

Issuing statutory notices – a new approach to decision makers

Policy Statement

PS21/16

November 2021

This relates to

Consultation Paper 21/25
which is available on our website at
www.fca.org.uk/publications

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Contents

1	Summary	3
2	Proposals to move some statutory notice decisions from the RDC to the Executive and categories of decision	8
3	Changes to decision-making under Executive Procedures and other modifications	15
Annex 1		
	List of non-confidential respondents	22
Annex 2		
	Abbreviations used in this paper	24
Appendix 1		
	Made rules (legal instrument)	



Moving around this document

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1 Summary

- 1.1** We are setting out changes to our Enforcement Guide (EG) and Decisions Procedure and Penalties Manual (DEPP) to streamline our decision-making and governance to enable us to be more effective and efficient in stopping harm to consumers and markets.
- 1.2** In July 2021, we consulted on moving some decision-making on statutory notices from our Regulatory Decisions Committee (RDC) to Executive Procedures so that the RDC would focus on contentious enforcement cases. Decisions under Executive Procedures would focus on areas where we need to prevent or stop harm to consumers or the market occurring or increasing, by preventing firms from offering financial services in the first place or intervening to restrict the financial services offered to consumers. We also proposed some modifications to our existing Executive Procedures framework.
- 1.3** This Policy Statement (PS) summarises the feedback we received to our Consultation Paper (CP21/25) and our response and sets out the final changes to our Handbook.

Who this affects

- 1.4** This PS is likely to interest:
- regulated firms
 - individuals working in financial services
 - consumer groups and individual consumers
 - industry groups/trade bodies
 - policy makers and regulatory bodies
 - industry experts and commentators

The wider context of this policy statement

Our consultation

- 1.5** The environment in which we operate is changing rapidly. There have been dramatic changes to the financial services regulatory landscape, reflective of the wider economic, technological and social changes, as well as the challenges of the pandemic and the UK's exit from the EU.
- 1.6** To tackle the challenges faced by consumers and industry, we need to make faster and more effective decisions to promote the right outcomes for consumers, markets and firms. This need for change was also made clear in the criticisms and recommendations set out in the independent reviews into our regulation of London Capital & Finance (LCF) and the Connaught Income Fund Series 1 and connected companies (Connaught).

- 1.7** We accepted the 9 recommendations addressed to us in the LCF Review and the 5 lessons identified in the Connaught Review and embarked on a wide-ranging Transformation programme to implement the recommendations and build a data-led regulator able to make fast and effective decisions.
- 1.8** The decisions we make affect how and when consumers are protected from firms which do not meet our regulatory standards. We want to prevent and stop harm faster and more effectively. To do that, we need to focus on making changes to areas within our control and be more accountable; with more clarity about what we are doing and why, and what difference we are trying to make. We reviewed our RDC functions, asking whether we could make decisions on authorisation and cancellation issues or on supervisory interventions in a more streamlined way.
- 1.9** We identified that the following changes would enable us to make decisions faster and more effectively:
- the RDC should focus on significant misconduct cases, where the harm has already materialised and the issue is what, if any, sanctions are appropriate
 - a greater degree of decision-making should be allocated to the Executive, to place greater responsibility and accountability with FCA staff
 - greater willingness to be more assertive in the use of our powers when we identify concerns with the potential to cause or increase harm to consumers
- 1.10** Consequently, in CP21/25 we consulted on moving the following categories of decision from the RDC to the Executive – decisions:
- relating to a firm's authorisation or an individual's approval
 - to use our own-initiative intervention powers to impose a fundamental variation of permission or requirement in relation to a firm (DEPP 2.5.8G defines fundamental variation or requirement)
 - to take action in straightforward cancellation cases because a firm does not meet our regulatory requirements, and that action is contested
 - to commence civil proceedings, such as seeking an injunction
 - to commence criminal proceedings, such as a prosecution for insider dealing
- 1.11** We also consulted on how decisions are made under our Executive Procedures framework. We proposed amending the definition of Senior Staff Committee so it would comprise a minimum of two, rather than three people. We said that where a decision is made under Executive Procedures, we would take account of written representations, and in exceptional circumstances allow recipients to make oral representations.
- 1.12** We did not propose to change the Executive Procedures framework to align it with the RDC's process. As such, staff responsible for taking the statutory notice decision would be advised by FCA lawyers who have also supported our staff who are recommending we take action. We said we would also retain the existing approach to disclosing communications between our staff recommending the decision and those responsible for the decision to give a statutory notice.
- 1.13** We also proposed a change to our policy in our EG 8.3 by removing the requirement for urgency before we can take a decision on an own-initiative basis.

1.14 The consultation period closed on 17 September 2021.

Summary of feedback and our response

1.15 We received 32 responses from a range of stakeholders, including regulated firms, law firms, compliance consultancy firms, trade bodies and individuals.

1.16 The vast majority of respondents agreed with the aims of the proposals but did not agree with how we would implement them. There was a concern that speed and efficiency were being emphasised unduly and would increase the potential risk of a lack of fairness and objectivity in decision-making.

1.17 Most respondents who opposed the changes did so on the basis that the RDC is seen as an essential element in providing procedural fairness because of its ability to act as a check and balance on the Executive, and because of its independence and objectivity. Concerns were raised about the risk of bias and the difficulty of maintaining proper separation between the process of investigation and the decision being made under Executive Procedures. It was felt by some that the operational independence of the RDC made these risks easier to avoid.

1.18 We have carefully considered whether to make any changes in light of the comments received in consultation, but we intend to implement our proposals as consulted on. We recognise that the desire to intervene more quickly must be balanced with procedural fairness. However, we believe that our Executive Procedures, through which a number of decisions on authorisations and interventions are already made, do provide a fair process.

1.19 Our Executive Procedures comply with the statutory requirement that the decision is taken by a person not directly involved in establishing the evidence in most cases, and subject to those provisions, the decision maker and procedure are a matter for our discretion. There is no additional legislative requirement that the decision is made by committee, or that our processes permit oral representations, or require separate legal advice.

1.20 The important elements of any fair decision-making procedure are that the subject of any proposed decision is informed of:

- the nature of the proposed decision
- the reasons for coming to that decision
- and the supporting information and materials that have been relied on

1.21 The subject should then have the opportunity to make representations that are carefully considered before the decision maker finalises any decision.

1.22 Our Executive decision-making process enables decisions to be made which are fair and reasonable; that take all relevant factors into account including representations from the subject, are proportionate, and supported by the evidence. More detail on the feedback we received, and our response, is provided in Chapter 2 and Chapter 3.

How it links to our objectives

- 1.23** The changes to our decision-making and Executive Procedures will help us promote our statutory objectives. The decisions we make affect how and when consumers are protected and help address issues of market integrity where firms do not meet our regulatory standards. While the identity of the decision maker will change, we believe this will enable us to act more decisively and swiftly where the greatest levels of harm exist.

What we are changing

- 1.24** This PS confirms we are making the changes to the Handbook (DEPP and EG) as proposed in our consultation. This transfers decision-making from the RDC to Executive Procedures in certain authorisations, interventions, straightforward cancellation cases and decisions whether to commence civil and criminal proceedings.
- 1.25** We are also making the changes to the Handbook to modify the Executive Procedures framework to provide additional flexibility.

Outcome we are seeking

- 1.26** As we noted in CP21/25, we expect that as a result of the changes, decisions will be made under Executive Procedures where we need to prevent firms or individuals from offering financial services, or we need to intervene quickly to prevent or stop harm to consumers or the market occurring or increasing.
- 1.27** The RDC will focus on contentious enforcement cases. These cases often involve proposals to impose a sanction or disciplinary measure against a firm or individual and will often concern historical misconduct. They are usually less time critical than the decisions which we propose to transfer to Executive Procedures.
- 1.28** Our Executive decision makers already take numerous decisions including where we propose to restrict the regulated activities of a firm. We are now bringing more decisions under the same decision-making framework where the greatest and most immediate harm exists. This will ensure greater consistency of decision-making and a proportionate response to the greatest consumer harm.
- 1.29** The changes we are making will not compromise the rights and protections that firms and individuals who are subject to these processes have; we will remain transparent and accountable for all our decisions made through both the RDC and Executive process. We recognise that poor decision-making and ineffective processes can lead to complaints and challenges to those decisions and we are committed to ensuring that both processes support fair and consistent decision-making.

Measuring success

- 1.30** The changes should result in a more flexible approach and enable decisions to be made more quickly, efficiently and effectively. The likelihood of success in achieving those outcomes is inextricably linked to the effectiveness of our Transformation programme so that these proposals are implemented effectively with adequate resourcing and oversight. This includes improving the speed at which cases are delivered to decision makers and reconsidering our risk appetite.
- 1.31** This will require ongoing training of Executive decision makers and monitoring of decisions and outcomes. Our Transformation programme has already developed:
- detailed processes, capability and training and the support necessary for practical implementation of these changes
 - an approach to monitoring decisions including quality assurance processes
- 1.32** As part of our commitment to improve operational effectiveness, we recognise the importance of transparency around our processes and decisions. We will carry out a 6 month post-implementation review to assess the effectiveness of the changes, and we will include in our Annual Report similar data on Executive decisions and outcomes that is currently provided for the RDC once such data is available.

Equality and diversity considerations

- 1.33** We have considered the equality and diversity issues that may arise from the proposals when consulting and in this PS.
- 1.34** In CP21/25, we explained that we did not consider the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals when monitoring implementation and their effectiveness.

Next steps

- 1.35** The changes to DEPP and EG in Appendix 1 will come into force on 26 November 2021.

2 Proposals to move some statutory notice decisions from the RDC to the Executive and categories of decision

- 2.1** In CP 21/25 we consulted on the proposal to move some statutory notice decisions from the RDC to the Executive. As a result of these changes, the RDC would focus on significant misconduct cases, where the harm has already materialised and the subject needs to be penalised for the failure. Such cases could involve proposals to impose a sanction or disciplinary measure against a firm or individual.
- 2.2** Decisions under Executive Procedures would focus on situations where we need to intervene to prevent or stop harm, or prevent harm from increasing, to consumers or the market, where the exercise of a power involves making regulatory judgments. In these matters we will often need to act decisively and swiftly. This could be through the use of our statutory intervention powers, or through authorisation or cancellation decisions.
- 2.3** Decisions to commence civil or criminal proceedings are different in nature to our other proposals, but in those cases of serious misconduct, it is the Court process that will determine these issues. The RDC sign-off requirement is an additional step in the process that we believe can be removed to improve efficiency without impacting on the quality of the decision-making which will be made through the judicial process.
- 2.4** In this chapter we summarise the feedback on the proposals to move some statutory notice decisions from the RDC to the Executive and set out our response below.

Changes to the decision maker

- 2.5** In CP 21/25 we set out our proposals to move decision-making from the RDC to the Executive in authorisations cases, interventions cases, straightforward cancellation cases and for decisions to commence civil and criminal proceedings.
- 2.6** We asked respondents the following question:
- Q1:** *Do you agree with the proposal to move some statutory notice decisions from the RDC to the Executive? Please give reasons for your answer.*
- 2.7** A couple of respondents supported the proposal to move some of the statutory notice decisions from the RDC to the Executive, other respondents were supportive subject to appropriate processes and safeguards being put in place. The majority of respondents raised concerns about the proposal, a number were not opposed to some of the categories of decision being moved over from the RDC to the Executive but did not agree with all those categories proposed. Others thought all the statutory decisions being consulted on should remain with the RDC.
- 2.8** Many of the respondents who opposed the proposal felt that the RDC offered independence and objectivity, providing a procedural safeguard which is viewed

as important in maintaining confidence in the fairness of the decision-making. Respondents were concerned that the proposals would impact on the fairness and quality of the decision-making.

- 2.9** Other respondents were concerned about the separation between those providing the information to support a decision and the decision maker. There were concerns that there may be a conflict of interest or lack of operational independence.
- 2.10** Some were concerned that by moving statutory notice decisions away from the RDC to the Executive there would be a loss of experience and diversity of thought with an increased risk of 'groupthink' and organisational thinking.
- 2.11** A couple of respondents said it would be important to ensure that the relevant FCA decision makers have the relevant skills and expertise to take such decisions.
- 2.12** One respondent said it would be important to have robust governance procedures in place to ensure procedural fairness and transparency.

Our response

We have reviewed all of the responses carefully and noted the overall concerns about the proposals. We also considered other ways of achieving our objectives. For example, making further changes to our existing processes and keeping current arrangements regarding decision makers. For the reasons set out below, we do not consider that this would achieve the optimal outcomes for consumers and firms.

We understand that the overriding concerns are that Executive Procedures will not provide the same fairness and quality of decisions that are currently made by the RDC. However, our review of the responses suggests that the perception that Executive Procedures may somehow be unfair may have been in part caused by potential misunderstanding; for example, some respondents appeared to believe that the RDC is a body wholly independent of the FCA and that this provides a necessary procedural safeguard. Although the RDC is not wholly independent (being a committee of the FCA Board), some respondents suggested that it is the structural separation of the RDC which gives the market confidence that those making the decision are not involved in prior evidence gathering, and there was a concern that under the new procedures that Executive decision makers would be involved in the investigation leading to the decision.

We recognise that the RDC is a well-regarded part of the FCA regulatory process and the RDC will remain the decision maker in those cases where we propose some form of sanction, for example a penalty or a prohibition.

However, the structure and procedures of the RDC are not required by our statutory framework. This requires separation between the person who decides that we should give a warning or decision notice and the gathering of the evidence on which that decision is based. There is no

requirement for statutory decisions to be made by a committee, or for the decision maker to be independent from us.

Both the RDC and Executive Procedures fulfil the statutory requirement for appropriate separation of decision makers. Beyond this statutory requirement, an administrative decision-making process must be fair to those who are subject to the decision. This requires that the decision maker must make a decision having taken into account all relevant circumstances including the representations of the subject of the decision. The decision maker under our Executive Procedures (whether committee or individual) will be an experienced member of FCA staff who will usually be from the industry area where the decision is to be made. They will be separate from the gathering of evidence upon which the decision is based. Accordingly, we believe they will be in a strong position to make a lawful, reasonable and proportionate regulatory decision having taken into account all relevant circumstances.

Our Executive decision makers already take numerous interventions decisions including where we proposed to restrict the regulated activities of a firm. We are now bringing all interventions decisions under the same decision-making framework which we consider will enable decisions to be made most efficiently and effectively.

We recognise that poor decision-making and ineffective processes can lead to complaints and challenges to those decisions and we are committed to ensuring that both processes support fair and consistent decision-making. However, if the subject of a decision does wish to challenge the decision (either made by the Executive or RDC) they are able to do so via the Upper Tribunal process which will hear the subject's case afresh.

A number of respondents did not object to our proposals but did express the view that they would like reassurance that the appropriate training, governance and oversight is in place to support decisions made through Executive Procedures.

We are committed to procedural fairness and high-quality decision-making, and have built internal processes and supporting infrastructure designed to deliver the successful implementation of our proposals and support for fair and timely decisions:

- Training: our Executive decision makers have received bespoke training which we will refresh on an ongoing basis and for all new relevant staff
- Separation of decision-making: clear process maps for decision-making, with required action points at various stages of the process. These include requirements to consider and record how separation of decision makers and management of any conflicts of interest have been addressed
- Legal advice: in addition to the legal advice that will be obtained in relation to any proposed decision, legal advice will also be obtained on issues of separation and conflicts of interest if necessary. Support and advice from Enforcement, our General Counsel Division and other specialist departments will also be obtained where needed

- Governance & oversight: we have developed a monitoring framework to ensure oversight of decisions, including quality assurance processes. We are building in a feedback loop and lessons learnt to ensure consistency of decision-making

The regulatory landscape has changed a great deal since our original processes were put in place, with rapid technological changes, the digitalisation of financial services, the emergence of new products and services and as a result, changes to the way consumers access and use financial services. The threat landscape has shifted for consumers, with fraudsters and scammers benefitting from new technologies and new consumers being drawn to high-risk markets and products. We need to adapt to ensure we tackle this increased harm to consumers. We are therefore going to implement the changes as consulted on. We believe the changes will support us in making decisions more quickly and effectively with the aim of reducing harm for the benefit of consumers.

Categories of decision

2.13 In addition, we asked the following:

Q2: *Do you agree with the categories of decision that we suggest? If not, which statutory notice decisions do you consider the RDC should keep? And which statutory notice decisions should be made under Executive Procedures?*

2.14 A couple of respondents said that all the categories of decision set out in the CP should remain with the RDC. Reasons for this included the view that the RDC provides independence and a wider view which is important to the decisions being made. It was said that the RDC builds a level of accountability and acts as a check and balance. This helps ensure confidence in the process and a change to that would erode trust with decisions being impacted by organisational thinking.

2.15 Others said that all categories should remain with the RDC with the exception of the decision to commence civil proceedings, with some respondents also agreeing that the decision to commence criminal proceedings could be moved to Executive Procedures too. Reasons given included the view that the RDC play an important safeguarding role supported by separate legal advisers, and access to communications. It was also said that transferring the decisions from the RDC to the Executive is likely to lead to a view on the part of the subjects that the process is not sufficiently transparent and fair.

2.16 Other respondents said that only straightforward cases should be transferred to Executive decision makers, with the RDC retaining anything more complex so that in complex cases the decisions are made by those with industry experience. One respondent said that if the firm or individual objects to the decision proposed, the decision should be referred to the RDC.

2.17 One respondent suggested that the RDC should remain the decision maker for statutory notices where the decision is not urgent. One said that the distinction should be between cases where the proposal is to remove a substantive right and cases where a new right is to be granted, with the former remaining with the RDC so as to benefit from additional safeguards that it viewed the RDC provides.

2.18 Another respondent highlighted that the proposals are based on a distinction between disciplinary and supervisory decisions, which is not necessarily a significant distinction for firms or their representatives. A couple of respondents wanted additional detail on the proposals, in particular on the intended decision maker which one respondent thought should be provided before the proposals are introduced. The other wanted further detail on how decisions can be challenged and the process to challenge.

Authorisations decisions

2.19 One respondent said that for more straightforward authorisations decisions, for example those that fall within the category of a core SMCR firm, the decisions could be made under Executive Procedures. However, more complex authorisations should stay with the RDC.

2.20 A number of respondents said that the RDC should retain responsibility for authorisation decisions that are contested. Reasons for this included concerns that decision makers might lack understanding of the issues at hand and there would not be sufficient challenge to decisions. Another thought where the decision to refuse an individual application for authorisation is contested, that this decision should be made by the RDC, as it was felt the cost of referring to the Upper Tribunal is too expensive for individual applications.

2.21 One respondent noted that smaller firms may be more impacted by authorisations and approval decisions being moved to Executive Procedures, noting that the impact of not having an approval given will potentially have a career or business-altering impact. The respondent said that where a smaller firm does not have a dedicated supervisor, they may not have had the opportunity to discuss the decision and are therefore at more risk of unfair treatment by the removal of the RDC than larger organisations where there is likely to have been discussion prior to any action.

Interventions decisions

2.22 A couple of respondents thought the RDC should remain the decision maker in all the specified interventions case noting that interventions can have a significant impact on the firms and on the regulatory system. Other respondents said the distinction between fundamental and non-fundamental interventions should be maintained, with fundamental interventions remaining with the RDC, given the impact they could have on the firms and individuals involved. One respondent was concerned about interventions decisions being made under Executive Procedures in cases that might be viewed as 'borderline', and which could have an impact on the firm which is ultimately just as significant as enforcement action.

2.23 Other respondents thought that in more complex intervention cases the RDC should retain authority. Another thought a distinction could be made between large firms which are systemically important, and where intervention action could have a wide-ranging impact, and which would benefit from RDC review.

Cancellations decisions

- 2.24** Many respondents did not oppose straightforward cancellation cases being dealt with through the Executive Procedures. One respondent sought clarification on what was meant by a “straightforward cancellation” case. Another pointed out that cancellation cases are not always straightforward and can involve analysis of a firm’s business model, for example. It was noted that cancellation cases can often have a terminal effect on a business and in turn impact on the livelihood and reputation of the individuals involved.
- 2.25** Other respondents agreed that the RDC should remain the decision maker in cancellation cases where a disciplinary sanction or prohibition order is proposed.

Commencing civil proceedings

- 2.26** A number of respondents agreed with the proposal to move decisions on the commencement of civil proceedings. Reasons for agreement included the need to move quickly (for example if an urgent injunction is being sought), that decisions to commence such proceedings involved experienced FCA staff, and that once the court process commences there is independent judicial scrutiny.
- 2.27** One respondent noted that the independence of the decision maker and the staff providing legal advice on the proceedings will be important, and that in a case of a conflict of interest the decision maker should be able to refer the decision to the RDC.
- 2.28** Other respondents disagreed with the proposal and were concerned about such decisions being moved to Executive Procedures. One respondent suggested that complex civil proceedings should remain with the RDC. Another said that legal proceedings issued by the FCA can have reputational and cost implications for the firms and individuals involved, and in challenging cases there may be merit in the FCA being able to seek the RDC’s review of the decision.

Commencing criminal proceedings

- 2.29** A couple of respondents raised concerns with the proposal to move decisions relating to the commencement of criminal proceedings to the Executive Procedures given the serious nature of such proceedings. One respondent said that there is a benefit in maintaining the RDC as the decision maker to ensure there is a fresh pair of eyes, particularly given the consequences of criminal proceedings for those involved. Another said the decision to commence complex criminal proceedings should stay with the RDC. One highlighted the importance of the RDC in testing and challenging the decision to commence proceedings, which can have significant effects on those involved.

Our response

We have considered the categories of decision in light of the comments made, particularly in light of suggestions regarding the complexity and potential impact of cases. However, on balance, we are going to proceed with our proposals to move the categories of decisions set out in CP 21/25 to Executive Procedures.

Intervention decisions are often time critical and are largely protective measures where the harm has not yet crystallised and it is therefore important to act quickly to stop any more or future harm occurring.

In authorisations cases, the speed of decision-making can be critical to preventing consumer harm and for informing a firm of whether they are permitted to operate. The changes will streamline our approach, so there will no longer be cases involving two sets of decision makers. The proposals will enable us to work more efficiently and avoid duplication.

In CP 21/25 we used the term “straightforward cancellations”. The types of cases we are referring to here are those cases where the relevant facts and considerations are not complex. Such cases may involve, for example, firms who have failed to pay their regulatory fees, firms that have failed to submit the relevant regulatory returns, or firms that are failing to meet our Threshold Conditions. We consider that it is consistent with decision-making under the new cancellation procedures, that such cases are brought under the same decision-making framework to enable decisions to be made most efficiently and effectively. As we explained in CP 21/25, in cases where the issues are more complex and investigators are appointed, decisions will remain with the RDC.

In all of these areas, decisions made by the Executive will be determined in an area that deals with the relevant sector or market and at an appropriate level of seniority. We consider this will help address concerns that decisions would be made by those without sufficient experience.

For decisions to commence civil and criminal proceedings, we believe it is appropriate to allocate these types of decisions to the Executive. The decision to commence such proceedings often requires us to move quickly, for example where we are seeking an urgent injunction. There is a benefit in removing the duplication of decision-making so avoiding another layer of process that requires additional work and adds time to coming to a decision. In most cases we will also seek advice and input from subject matter experts.

These categories of decision can be distinguished from enforcement cases where the harm has already materialised, where there is suspected serious misconduct and where we are seeking to sanction or discipline the subject of the decision. These cases will be retained by the RDC.

3 Changes to decision-making under Executive Procedures and other modifications

- 3.1 In CP 21/25 we set out proposed changes to our Executive Procedures. Our Executive Procedures decision-making framework is already well established and set out in DEPP.
- 3.2 We proposed some changes to the framework to provide additional flexibility by amending the definition of Senior Staff Committee.
- 3.3 We also proposed that where the decision is made by the Executive, representations would be made through a written representation procedure with oral representations permitted in exceptional circumstances.
- 3.4 We proposed maintaining the current arrangements under Executive Procedures in respect of legal advisers and the disclosure of communications between FCA staff and the decision maker. We also proposed a change to our policy in EG 8.3.
- 3.5 In this chapter we summarise the feedback on the proposals to amend our Executive Procedures and set out our response below.

Changes to the definition of Senior Staff Committee

- 3.6 Under Executive Procedures, a decision may be made by an individual or committee. We proposed amending the definition of Senior Staff Committee meeting so that it would comprise a minimum of two rather than three people. DEPP already provides for a decision to be made by two people so our proposed change would bring the definition of Senior Staff Committee in to line with other parts of DEPP.
- 3.7 We asked respondents:
 - Q3:** *Do you agree with the proposed changes to the definition of Senior Staff Committee meeting under Executive Procedures? Please give reasons for your answer*
- 3.8 Some respondents agreed with this proposal on the basis that it would bring the definition in line with other parts of DEPP. Others agreed with the proposal on the basis that it is consistent with legislative requirements. A number of respondents disagreed with our proposal to change the definition of Senior Staff Committee meeting. Some suggested that the change from three people to two people would result in a loss of broader perspectives and diversity of thought, with a resulting impact on the quality of decision-making and the perception within the regulated community of the quality of decision-making. Others thought the proposal risked one member of the committee having influence over the decision-making process.
- 3.9 Some respondents said that it would be important to set out a clear procedure for when there is deadlock between the committee members and were not clear how the proposal would work if a vote was required.

- 3.10** Some respondents were concerned about independence and in particular raised concern around one of the two committee members being involved in establishing the evidence. Others were concerned about the impact it might have on legal advisers advising both our staff recommending the action and those making the decision and the impact that this could have in the confidence of the decision-making.
- 3.11** One respondent said any reduction in the size of the committee would need to be accompanied by ensuring the decision makers have the appropriate skill and experience. Another said there should be a level of oversight and accountability for the decision makers involved. One was concerned about the reduction from three to two and the resulting impact this could have on the consideration given to each decision if more decisions are taken by fewer decision makers.

Our Response

We have considered the feedback and are going to proceed with the changes to the definition of Senior Staff Committee. This would bring the definition of Senior Staff Committee in line with other parts of DEPP.

The representations process

- 3.12** Under the current process, recipients of our statutory notices can make representations to us about the action covered by the notice. Recipients of a warning notice, which proposes the action we are minded to take, have a statutory right to make representations to us on the content of the notice. This means we will consider representations before deciding to take action.
- 3.13** Recipients of a first supervisory notice can also have the option to make representations. However, we can issue a supervisory notice which takes immediate effect. This means the opportunity to make representations to us will arise after we have decided that action should be taken.
- 3.14** As we said in CP 21/25, we currently take account of written and oral representations and have reviewed our current procedures for considering oral representations. We proposed that for statutory notice decisions to be made under Executive Procedure, we will take account of written representations, and in exceptional circumstances will allow recipients to make oral representations. These could be made in addition to written representation or as an alternative.
- 3.15** We asked respondents the following questions:
- Q4:** *Do you agree with the proposal that oral representations may only be made to Executive decision makers in exceptional circumstances? If not, please give reasons for your answer*
- Q5:** *Do you agree with the proposed definition of exceptional circumstances? If not, please explain how you would define exceptional circumstances.*

- 3.16** An overwhelming majority of respondents did not support the proposal that oral representations would be heard by Executive decision makers only in exceptional cases.
- 3.17** Some respondents considered that oral representations should be permitted in all cases and others suggested a test with more discretion of the decision maker to decide when this was appropriate.
- 3.18** The predominant concern raised was the effect that limiting oral representations would have on perception of fairness of the process and on the ability to make effective representations. Some respondents felt that the chance to make oral representations gives them assurance that their points have been taken into account by the decision maker. A couple of respondents were particularly concerned about the impact that the change could have on smaller firms. Many respondents noted that oral representations are seen as an important safeguard, and it provides an opportunity for conveying points to FCA and provides an opportunity for interrogation.
- 3.19** A couple of respondents suggested that any increase in speed or efficiency from the proposal could be lost if there are increased referrals to the Upper Tribunal of FCA decision. Other respondents suggested that any delays could be managed by setting tight deadlines or using videoconferencing facilities.
- 3.20** A few respondents were not clear as to who would decide whether exceptional circumstances have been met, the level of urgency or the complexity of the case. Other thought there should be further clarification over the meaning of “exceptional circumstances”.

Our response

We recognise how important it is to the perception of fairness that permitting oral representations may reassure firms or individuals that their representations have been taken into account.

We have considered all these representations and decided to proceed with the proposal that oral representations may only be made to Executive decision makers in exceptional circumstances.

This is primarily because we consider that in the vast majority of cases, the decision maker will be able to take account of the subjects' views and evidence by considering their written representations. For the types of decision being moved away from the RDC, it is difficult to see that oral representations would be required in order to take account of a firm or individual's position and in order for fair decisions to be made. For such cases, the proposals allow written representations to be made in all cases. In addition, oral representations can be made in exceptional circumstances, including where the respondent is unable to make written representations or where the Executive decision maker considers that the delay caused by the time needed to provide written representations increases the risk of harm occurring. We consider this is a sufficient procedural safeguard, if necessary to ensure the decision maker is able to take into account all relevant information.

We are required to give reasoned decisions, and as part of our statutory notice procedures, set out the factors that lead us to propose a particular course of action. The information provided in such notices should demonstrate to the subject of the decision how we have had regard to any written representations they make.

We can see the benefit perceived by firms and individuals from having the opportunity to make oral representations. However, we consider that benefit to be outweighed by the negative impact on the speed and efficiency of decision-making which is vital in cases where consumers are at risk, or where there is a potential commercial impact for firms. We also consider that accommodating oral representations in all cases could make our process more akin to a hearing, rather than the administrative decision-making process that it is. In our view this proposal achieves the speed and efficiency of decision making required by both consumers and firms, without compromising on fairness. Firms and individuals may refer authorisation, interventions and cancellations decisions to the Upper Tribunal, where there will be a fresh hearing and the ability to give oral evidence and be cross-examined on it, which is not available through either the RDC or Executive Procedures.

Accordingly, on balance, we have decided to implement the change to our Executive procedures, so that oral representations may only be made in exceptional circumstances.

Other modifications

The test for urgency when considering our powers

3.21 We also proposed a change to our policy set out in EG 8.3. This is where we believe it is necessary to act on an own-initiative basis to impose or vary a requirement or a variation of permission and that decision needs to take effect without urgency being a requirement for the use of such powers. In EG we set out the circumstances when we will consider the exercise of this power: where we have information available that indicates serious concerns about the firm or its business that need to be addressed immediately; and circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm to ensure the firm addresses these concerns.

3.22 We proposed to retain the circumstances, and the factors set out in EG 8.3.3 (examples of situations that would give rise to such serious concerns) and EG 8.3.4 (examples of factors going to seriousness). However, we did propose to remove the requirement for urgency before we can make such a decision.

The role of legal advisers to executive decision makers

3.23 As set out in CP 21/25, some statutory notice decisions previously made by the RDC (which has its own legal advisers) would now be made under Executive Procedures, where staff responsible for taking the statutory notice decision may be advised by legal advisers who have also advised our staff recommending action is taken.

Disclosure of communications

- 3.24** We also said that the current approach to sharing communications between our staff recommending that action be taken and those responsible for a decision under Executive Procedures is set out in DEPP. We said that we will not normally disclose such communications and we proposed to maintain this approach.
- 3.25** We noted that this contrasts to the approach applied to communications where the RDC is the decision maker. In those cases, it will remain the case that the RDC will not, after giving a warning notice, meet with or discuss the matter while it is still ongoing with the FCA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.
- 3.26** We asked the following question on the proposed modifications set out above:

Q6: *Do you agree with the proposed modifications to our Executive Procedures framework?*

- 3.27** A couple of respondents agreed with the proposed modifications subject to the responses they provided to the other questions. A number of respondents were concerned about the proposals, with some providing more detailed comments, as set out below.

Legal advice

- 3.28** Some respondents were concerned about the decision maker receiving legal advice from the same adviser that has advised our staff recommending the action. There was concern about the potential conflict of interest this might cause and lack of impartiality.
- 3.29** Respondents asked how we were going to ensure that the legal advice provided to decision makers is independent from the legal advice provided to our staff, highlighting the importance of it in ensuring there is appropriate challenge. One suggested that a separate team of unconnected legal advisers should be used to maintain separation.

Disclosure of communications

- 3.30** A few respondents noted that disclosure of communications would lead to a more transparent and fair process and the likely impact of the proposals is a significant increase in the number of tribunal referrals where communications would likely need to be disclosed in any event.
- 3.31** A couple said that the current approach adopted by the RDC should be followed here, with communications between FCA staff recommending the action and those senior FCA staff taking a decision under Executive Procedures being disclosed to affected parties. It was also suggested that the FCA should keep a record of all interactions between the FCA staff recommending the action and the decision maker.
- 3.32** Another respondent highlighted the importance of firms and individuals being provided with the material that will be used in the decision, noting that a failure to do this would not be transparent.

- 3.33** One respondent noted that it is not clear how much information a firm or individual will receive in support of our decision to take action, including who the decision maker is, the evidence relied on, and the factors taken into account and was concerned about how much information a subject might receive.

Our response

The initial development of the RDC was driven by the need to ensure decision makers were not involved in gathering the evidence which would form the basis for a decision. This led to the development of underlying processes such as separate legal advice and, from the point a recommendation to take a decision has been made, open disclosure of substantive communications between the case team, decision maker and subject of the proposed decision. However, there is no statutory requirement to have these processes in place for any of our decisions.

We do not consider that our Executive Procedures will lead to procedural unfairness or adversely affect the quality of the reasoning underpinning the decision.

Legal advice: We note that one of the respondents has suggested that a separate team of unconnected legal advisers should be used to maintain separation. This is not required by our regulatory framework but our Handbook does make clear that all decision makers will apply the relevant statutory tests having regard to the context and nature of the particular matter consisting of the relevant facts, law and our priorities and policies. We consider that our process will ensure those making the decision receive objective and balanced legal advice. Those giving legal advice to the investigating team and decision maker will be overseen separately to ensure they discharge their professional obligations.

Disclosure: Although the disclosure process under our Executive Procedures is different to the RDC, we want to be clear that subjects of a decision will receive a clear notice setting out the reasons for the decision and the facts and matters supporting that decision, as well as the material on which the decision was based so that they can assess whether they want to make representations or appeal the decision.

In addition, should any of our decisions be appealed, there is full disclosure in the Tribunal of any material that might undermine our decision and all the material which we relied on in making the decision.

The test for urgency when considering our powers

- 3.34** A couple of respondents did not agree with the proposed changes to EG 8.3 and did not feel that the proposed change had been sufficiently explained. One respondent said the proposed changes to EG 8.3 taken in combination with the other proposals further erode the independence and fairness of the process. Another respondent noted that given the impact that the use of own-initiative powers can have, the safeguards and process should not be weakened unless there is an urgent need, and as such urgency should remain a pre-requisite.

- 3.35** We have considered the feedback received on our proposed amendment and are going to proceed with the change. We want to be able to address situations where we consider we have exhausted engagement with a firm and consider that the appropriate next step is to exercise an own-initiative power.
- 3.36** We set out the circumstances when we will consider the exercise of this power in EG 8.3.2: where we have information available that indicates serious concerns about the firm or its business that need to be addressed immediately; and circumstances that indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm to ensure the firm addresses these concerns. We are not changing these circumstances, or the factors set out in EG 8.3.3.

Annex 1

List of non-confidential respondents

Premier FX Liquidation Committee

Mr Tony Watts

Association of Independent Risk & Fraud Advisors (AIRFA)

AXA UK Group

Elizabeth Coyle – Compliance Consultant at TIFAC

Financial Services Consumer Panel

Amigo Loans

Consumer Credit Trade Association

Bryan Cave Leighton Paisner LLP

Clifford Chance LLP

British Insurance Brokers' Association

Association of Professional Compliance Consultants

Personal Investment Management & Financial Advice Association (PIMFA)

London & International Insurance Brokers' Association (LIIBA)

Mishcon de Reya LLP

Association of British Credit Unions Limited (ABCUL)

Transparency Task Force

Association of British Insurers (ABI)

Copper (Copper Technologies (UK) Ltd)

The City of London Law Society

Finance & Leasing Association

The Investment Association

European Venues and Intermediaries Association

Simmons & Simmons LLP

Brown Rudnick LLP

International Underwriting Association

Legal & General Group

Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB)

Association of Foreign Banks

Kingsley Napley LLP

Annex 2

Abbreviations used in this paper

Abbreviation	Description
CP	Consultation Paper
DEPP	Decision Procedure and Penalties Manual
EG	Enforcement Guide
PS	Policy Statement
RDC	Regulatory Decisions Committee

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Appendix 1

Made rules (legal instrument)

CHANGES TO DECISION MAKING FOR STATUTORY NOTICE PROCEDURE INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 63C (Statement of policy);
 - (2) section 69 (Statement of policy);
 - (3) section 88C (Action under s.88A: statement of policy);
 - (4) section 89S (Action under s.89Q: statement of policy);
 - (5) section 93 (Statement of policy);
 - (6) section 124 (Statement of policy);
 - (7) section 131J (Imposition of penalties under section 131G: statement of policy);
 - (8) section 137T (General supplementary powers);
 - (9) section 139A (Power of the FCA to give guidance);
 - (10) section 192N (Imposition of penalties under section 192K: statement of policy);
 - (11) section 210 (Statements of policy);
 - (12) section 312J (Statement of policy);
 - (13) section 345D (Imposition of penalties on auditors or actuaries: statement of policy); and
 - (14) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 26 November 2021.

Amendments to the Handbook

- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.
- E. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Changes to Decision Making for Statutory Notice Procedure Instrument 2021.

By order of the Board
25 November 2021

Annex A

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 Application and Purpose

...

1.2 Introduction to statutory notices

...

The decision makers

1.2.5 G Decisions on whether to give a *statutory notice* will be taken by a ‘decision maker’. The *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)~~ FCA staff under executive procedures; or
- (2) ~~FCA staff under executive procedures~~ the Regulatory Decisions Committee (RDC); or
- (3) *FCA* staff under the *settlement decision procedure*.

...

2 Statutory notices and the allocation of decision making

...

2.1 Statutory notices

...

Consistent decision making

...

2.1.4A G If a *statutory notice* decision is referred to the *RDC* which would otherwise be taken by *executive procedures* in accordance with *DEPP* 2.1.4G, the *RDC* will follow the procedure as set out at *DEPP* 3.2.

...

2.3 Decision notices and second supervisory notices

Approach of decision maker

...

2.3.1A G Notwithstanding DEPP 2.3.1G(2), FCA staff under executive procedures who are asked to decide whether to give a decision notice or second supervisory notice will consider oral representations only in exceptional circumstances where they determine that prohibiting oral representations are likely to impact on the fairness of the decision. This may include (but is not limited to) circumstances where:

- (1) the subject of the decision notice or second supervisory notice is not reasonably able to make written representations due to relevant personal circumstances; and/or
- (2) oral representations are required due to the urgency or complexity of the matter to be decided.

...

2.5 Provision for certain categories of decision

...

Different decision makers

2.5.2 G ~~The~~ In some circumstances, 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 FCA staff under executive procedures and the decision notice decision be taken by the RDC. Similarly For example, 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).

...

2.5.5 G ~~If representations are made in response to a warning notice proposing any of the action actions set out at DEPP 2.5.3G(1), DEPP 2.5.3G(4), DEPP 2.5.3G(4A), DEPP 2.5.3G(4B) or DEPP 2.5.3G(5), then the RDC will take the decision to give a decision notice. DEPP 2.5.3G, then FCA staff under executive procedures will take the decision to give a decision notice.~~

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. [deleted]~~

- 2.5.6 G If representations are made in response to a *warning notice* proposing the action set out at ~~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 variation or requirement (see ~~DEPP 2.5.8G~~). Otherwise, the decision to give the *decision notice* will be taken by FCA staff under *executive procedures*. ~~[deleted]~~

...

FCA's own-initiative powers

- 2.5.7 G ~~The RDC~~ FCA staff under *executive procedures* will take the decision to give a *supervisory notice* exercising the FCA's own-initiative 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 variation or requirement, including where the action involves a fundamental variation or requirement~~ (see DEPP 2.5.8G). ~~Otherwise, the decision to give the supervisory notice will be taken by FCA staff under executive procedures.~~

- 2.5.7A G ~~Notwithstanding DEPP 2.5.7G,~~ FCA staff under *executive procedures* will be the decision maker ~~whenever~~ when a firm agrees not to contest the FCA's exercise of its own-initiative powers, ~~including where the FCA's action involves a fundamental variation or requirement, and when the exercise of the FCA's own-initiative powers is contested by a firm.~~

- 2.5.7B G Any decision made by FCA staff under executive procedures to give a supervisory notice exercising the FCA's own-initiative powers (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) which involves a fundamental variation or requirement (see DEPP 2.5.8G) will be taken by a member of FCA staff of at least Director level (which may include an acting Director).

...

The FCA's power to vary SMF manager's approval on its own initiative

- 2.5.8A G ~~The RDC~~ FCA staff under *executive procedures* will take the decision under section 63ZB of the *Act* to vary an approval given to an *SMF manager* (by imposing a condition, varying a condition, removing a condition or limiting the period for which the approval is to have effect).
- 2.5.8B G ~~Notwithstanding DEPP 2.5.7G,~~ FCA staff under *executive procedures* will be the decision maker ~~whenever~~ when all of the interested parties (as defined by section 63ZC(6) of the *Act*) agree not to contest the FCA's exercise of its power under section 63ZB of the *Act* and when the exercise of such powers is contested by any of the interested parties (as so defined).

...

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

- 2.5.11A 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* where the *sponsor* has requested or otherwise agrees to the limitation or other restriction and where the *sponsor* contests the imposition of the limitation or other restriction. Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.~~
- 2.5.11B 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*.~~ *executive procedures*.
- 2.5.11C 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* where the *primary information provider* has requested or otherwise agrees to the limitation or other restriction and where the *primary information provider* contests the imposition of the limitation or other restriction. Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.~~
- 2.5.11D 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 *FCA* staff will usually inform or discuss with the *person* concerned any action they contemplate before they recommend to ~~the RDC~~ *FCA* staff under executive procedures that the *FCA* takes formal action. The *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 such decisions, including those referred to in DEPP 2.5.13G, will be taken by FCA staff under executive procedures~~ 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 FCA staff under executive procedures rather than by the RDC~~ and if the proposed action is not agreed.

...

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

...

Notices under other enactments

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

- (5) The decision to give a written notice under section 55XA(1) of the *Act* will be taken by *FCA* staff under *executive procedures*. If the applicant decides to seek a review, by the *FCA*, of that decision, they can make representations to ~~the RDC~~ *FCA* staff under executive procedures. ~~If the RDC FCA staff under executive procedures then decides~~ decide under section 55XA(5) of the *Act* to confirm the first decision, or take a different decision of the type described by section 55XA(1) of the *Act*, it must give the applicant a written notice.
- (5A) The decision to impose or vary a direction under regulation 74C of the *Money Laundering Regulations* ~~will be taken by the RDC, if the direction involves a fundamental imposition or variation. Otherwise, the decision to give the supervisory notice will be taken by FCA staff under executive procedures, including if the direction involves~~

a fundamental imposition or variation. *FCA* staff under *executive procedures* will be the decision maker ~~whenever~~ when a *cryptoasset business* does not contest the direction and when the direction is contested by a *cryptoasset business*. A fundamental imposition or variation of a direction means:

- (a) preventing a *cryptoasset business* from undertaking *cryptoasset business*; or
 - (b) imposing or varying a direction in relation to the *cryptoasset business*' assets, or refusing an application to vary or cancel such a direction.
- (6) *CRA Regulation*: Where the *FCA* is exercising its powers to refuse an application for registration under articles 16 or 17, or to refuse an application made by a *credit rating agency* to withdraw its registration under article 20(3), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a *credit rating agency* on the *FCA*'s own initiative under article 20(1) or (2), or to give a direction under article 24(1), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by ~~the RDC~~ *FCA* staff under *executive procedures*.

Upon receipt of a written notice under article 18(2) the *credit rating agency* may decide to seek a review or to refer the matter directly to the *Tribunal* under article 18A.

If the *credit rating agency* decides to seek a review of the decision set out in the article 18(2) notice, they can make representations to ~~the RDC~~ *FCA* staff under *executive procedures*. If ~~the RDC decides~~ *FCA* staff under *executive procedures* decide to maintain the original decision, the *credit rating agency* may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

- (7) *Trade Repositories (EU Exit) Regulations*: Where the *FCA* is exercising its powers to refuse an application for registration of a *trade repository* under article 58 of *EMIR* or to refuse an application made by a *trade repository* to withdraw its registration under article 71(3) of *EMIR*, it must give a written notice in accordance with article 71a(6) of *EMIR*. In these circumstances the decision to give a written notice under article 71a(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a trade repository on the *FCA*'s own initiative under article 71(1) or (2), it must give a written notice in accordance with article 71a(6). In these circumstances the decision to give a written notice

under article 71a(6) will be taken by ~~the RDC~~ FCA staff under executive procedures.

Upon receipt of a written notice under article 71a(6) the credit rating agency may decide to seek a review or to refer the matter directly to the *Tribunal* under article 71b.

If the *trade repository* decides to seek a review of the decision set out in the article 71a(6) notice, they can make representations to ~~the RDC~~ FCA staff under executive procedures. If ~~the RDC decides~~ FCA staff under executive procedures decide to maintain the original decision, the *trade repository* may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

- (8) *Securitisation Regulation* (as amended by the *Securitisation (Amendment) (EU Exit) Regulations*): where the *FCA* exercises its powers to refuse an application for registration of a *securitisation repository* under article 12, or to refuse an application made by a *securitisation repository* to withdraw its registration under article 13a, it must give a written notice in accordance with article 13(6). In these circumstances, the decision to give a written notice under article 13(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* exercises its powers to withdraw the registration of a *securitisation repository* on its own initiative under article 13a, it must give a written notice in accordance with article 13(6)(b). In these circumstances, the decision to give a written notice under article 13(6)(b) will be taken by ~~the RDC~~ FCA staff under executive procedures.

Upon receipt of a written notice under regulation 13a, the *securitisation repository* may decide to seek a review or to refer the matter to the *Tribunal*. If the *securitisation repository* decides to seek a review of the decision set out in the regulation 13a notice, they can make representations to ~~the RDC~~ FCA staff under executive procedures. If ~~the RDC decides~~ FCA staff under executive procedures decide to maintain the original decision, the *securitisation repository* may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

- (9) *Securities Financing Transactions Regulation* (as amended by the *SFTR (EU Exit) Regulations*): where the *FCA* is exercising its powers to refuse an application for registration of a *trade repository* under article 7 of the *Securities Financing Transactions Regulation* or to refuse an application made by a *trade repository* to withdraw its registration under article 10(3), it must give a written notice in accordance with article 10a(6). In these circumstances the decision to give a written notice under article 10a(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a *trade repository* on the *FCA's* own initiative under article 10(1) or 10(2), it must give a written notice in accordance with article

10a(6)(b). In these circumstances, the decision to give a written notice under article 10a(6)(b) will be taken by ~~the RDC~~ FCA staff under executive procedures.

Upon receipt of a written notice under article 10 the *trade repository* may decide to seek a review or to refer the matter directly to the *Tribunal* under article 10b.

If the *trade repository* decides to seek a review of the decision set out in the article 10 notice, they can make representations to ~~the RDC~~ FCA staff under executive procedures. If ~~the RDC~~ decides FCA staff under executive procedures decide to maintain the original decision, the trade repository may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *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
...
55X(2)	when the <i>FCA</i> is proposing to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		<i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> <u><i>Executive procedures</i></u>
55X(4)(a) 55X(4)(b)	when the <i>FCA</i> is deciding to grant an application for a <i>Part 4A permission</i> 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><i>Executive procedures</i></u>
55X(4)(c) 55X(4)(d)	when the <i>FCA</i> is deciding to grant an application to vary a <i>firm's Part 4A permission</i> but, other than as part of the application, to restrict the <i>Part 4A permission</i> (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>SUP 6</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> <u><i>Executive procedures</i></u>
...			

55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application for a <i>Part 4A permission</i>		RDC or executive procedures <u>Executive procedures</u> See <i>DEPP 2.5.5G</i>
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application to vary a <i>firm's Part 4A permission</i>	<i>SUP 6</i>	RDC or executive procedures See <i>DEPP 2.5.6G</i> <u>Executive procedures</u>
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application to cancel a <i>firm's Part 4A permission</i>	<i>SUP 6</i>	RDC or executive procedures <u>Executive procedures</u> See <i>DEPP 2.5.5G</i>
55X(4)(f)	When the <i>FCA</i> is deciding to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		RDC or RDC or executive procedures See <i>DEPP 2.5.6G</i> <u>Executive procedures</u>
55Z(1) 55Z(2)	when the <i>FCA</i> is proposing or deciding to cancel a <i>firm's Part 4A permission</i> otherwise than at its request *		RDC <u>Executive procedures</u>
...			
62(3)	when the <i>FCA</i> is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> or to grant the application subject to conditions or for a limited period (or both)	<i>SUP 10A</i> and <i>SUP 10C</i>	RDC or executive procedures <u>Executive procedures</u> See <i>DEPP 2.5.5G</i>
63(3)/(4)	when the <i>FCA</i> is proposing or deciding to withdraw approval from an <i>approved person</i> *		RDC <u>Executive procedures</u>

...			
63ZA(8) and 62(3)	when the <i>FCA</i> is deciding to refuse an application for variation of an approval granted to an <i>SMF manager</i> , subject to conditions	<i>SUP 10C</i>	<i>RDC</i> or <u><i>executive procedures</i></u> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.5G</i>
...			
88(4)(a) 88(6)(a) 88(8)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>person's</i> application for approval as a <i>sponsor</i>	<i>LR 8</i>	<i>RDC</i> <u><i>Executive procedures</i></u>
...			
88(4)(a) 88(6)(a) 88(8)(d)	when the <i>FCA</i> is 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		<i>RDC</i> or <u><i>executive procedures</i></u> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.11BG</i>
88(4)(aa) 88(6)(aa)	when the <i>FCA</i> is proposing or deciding to impose limitations or restrictions on the services to which a <i>sponsor's</i> approval relates		<i>RDC</i> or <u><i>executive Executive procedures</i></u> See <i>DEPP 2.5.11AG</i>
88(4)(b) 88(6)(b)	when the <i>FCA</i> is proposing or deciding to cancel a <i>sponsor's</i> approval as a <i>sponsor</i> otherwise than at the <i>sponsor's</i> request*		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
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		<i>RDC</i> <u><i>Executive procedures</i></u>

	a <i>primary information provider</i>		
...			
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> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.11DG
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 Executive procedures</i> See <i>DEPP</i> 2.5.11AG
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> <u><i>Executive procedures</i></u>
...			
245(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>unit trust scheme</i> to be an <i>AUT</i> or an <i>AUT</i> to be a money market fund	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.15G
...			

255(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 254 revoking the <i>authorisation order</i> of an <i>AUT</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	RDC <u>Executive procedures</u>
...			
256(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>AUT</i>		RDC <u>Executive procedures</u>
260(1)/(2)	when the <i>FCA</i> , 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		RDC <u>Executive procedures</u>
261G(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>scheme</i> to be an <i>ACS</i> or an <i>ACS</i> to be a money market fund	<i>COLL 2</i>	RDC or executive procedures <u>Executive procedures</u> See <i>DEPP</i> 2.5.15G
...			
261V(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 261U revoking the <i>authorisation order</i> of an <i>ACS</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	RDC <u>Executive procedures</u>
...			

261W(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>ACS</i>		<u><i>RDC Executive procedures</i></u>
261Z2(1)/(2)	when the <i>FCA</i> , on an application to revoke or vary a direction under section 261X, 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		<u><i>RDC Executive procedures</i></u>
...			
280(1)/(2)	when the <i>FCA</i> is proposing or deciding to revoke a section 272 order in respect of a <i>recognised scheme</i> *		<u><i>RDC Executive procedures</i></u>
...			
331(1)/(3)	when the <i>FCA</i> is proposing or deciding to make an order disapplying the exemption from the <i>general prohibition</i> under section 327*		<u><i>RDC Executive procedures</i></u>
331(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329*		<u><i>RDC Executive procedures</i></u>
...			

Co-operative and Community Benefit Societies Act (Northern Ireland) 1969	Description	Handbook reference	Decision maker
...			
Sections 15 and 16	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>registered society</i> relying on section 15 (1)(c)(ii)		<i>Executive procedures</i> where no representations are made in response to a notice of proposed cancellation, otherwise by the <i>RDC Executive procedures</i>
Section 65	where the <i>FCA</i> is proposing to petition for the winding up of a <i>registered society</i>		<i>RDC Executive procedures</i>
Section 75	where the <i>FCA</i> is proposing to prosecute a <i>registered society</i>		<i>Executive procedures</i> or <i>RDC</i>

Credit Unions (Northern Ireland) Order 1985	Description	Handbook reference	Decision maker
...			
Articles 60(1) and 61(1)	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>Northern Ireland credit union</i> relying		<i>Executive procedures</i> where no representations are made in response to a notice of proposed cancellation, otherwise by the <i>RDC</i>

	on section 60(1)(c)(ii)		
Article 63	where the <i>FCA</i> is proposing to petition for the winding up of a <i>Northern Ireland credit union</i>		RDC <u>Executive procedures</u>
Article 76	where the <i>FCA</i> is proposing to prosecute a <i>Northern Ireland credit union</i>		<i>Executive procedures</i> or RDC

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(a)/(3)(a)	when the <i>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	See <i>DEPP</i> 2.5.18G(3)	RDC <u>Executive procedures</u>

	direction other than at the request of the society*		
58A(1)(b)/(3)(b)	when the <i>FCA</i> 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 Executive procedures</i>
85(4A)	when the <i>FCA</i> , on an amalgamation between <i>friendly societies</i> each of which has a <i>Part 4A permission</i> , notifies the successor society of the terms of its <i>Part 4A permission</i>		<i>RDC or executive procedures</i> <i>Executive procedures</i> See <i>DEPP 2.5.12G</i>

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 16(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i> or an <i>ICVC</i> to be a money market fund	<i>COLL 2</i>	<i>RDC or executive procedures</i> <i>Executive procedures</i> See <i>DEPP 2.5.15G</i>

...			
Regulation 24(1)/(2)	when the <i>FCA</i> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)*		<u><i>RDC Executive procedures</i></u>
Regulation 28(1)/(2)	when the <i>FCA</i> 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		<u><i>RDC Executive procedures</i></u>
...			

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

	<i>representative from the Register*</i>		
--	--	--	--

Payment Services Regulations	Description	Handbook reference	Decision maker
...			
Regulations 9(8)(a), 15 and 19	when the <i>FCA</i> 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 for registration as an <i>account information service provider</i> , or to impose a requirement, or to refuse an application to vary an authorisation or existing registration		<i>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</i>
Regulations 10(2), 10(3)(a), 15 and 19	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution</i> or <i>account information service provider's</i> registration, otherwise than at that institution's own request*		<i>RDC Executive procedures</i>
...			

Regulation 34(9)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</i>
Regulations 35(2) and 35(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of a <i>payment institution*</i>		<i>RDC Executive procedures</i>
...			
Schedule 5 paragraph 5(6)	when the <i>FCA</i> is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i>
Schedule 5 paragraph 5(7)	when the <i>FCA</i> is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures, where no representations are made in response to a warning notice, otherwise by the RDC</i>
...			

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017	Description	Handbook reference	Decision maker
Regulations 25(6), 25(9) and 25 (10)(b)	when the <i>FCA</i> is exercising its power to give a direction		RDC <u>Executive procedures</u>
...			
Regulation 59(4)(b)	when the <i>FCA</i> is deciding to refuse an application for registration		RDC or <u>executive procedures</u> <u>Executive procedures</u> (Note 1)
Regulations 60(8) and 60(9)	when the <i>FCA</i> is proposing or deciding to suspend or cancel the registration of a person registered under the <i>Money Laundering Regulations</i>		RDC <u>Executive procedures</u>
...			
<p>Note:</p> <p>(1) The RDC will take the decision to give the notice under regulation 59(4)(b) if representations are made in response to the notice under regulation 59(3)(b) proposing to refuse the registration application.</p>			

...

Electronic Money Regulations	Description	Handbook reference	Decision maker
...			

Regulations 9(7)(a) and 15	when the <i>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 where no representations are made in response to a warning notice, otherwise by the RDC</i>
Regulations 10(4), 10(5)(a) and 15	when the <i>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 *		<u><i>RDC Executive procedures</i></u>
Regulations 11(6), 11(9), 11(10)(b) and 15	when the <i>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 or Executive procedures (Note 1)</i>
...			
Regulation 34(10)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</i>

Regulations 35(2) and 35(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of the <i>electronic money institution</i> *		<u><i>Executive procedures RDC</i></u>
...			
Regulation 74(7)	when the <i>FCA</i> is proposing to decide not to include a person on the register		<u><i>Executive procedures</i></u>
Regulation 74(8)(a)	when the <i>FCA</i> is deciding not to include a person on the register		<u><i>Executive procedures</i></u> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulation 74(8)(a)	when the <i>FCA</i> is deciding not to include a person on the register		<u><i>Executive procedures</i></u> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Schedule 2A paragraph 5(6)	when the <i>FCA</i> is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<u><i>Executive procedures</i></u>
Schedule 2A paragraph 5(7)	when the <i>FCA</i> is deciding to refuse an application to vary the period, event or condition of a		<u><i>Executive procedures</i></u> , where no representations are made in response to a warning notice,

	prohibition, or to remove a prohibition, or to vary or remove a restriction		otherwise by the <i>RDC</i>
...			
<p>Notes:</p> <p>(1) The <i>RDC</i> will take the decision to give the notice exercising the <i>FCA's</i> own initiative power if the action involves:</p> <p>(a) removing a type of activity from an authorisation or registration; or</p> <p>(b) refusing an application to include a type of activity in an authorisation or registration; or</p> <p>(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</p> <p>(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement. [deleted]</p> <p>(2) The <i>Electronic Money Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</p>			

...

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...			
Regulation 13(2)(a), article 14b of the <i>RVECA</i> regulation and article 15b of the <i>SEF</i> regulation	where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>

Regulation 18(1)	where the <i>FCA</i> proposes to revoke the registration of a <i>small registered UK AIFM</i> including, where applicable, its registration as a <i>SEF manager</i> or <i>RVECA manager</i>		<i>RDC Executive procedures</i>
Regulation 18(2)(a)	where the <i>FCA</i> decides to revoke the registration of a <i>small registered UK AIFM</i> including where applicable its registration as a <i>SEF manager</i> or <i>RVECA manager</i>		<i>RDC Executive procedures</i>
...			
Regulation 23B(2)(a)	where the <i>FCA</i> decides to refuse an application made by a <i>UK AIF</i> for authorisation as a <i>UK LTIF</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice otherwise by the RDC
Regulation 23C(1)	where the <i>FCA</i> proposes to revoke the authorisation of a <i>UK LTIF</i>		<i>RDC Executive procedures</i>
Regulation 23C(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a <i>UK LTIF</i>		<i>RDC Executive procedures</i>
...			
Regulation 23E(2)(a)	where the <i>FCA</i> decides to refuse an application for registration as a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice otherwise by the RDC

	<i>venture capital fund</i>		
Regulation 23F(1)	where the <i>FCA</i> proposes to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i>		<u><i>RDC Executive procedures</i></u>
Regulation 23F(2)(a)	where the <i>FCA</i> decides to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i>		<u><i>RDC Executive procedures</i></u>
...			
Regulation 23H(2)(a)	where the <i>FCA</i> decides to refuse an application for authorisation as a money market fund		<i>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</i>
Regulation 23I(1)	where the <i>FCA</i> proposes to revoke the authorisation of a money market fund		<u><i>RDC Executive procedures</i></u>
Regulation 23I(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a money market fund		<u><i>RDC Executive procedures</i></u>
...			
Regulation 56	where the <i>FCA</i> is proposing to revoke a <i>full-scope UK AIFM's</i> approval to <i>market</i>		<u><i>RDC Executive procedures</i></u>

	an <i>AIF</i> under regulation 54		
Regulation 56	where the <i>FCA</i> is deciding to revoke a <i>full-scope UK AIFM</i> 's approval to market an <i>AIF</i> under regulation 54		<u><i>RDC Executive procedures</i></u>
Regulation 62(2)	where the <i>FCA</i> proposes to revoke an <i>AIFM</i> 's entitlement to market an <i>AIF</i>		<u><i>RDC Executive procedures</i></u>
Regulation 62(3)	where the <i>FCA</i> decides to revoke the entitlement of an <i>AIFM</i> to market an <i>AIF</i>		<u><i>RDC Executive procedures</i></u>
...			

...

The Co-operative and Community Benefit Societies Act 2014	Description	Handbook reference	Decision maker
...			
Sections 6 to 8	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>registered society</i> relying on condition C, D or E in section 5		<i>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</i>
Section 123	where the <i>FCA</i> is proposing to petition for the winding up of a <i>registered society</i>		<u><i>RDC Executive procedures</i></u>

Section 132	where the <i>FCA</i> is proposing to prosecute a <i>registered society</i>		<i>Executive procedures</i> or <i>RDC</i>
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...

The Mortgage Credit Directive Order 2015	Description	Handbook reference	Decision maker
...			
Article 11(2)	when the <i>FCA</i> is deciding to refuse an application for entry on the register or variation of an existing entry on the register		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the RDC
Articles 14(1), 14(2), 16(3) and 16(4)	when the <i>FCA</i> is proposing or deciding to revoke or suspend the registration of a registered <i>CBTL firm</i> other than at the firm's request or with the firm's consent*		<i>RDC Executive procedures</i>
...			

...

Data Reporting Services Regulations 2017	Description	Handbook reference	Decision maker
...			
Regulation 10(9)(b)	when the <i>FCA</i> is deciding to impose a restriction on the		<i>RDC or executive procedures</i> <i>Executive procedures</i>

	applicant for authorisation as a <i>data reporting services provider</i>		(see Note 1)
...			
Regulations 8(6)(b) and 10(9)(c)	when the <i>FCA</i> is deciding to refuse an application for verification or authorisation as a <i>data reporting services provider</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note 2)
Regulations 8(9), 11(4)(a) and 11(5)(b)(i)	when the <i>FCA</i> is proposing or deciding to cancel a verification or the authorisation of a <i>data reporting services provider</i> otherwise than at its request		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
Regulations 8(9) and 11(5)(b)(ii)	when the <i>FCA</i> is deciding to refuse a request to cancel a verification authorisation of a <i>data reporting services provider</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note 2)
...			
Regulations 8(10) and 12(4)	when the <i>FCA</i> is deciding to refuse a request to vary a verification or the authorisation of a <i>data reporting services provider</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note 1)
...			
Notes:			

~~1) If representations are made in response to a *warning notice*, then the *RDC* will take the decision to give a *decision notice* if the action proposed involves:~~

~~(a) restricting a *person* from providing a *data reporting service*; or~~

~~(b) refusing an application to include a type of activity in a verification or authorisation.~~

~~In all other cases, the decision to give a *decision notice* will be taken by *FCA* staff under *executive procedures*.~~

~~(2) If representations are made in response to a *warning notice* then the *RDC* will take the decision to give a *decision notice*. Otherwise the decision to give a *decision notice* will be taken by *FCA* staff under *executive procedures*.~~

...

UK Securitisation Regulations	Description	Handbook reference	Decision maker
...			
Regulation 19(1)(d) and 20(1)(d)	when the <i>FCA</i> is proposing or deciding to refuse an application under regulation 13		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note)
Regulation 19(1)(e) and 20(1)(e)	when the <i>FCA</i> is proposing or deciding to cancel the authorisation of a third-party verification service otherwise than at its request under regulation 16		<i>RDC</i> <u><i>Executive procedures</i></u>
Regulation 19(1)(f) and 20(1)(f)	when the <i>FCA</i> is proposing or deciding to refuse a request to cancel the authorisation of a third-party verification service under regulation 17		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note)
...			

[Note:
 The decision to give a *warning notice* will be taken by *FCA* staff under *executive procedures*. If representations are made in response to a *warning notice* then the *RDC* will take the decision to give a *decision notice*.
 Otherwise the decision to give a *decision notice* will be taken by *FCA* staff under *executive procedures*.]

Proxy Advisors (Shareholders' Rights) Regulations	Description	Handbook reference	Decision maker
...			
Regulation 12	when the <i>FCA</i> is proposing or deciding to impose a financial penalty under regulation 12		<i>RDC</i> or <i>executive procedures</i>
...			

OPBAS Regulations	Description	Handbook reference	Decision maker
...			
Regulation 17	when the <i>FCA</i> is proposing to make a recommendation to the Treasury that a <i>self-regulatory organisation</i> is removed from Schedule 1 to the <i>Money Laundering Regulations</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
Regulation 17	when the <i>FCA</i> is deciding to recommend to the Treasury that a <i>self-regulatory organisation</i> is removed from Schedule 1 to the <i>Money Laundering Regulations</i>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> , otherwise by the <i>RDC</i>

...

2 Annex Supervisory notices
2G

Section of the Act	Description	Handbook reference	Decision maker
55XA(1)(a) and 55XA(1)(b)	when the <i>FCA</i> is deciding to grant an application for a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> specified in article 63S of the <i>Regulated Activities Order</i> with a limitation or a requirement which was not applied for, or with a narrower or wider description of <i>regulated activity</i> than that applied for		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.18G(5)
55XA(1)(c) and 55XA(1)(d)	when the <i>FCA</i> is deciding to grant an application to vary a <i>firm's Part 4A permission</i> to carry on the <i>regulated activity</i> specified in article 63S of the <i>Regulated Activities Order</i> but, other than as part of the application, to restrict the <i>Part 4A permission</i> either by imposing a limitation or requirement which was not applied for or by specifying a narrower or wider description of <i>regulated activity</i> than that applied for		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.18G(5)
55XA(1)(e)	when the <i>FCA</i> is deciding to refuse an application for a <i>Part</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

	<i>4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</i>		See DEPP 2.5.18G(5)
55XA(1)(f)	when the <i>FCA</i> is deciding to refuse an application to vary a firm's <i>Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</i>		<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.18G(5)
55Y(4) 55Y(7) 55Y(8)(b)	when the <i>FCA</i> is exercising its own-initiative variation power to vary a firm's <i>Part 4A permission</i>	SUP 7	<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.7G
63ZC(4) 63ZC(8) 63ZC(9)(b)	when the <i>FCA</i> is exercising its power to vary, on its own initiative, an approval granted to an <i>SMF manager</i>		<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.8AG and DEPP 2.5.8BG
71H(2), (3), (4), (9) or (11)(a)	where the <i>FCA</i> is proposing or deciding to impose or vary a requirement in relation to a director or senior executive under section 71B or 71C(2) or (8) or to appoint or vary the terms of appointment of a temporary manager under section 71C(1)		<i>RDC</i> <u><i>Executive procedures</i></u>
55Y(4) 55Y(7) 55Y(8)(b)	when the <i>FCA</i> is exercising its own-initiative requirement power		<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.7G

78(2)/(5)	when the <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> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.9G(4)</i> and <i>DEPP 2.5.10G</i>
...			
259(3)/ (8)/ (9)(b)	when the <i>FCA</i> 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> <u><i>Executive procedures</i></u>
261Z1	when the <i>FCA</i> gives a direction under section 261X or section 261Z	<i>COLL</i>	<i>RDC</i> <u><i>Executive procedures</i></u>
268(3)/ (7)(a) or (9)(a) (as a result of (8)(b)/(13))	when the <i>FCA</i> 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> <u><i>Executive procedures</i></u>
282 (3)/ (6)/ (7)(b)	when the <i>FCA</i> is exercising its power to give a direction to an <i>operator</i> , <i>trustee</i> or <i>depository</i> of a <i>recognised scheme</i>	<i>COLL</i>	<i>RDC</i> <u><i>Executive procedures</i></u>
...			
321(2)/(5)	when the <i>FCA</i> is exercising its power to impose a requirement on a former underwriting member of Lloyd's		<i>RDC</i> <u><i>Executive procedures</i></u>

OEIC Regulations reference	Description	Handbook reference	Decision maker
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Regulation 27	when the <i>FCA</i> 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><i>Executive procedures</i></u>
---------------	--	-------------	--

Payment Services Regulations	Description	Handbook reference	Decision maker
12(6), 12(9), 12(10)(b), 15 and 19	when the <i>FCA</i> is exercising its powers to vary a person's <u><i>person's</i></u> authorisation on its own initiative		<i>RDC</i> or <i>Executive procedures</i> See also <i>DEPP 3.4</i> (Note 1)
Schedule 5, paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7)	when the <i>FCA</i> is exercising its power to impose a prohibition or restriction, or to vary a restriction		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (Note 2) See also <i>DEPP 3.4</i>

Notes:

(1) ~~The RDC will~~ *FCA* staff under *executive procedures* will take ~~the decision~~ all decisions to give a notice exercising the *FCA*'s own initiative power to vary a *person's* authorisation, including 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*.~~

(2) ~~The RDC will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 4A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However, *FCA* staff under *executive procedures* will be the decision maker whenever a *firm* agrees~~

~~not to contest the imposition of a prohibition or imposition or variation of a restriction.~~

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
Regulation 22(4)	where the <i>FCA</i> is exercising its power on its own initiative to give or vary a direction under regulation 22(1) to a <i>small registered UK AIFM</i> , a <i>SEF manager</i> or <i>RVECA manager</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.7G</i> to <i>DEPP 2.5.8G</i>
...			

<i>Electronic Money Regulations</i>	Description	Handbook reference	Decision maker
Schedule 2A, paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7)	when exercising its power to impose a prohibition or restriction, or to vary a restriction		<i>RDC</i> or <i>executive procedures</i> (Note 1) See also <i>DEPP 3.4</i>

Notes:

(1) The *RDC* will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 2A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However, *FCA* staff under *executive procedures* will be the decision maker whenever a *firm* agrees not to contest the imposition of a prohibition or imposition or variation of a restriction.

...

The Immigration Act 2014 (Bank Account) Regulations 2014	Description	Handbook reference	Decision maker
Regulation 24 and 25	where the <i>FCA</i> is proposing or deciding to publish a statement (under regulations 15 or 16) or impose a financial penalty (under regulation 17) or impose a restriction on permission (under regulation 18) or suspend or restrict an approval (under regulation 19)*		<i>RDC</i> or <u><i>executive procedures</i></u>

The Mortgage Credit Directive Order 2015	Description	Handbook reference	Decision maker
Article 19(6)	when the <i>FCA</i> is exercising its <i>own-initiative power</i> to impose a direction		<i>RDC</i> or <u><i>executive procedures</i></u> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.7G and <i>DEPP</i> 2.5.7AG

The Payment Accounts Regulations 2015	Description	Handbook reference	Decision maker
Regulation 30	when the <i>FCA</i> is exercising the power to impose a direction		<i>RDC</i> or <u><i>executive procedures</i></u> (Note)

			<u>Executive procedures</u> See DEPP 2.5.17G
Note: The <i>RDC</i> will take the decision to give a notice imposing a direction. However, <i>FCA</i> staff under <i>executive procedures</i> will be the decision maker whenever a <i>firm</i> agrees not to contest the direction.			

Markets in Financial Instruments Regulations 2017	Description	Handbook reference	Decision maker
Regulation 12(2)	when the <i>FCA</i> is exercising its power of intervention in respect of a <i>third country</i> firm		<i>RDC</i> or <i>executive procedures</i> <u>Executive procedures</u> (see DEPP 2.5.7G and DEPP 2.5.7AG)
...			
Regulations 40(3) and 40(6)	when the <i>FCA</i> is proposing or deciding to impose a requirement, or deciding to not rescind the imposition of a requirement that has already taken effect under regulation 40		<i>RDC</i> <u>Executive procedures</u>

Data Reporting Services Regulations 2017	Description	Handbook reference	Decision maker
Regulation 22(6)	when the <i>FCA</i> is imposing a limitation or other restriction under regulation 22		<i>RDC</i> or <i>executive procedures</i> <u>Executive procedures</u>

			(see Note)
<p>Note: The <i>RDC</i> will take the decision to give a notice imposing a restriction or limitation if it involves restricting a <i>person</i> from providing a <i>data reporting service</i>. Otherwise the decision to give a notice will be taken by <i>FCA</i> staff under <i>executive procedures</i>.</p>			

...

CRA Regulation	Description	Handbook reference	Decision maker
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 16 to refuse an application for registration of a <i>credit rating agency</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 17 to refuse an application for registration of a group of <i>credit rating agencies</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 20(1) and 20(2) to withdraw the registration of a <i>credit rating agency</i> on its own initiative		<i>RDC</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 20(3) to refuse an application made by a <i>credit rating agency</i> to withdraw its registration		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 24(1) to impose a direction to		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

	temporarily prohibit a <i>credit rating agency</i> from issuing credit ratings or to suspend the use of credit ratings issued by a <i>credit rating agency</i>		(see <i>DEPP</i> 2.5.18G(6))
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Trade Repositories (EU Exit) Regulations	Description	Handbook reference	Decision maker
Article 71a(6) and 71a(10)	when the <i>FCA</i> is exercising its power under article 58 to refuse an application for registration of a <i>trade repository</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(7))
Article 71a(6) and 71a(10)	when the <i>FCA</i> is exercising its power under article 71(1) or 71(2) to withdraw the registration of a <i>trade repository</i> on its own initiative		<i>RDC</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(7))
Article 71a(6) and 71a(10)	when the <i>FCA</i> is exercising its power under article 71(3) to refuse an application made by a <i>trade repository</i> to withdraw its registration		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(7))

Securitisation (Amendment) (EU Exit) Regulations	Description	Handbook reference	Decision maker
Article 13(6)(a) and 13(11)(a) of the <i>Securitisation Regulation</i> as	when the <i>FCA</i> is exercising its power to refuse an application for registration of a		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

amended by regulation 15	<i>securitisation repository</i> under article 12 of the <i>Securitisation Regulation</i> as amended by regulation 15		(see <i>DEPP</i> 2.5.18G(8))
Article 13(6)(b) and 13(11)(b) of the <i>Securitisation Regulation</i> as amended by regulation 15	when the <i>FCA</i> is exercising its power to withdraw the registration of a <i>securitisation repository</i> on its own initiative under article 13a(1) or 13a(2) of the <i>Securitisation Regulation</i> as amended by regulation 15		<i>RDC Executive procedures</i> (see <i>DEPP</i> 2.5.18G(8))
Article 13(6)(c) and 13(11)(c) of the <i>Securitisation Regulation</i> as amended by regulation 15	when the <i>FCA</i> is exercising its power to refuse an application made by a <i>securitisation repository</i> to withdraw its registration under article 13a(3) of the <i>Securitisation Regulation</i> as amended by regulation 15		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(8))

Securities Financing Transactions Regulation	Description	Handbook reference	Decision maker
Article 10a(6)(a) and 10a(11)(a)	when the <i>FCA</i> is exercising its power under article 7 of the <i>Securities Financing Transactions Regulation</i> to refuse an application for		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(9))

	registration of a <i>trade repository</i>		
Article 10a(6)(b) and 10a(11)(b)	when the <i>FCA</i> is exercising its power to withdraw the registration of a <i>trade repository</i> on its own initiative under article 10(1) or 10(2)		<i>RDC</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(9))
Article 10a(6)(c) and 10a(11)(c)	when the <i>FCA</i> is exercising its power to refuse an application made by a <i>trade repository</i> to withdraw its registration under article 10(3)		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(9))

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017	Description	Handbook reference	Decision maker
Regulation 74C(5)	When the <i>FCA</i> is exercising its own initiative powers to impose, vary or rescind a direction.		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

3 The nature and procedure of the RDC

...

3.2 The operation of the RDC

...

Procedure: warning notices ~~and first supervisory notices~~

- 3.2.12 G If *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 *FCA* should give a *warning notice* ~~or a first supervisory notice~~:

- (1) The *RDC* will settle the wording of the *warning notice* ~~or first supervisory notice~~, and will ensure that the notice complies with the relevant provisions of the *Act*;

...

...

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 14 ~~days~~ days.

- (2) The *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 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 their decision they will take into account all relevant factors including the legal and factual complexity of the case, as well as whether there are any factors outside the control of the *firm* or *individual* that would materially impact on their ability to respond within the period set out in the *warning notice* ~~or first~~

~~supervisory notice~~. They may also take account of any relevant comments from the *FCA* staff responsible for the matter.

...

- 3.2.17 G (1) If the recipient of a *warning notice* ~~or a first supervisory notice~~ indicates that he wishes to make oral representations, the *RDC* staff, in conjunction with the Chairman or a Deputy Chairman of the *RDC*, will fix a date or dates for a meeting at which the relevant *RDC* members will receive those representations.

...

- 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;

...

- (4) the recipient of the notice to respond to points made by *FCA* staff or the *RDC*;

but the chairman may ask the recipient of the notice or *FCA* staff to limit their representations or response in length or to particular issues arising from the *warning notice* ~~or first supervisory notice~~. If the *warning notice* was given on the basis of a *focused resolution agreement*, the recipient will be required to limit their representations to the issues that remain in dispute.

- 3.2.19 G The recipient of the *warning notice* ~~or supervisory notice~~ may wish to be legally represented at the meeting, but this is not a requirement.

...

- 3.2.21 G The *RDC* will not, after the *FCA* has given a *warning notice* ~~or a first supervisory notice~~, meet with or discuss the matter whilst it is still ongoing with the *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 *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.

...

- 3.2.23 G In any case in which representations are made, in accordance with *DEPP* 2.3.1G, the *RDC* will consider whether it is right in all the circumstances to give the *decision notice* ~~or a second supervisory notice (as appropriate)~~.
- 3.2.24 G If the *RDC* decides that the *FCA* should give a *decision notice* ~~or a second supervisory notice~~:
- (1) the *RDC* will settle the wording of the notice which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the notice complies with the relevant provisions of the *Act*;
 - (2) the *RDC* will make any relevant *statutory notice associated decisions*, including whether the *FCA* is required to give a copy of the notice to a third party; and
 - (3) the *RDC* staff will make appropriate arrangements for the notice to be given.
- 3.2.25 G If the *RDC* decides that the *FCA* should not give a *decision notice* ~~or a second supervisory notice~~ the *RDC* staff will notify the relevant parties (including the relevant *FCA* staff) in writing of that decision.

...

Tribunal proceedings

- 3.2.27 G A decision by the *RDC* to give a *decision notice* ~~or supervisory notice~~ may lead to a reference to the *Tribunal* under the *Act*. The conduct of proceedings before the *Tribunal* is not however a matter for the *RDC*.

DEPP 3.4 (Urgent supervisory notice cases) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.4 Urgent supervisory notice cases [deleted]

Amend the following as shown.

4 Decisions by FCA staff under executive procedures

4.1 Executive decision maker

Who takes the decision

...

- 4.1.2B G A decision made in accordance with section 395(3) of the *Act* by an individual *FCA* staff member who has been directly involved in establishing the evidence on which the decision is based will be taken by a

member of FCA staff of at least Director level (which may include an acting Director).

Decisions by senior staff committee

- 4.1.3 G An *FCA* 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~~ may be taken by a *senior staff committee*.

...

- 4.1.5 G A *senior staff committee* may operate through standing or specific sub-committees to consider particular decisions or classes of decision, for which accountability will lie through the committee. Each meeting of a *senior staff committee*, or sub-committee, will include:

- (1) an individual with authority to act as its chairman; and
- (2) at least ~~two~~ one other ~~members~~ member.

...

Decisions by individual 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 which are not made by a senior staff committee~~, will be taken by an individual *FCA* staff member. Subject to *DEPP 2.5.7B*, ~~The~~ the decision will be:

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

...

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, *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:

- (-1) oral representations will not be permitted unless there are exceptional circumstances (*DEPP 2.3.1A*);
- (1) in a case where the decision will be taken by a *senior staff committee*:
 - (a) the chairman or deputy chairman of the *senior staff committee* will perform the role of the Chairman of the *RDC*; ~~and~~
 - (b) ~~the secretariat to the *senior staff committee* will perform the role of the *RDC* staff;~~

...

DEPP 4.2 (Urgent Statutory notice cases) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

4.2 Urgent Statutory notice cases [deleted]

Amend the following as shown.

TP1 Transitional provisions applying to the Decision Procedure and Penalties Manual

1. 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
1	<i>DEPP</i>	G	Expired		
2	<i>DEPP 6.7</i> (Discount for early settlement)	G	Expired		
3	<i>DEPP</i>	G	Expired		

4	<i>DEPP</i>	G	Expired		
<u>5</u>	<u><i>DEPP</i></u>	<u>G</u>	<u>A firm or individual who has been given a statutory notice before the commencement date in cases where the RDC, but for these changes, would be responsible for giving the decision notice will continue to have that matter dealt with by the RDC under the RDC procedures until the matter is concluded.</u>	<u>Commencement date</u>	<u>Commencement date</u>

Annex B

Amendments to the Enforcement Guide (EG)

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

7 Financial penalties and other disciplinary sanctions

...

7.9 Suspensions of voting rights

...

7.9.2 Decisions about whether to apply to the Court for a voting rights suspension order under the *Act* will be made by the ~~RDC Chairman~~ or, ~~if the Chairman is not available, by an RDC Deputy Chairman~~ executive director of Enforcement, or in his or her absence, the acting executive director of Enforcement.

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

8.3 Use of the own-initiative powers ~~in urgent cases~~

...

8.3.2 The *FCA* will consider exercising its *own-initiative power* ~~as a matter of urgency~~ where:

- (1) the information available to it indicates serious concerns about the *firm* or its business that need to be addressed immediately; and
- (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *firm* in order to ensure the *firm* addresses these concerns.

...

8.3.4 The *FCA* will consider the full circumstances of each case when it decides whether ~~an urgent~~ a variation of *Part 4A permission* or an imposition of a requirement is appropriate. The following is a non-exhaustive list of factors the *FCA* may consider.

- (1) The extent of any loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the *FCA's urgent* exercise of *own-initiative powers* will be appropriate, to protect the consumers' interests.

- (2) The extent to which *customer* assets appear to be at risk. ~~Urgent exercise~~ Exercise of the *FCA's own-initiative power* may be appropriate where the information available to the *FCA* suggests that *customer* assets held by, or to the order of, the *firm* may be at risk.
- (3) The nature and extent of any false or inaccurate information provided by the *firm*. Whether false or inaccurate information warrants the *FCA's* ~~urgent~~ exercise of its *own-initiative powers* will depend on matters such as:
- (a) the impact of the information on the *FCA's* view of the *firm's* compliance with the regulatory *requirements* to which it is subject, the *firm's* suitability to conduct *regulated activities*, or the likelihood that the *firm's* business may be being used in connection with *financial crime*;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the *FCA*, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *firm's* actual or potential *customers*.

...

- (6) The risk that the *firm's* business may be used or has been used to facilitate *financial crime*, including *money laundering*. The information available to the *FCA*, including information supplied by other law enforcement agencies, may suggest the *firm* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, and the *firm* appears to be failing to meet the *threshold conditions* or has put its *customers'* interests at risk, the *FCA's* ~~urgent~~ use of its *own-initiative powers* may well be appropriate.

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10 Injunctions

10.1 Introduction

10.1.1 ~~An exceptionally urgent case in these circumstances is one where the *FCA* staff believe that a decision to begin proceedings~~

- (1) ~~should be taken before it is possible to follow the procedure described in paragraph 10.1.2; and~~
- (2) ~~it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

...

- 10.1.3 Decisions about whether to apply to the civil courts for injunctions under the *Act* will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

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11 Restitution and redress

11.1 Restitution orders under sections 382, 383 and 384 of the Act: the FCA's general approach

- 11.1.1 Decisions about whether to apply to the civil courts for restitution orders under the *Act* will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

- 11.1.2 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- (1) ~~should be taken before it is possible to follow the procedure described in paragraph 11.1.1; and~~
- (2) ~~it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

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12 Prosecution of Criminal Offences

12.1 The FCA's general approach

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Commencing criminal proceedings

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- 12.1.5 Subject to 12.4C, a decision to commence criminal proceedings will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

12.1.6 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- ~~(1) should be taken before it is possible to follow the procedure described in paragraph 12.1.5; and~~
- ~~(2) it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

12.1.7 Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979 and the Co-operative and Community Benefit Societies Act 2014 ~~may either will~~ be taken by the ~~procedure described in EG 12.1.5 or under executive procedures~~. The less serious the offence or its impact and the less complex the issues raised, the more likely that the ~~FCA~~ will take the decision to ~~prosecute under executive procedures~~ executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

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13 Insolvency

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13.2 The FCA's general approach to use of its powers and rights in insolvency proceedings

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13.2.3 Decisions about whether to apply to the civil courts for insolvency orders under the *Act* will be made by the ~~RDC~~ Chairman or, in an urgent case and if the Chairman is not available, by an ~~RDC~~ Deputy Chairman. In an exceptionally urgent case the matter will be decided by the executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

13.2.4 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- ~~(1) should be taken before it is possible to follow the procedure described in paragraph 13.2.3; and~~
- ~~(2) it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

14 Collective Investment Schemes

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14.4 Exercise of the powers in respect of recognised schemes: sections 279 and 281 of the Act – powers to revoke recognition of schemes recognised under section 272: the FCA’s policy

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14.4.3 Decisions about whether to apply to the civil courts for *collective investment scheme* related orders under the *Act* will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA’s executive of at least director of division level~~ the acting executive director of Enforcement.

14.4.4 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- (1) ~~should be taken before it is possible to follow the procedure described in paragraph 14.4.3; and~~
- (2) ~~it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

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19 Non-FSMA powers

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19.6 Regulated Activities Order 2001 (RAO)

19.6.1 The RAO sets out those activities which are regulated for the purposes of the *Act*. Part V of the RAO also requires the *FCA* to maintain a register of all those people who are not authorised by the *FCA* but who carry on insurance distribution activities. Under article 95 RAO, the *FCA* has the power to remove from the register an appointed representative who carries on insurance distribution activities if it considers that he is not fit and proper. The *FCA* will give the person a *warning notice* informing him that it proposes to remove his registration and a *decision notice* if the decision to remove his registration is taken. The decisions to give a *warning notice* or a *decision notice* will be taken ~~by the RDC following the procedures set out in DEPP 3.2 or, where appropriate, DEPP 3.3~~ under executive procedures. A person who receives a decision notice under article 95 RAO may refer the matter to the *Tribunal*.

19.7 The Open-Ended Investment Companies Regulations 2001

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19.7.3 The *FCA* will give a company a *warning notice* if it proposes to revoke the company’s authorisation and a *decision notice* if the decision to revoke the company’s authorisation is subsequently taken. The decisions to give a *warning*

notice or a *decision notice* will be taken by the *RDC* following the procedures set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* under *executive procedures*. A person who receives a decision notice under the *OEIC Regulations* may refer the matter to the *Tribunal*.

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19.22 Decision making under the Payment Services Regulations

- 19.22.1 The *RDC* is the *FCA*'s decision maker for some of the decisions under the *Payment Services Regulations* as set out in *DEPP 2 Annex 1G*. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under regulations 12(6), 12(9), and 12(10)(b) (including as applied by regulations 15 and 19).

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19.23 Electronic Money Regulations 2011

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Decision making under the Electronic Money Regulations

- 19.23.7 The *RDC* is the *FCA*'s decision maker for some of the decisions under the *Electronic Money Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under regulation 11(6), (9) and (10)(b) (including as applied by regulation 15).

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19.27 Alternative Investment Fund Managers Regulations 2013

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Decision making under the AIFMD UK regulation

- 19.27.6 The *RDC* is the *FCA*'s decision maker for some decisions under the *AIFMD UK regulation*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. For decisions made by *executive procedures*, the procedures to be followed are in *DEPP 4*.

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19.30 The Mortgage Credit Directive Order

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Decision making under the MCDO

19.30.8 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the MCDO as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*, and ~~*DEPP 3.4* applies for urgent notices under article 16(1)(a).~~

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19.31 The Small and Medium Sized Business (Credit Information) Regulations

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Decision making under the Small and Medium Sized Business (Credit Information) Regulations

19.31.5 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Credit Information) Regulations*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or ~~*DEPP 3.4*~~. For decisions made by executive procedures, the procedure to be followed will be those described in *DEPP 4*.

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19.32 The Payment Accounts Regulations 2015

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Decision making under the PARs

19.32.7 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices*, *decision notices* or other written notices to be given under the *PARs* as set out in *DEPP 2 Annex 1* and *DEPP 2 Annex 2*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or ~~*DEPP 3.4*~~.

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19.33 The Small and Medium Sized Business (Finance Platforms) Regulations 2015

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Decision making under the Small and Medium Sized Business (Finance Platforms) Regulations

19.33.5 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Finance Platforms) Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or,

where appropriate, *DEPP 3.3* or ~~*DEPP 3.4*~~. For decisions made by *executive procedures*, the procedure to be followed will be those described in *DEPP 4*.

