificates) and 9F (Revocation of certificate on request) of the Regulated Activities Order | |
| Articles 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the Regulated Activities Order | Articles 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the Regulated Activities Order | |
| Section 123 of the Banking Act 2009 | Section 123 of the Banking Act 2009 | |

| Column 1 | Column 2 | |
|---|--|--|
| Provisions of other enactments under which the Authority gave guidance | Corresponding provisions: Financial Conduct Authority | |
| Regulation 14 (Guidance) of the Cross-Border Payments in Euro Regulations 2010 (SI 2010/89) | Regulation 15 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (SI 2012/3122) | |
| Regulation 60 (Guidance) of the Electronic Money Regulations 2011 (SI 2011/99). | Regulation 60 (Guidance) of the Electronic Money Regulations 2011 (SI 2011/99). | |