

Policy Statement

PS25/5

Our Enforcement Guide and greater transparency of our enforcement investigations

June 2025

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Chapter 1

Summary

- 1.1** This policy statement (PS) sets out our responses to feedback on our proposals to revise our Enforcement Guide, including proposals for greater transparency about our enforcement investigations. The revised version is in Appendix 1 to this PS. To help with the online use of our Handbook, and to clearly distinguish the archived previous version, our new and revised Enforcement Guide will be abbreviated to ENFG. For ease of reading in this PS, we use the abbreviation ENFG to refer to both the revised and previous versions.
- 1.2** We first published our ENFG in 2007 and it has since grown significantly. We have added to it when we get new powers and to provide further detail on our enforcement policies, approaches and practices.
- 1.3** It had become unhelpfully inaccessible and, in part, outdated. We publicly consulted on streamlining, focusing, and updating it in our consultation paper (CP) CP24/2, the first part of which was published in February 2024. Those proposals reflected our commitment to streamline our Handbook.
- 1.4** The first part of our CP included proposals for a new investigation publicity policy to provide a measured increase in investigation transparency under a public interest test. Proposing an increase in transparency reflected a recommendation by the Public Accounts Committee.
- 1.5** Following feedback and other stakeholder engagement, we revised the proposals and published the second part of our CP in November 2024.
- 1.6** Our revisions were widely welcomed but industry and trade bodies continued to have concerns about proposals to name regulated firms under investigation where a public interest test was met. Having carefully considered those concerns, and given the lack of broad consensus, we have decided to further limit the policy changes. Our approach was recorded in our March 2025 [letter](#) to the Treasury Select Committee.
- 1.7** In the final version of the revised ENFG, we have kept the exceptional circumstances test in our existing investigation publicity policy for regulated firms. We have also now provided for three instances where that test will no longer apply. Feedback shows broad support for increased transparency in these three areas. The changes will enable us, in limited circumstances, to:
- Announce and name the subjects of our investigations into suspected unauthorised activity or criminal offences related to unregulated activity.
 - Reactively confirm that we are investigating in specific circumstances.
 - Share information on an anonymised basis.
- 1.8** We have implemented most of the other changes to the ENFG on which we consulted in the first part of our CP and made some additional changes described below in light of feedback.

Who this affects

- 1.9** This PS and our revised ENFG may be of interest to:
- Firms that fall within our regulatory oversight, whether authorised by or registered with us, carrying out designated activities or relevant securities issuers.
 - Firms conducting activities for which they should be authorised or registered but are not.
 - Individuals working in either type of firm.
 - Consumer and investor groups and individual consumers and investors.
 - Industry groups, trade bodies, advisers, experts and commentators.
 - Other regulatory bodies.

The wider context of this PS

Our revised enforcement approach

- 1.10** The UK has a globally competitive financial services sector which plays an important part in supporting economic growth. High standards of market integrity, underpinned by effective regulation and enforcement, are critical to that effort. Visibly holding wrongdoers to account gives confidence to consumers, businesses and investors that the UK is a place that upholds those high standards. Our enforcement work directly reduces the damage that fraud and financial crime cause to UK markets' international reputation, growth and competitiveness.
- 1.11** Effective enforcement also reinforces the UK's reputation as a trusted, clean and stable place to do business. That trust is underlined when we investigate thoroughly and promptly, so any wrongdoing can be quickly addressed.
- 1.12** We recognised that our average investigation times were too long. We have focused our portfolio of enforcement cases in line with our strategic priorities and significantly accelerated our investigations. As a smarter regulator, we will support growth, help consumers and fight crime. With sharpened focus, we will have more impact. We have also raised the bar for opening an investigation and have strengthened our pre-investigation assessment processes. This is resulting in fewer and faster investigations, while also making full use of our supervisory intervention powers that don't involve enforcement investigations.

Our consultation

- 1.13** The ENFG is a publicly-available resource, of particular interest to the subjects of our enforcement investigations and their advisers. Some of the material in the ENFG would sit better in our Handbook or be more accessible on our website or is now out of date.

1.14 As part of our plans to update the ENFG, we proposed changes to our investigation publicity policy. Our proposals for a measured increase in transparency were part of our wider renewed enforcement approach with greater focus and pace.

1.15 We consulted in February and November 2024, with the aim of:

- Addressing the concerns we had about the ENFG's length, focus and accessibility.
- Introducing a new investigation publicity policy, in which the exceptional circumstances test would be replaced with a public interest framework.

What we are changing

1.16 Chapter 4 of our revised ENFG contains our amended investigation publicity policy. In light of feedback, we have decided not to proceed with our proposal to introduce a public interest framework. We will instead keep our existing exceptional circumstances policy as the principal test to decide if we should publicise an investigation into a regulated firm.

1.17 However, our policy now provides for 3 additional circumstances where we may also make announcements. These reflect areas where there was broad support for more transparency and much less concern.

1.18 The first will allow us to name a subject we are investigating for:

- suspected unauthorised financial services, including communicating a financial promotion without appropriate approval; or
- a suspected offence linked to unregulated activity

if we consider an announcement is desirable to warn or alert consumers or investors, or to help the investigation itself, for example by bringing forward witnesses.

1.19 The second will allow us to publicly confirm that we are investigating a subject if they, an affiliated company or a regulatory body, government or public body in the UK or a partner jurisdiction has or have already made that fact public. Our announcement may also confirm the nature of the investigation as far as that has already been made public.

1.20 The third will allow us to make public that we are investigating a particular matter on an anonymised basis without naming or identifying the subject of the investigation. We may do this where it would be desirable to educate people generally about the types of conduct we are investigating or to encourage firms to comply with our rules or other requirements.

1.21 We are continuing with the bulk of our proposed changes to streamline the rest of the ENFG. There are some areas where we have decided not to take proposals forward given feedback. We cover these in Chapter 3. In particular, we will continue to consult on all future changes to the ENFG.

How the changes link to our objectives

- 1.22** Our strategic objective is to ensure that the financial markets and the markets for regulated financial services function well. Our operational objectives include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. Whenever possible, we fulfil these in a way which advances the competitiveness and growth of the UK economy.
- 1.23** We consider that our general streamlining and focusing of the ENFG will give all stakeholders a better understanding of our enforcement policies, processes and procedures. Our investigation publicity policy will also benefit consumers and help protect and enhance the integrity of the UK financial system.

Outcomes we are seeking and measuring success

- 1.24** Our streamlined and updated ENFG will be a more user-friendly document. Firms and their advisers who use this information will benefit from shorter and more focused content. Moving some key information to our website will make it more accessible for everyone, including consumers and investors.
- 1.25** In implementing our revised investigation publicity policy and sharing more information about our enforcement work in specific circumstances, we hope to support public confidence, reassuring consumers and market participants that we are taking action. That in turn will help build trust in the system, supporting the economy and wider financial services industry. More openness, in specific circumstances, about our ongoing enforcement work will also support our accountability to Parliament, where there is often significant interest in our investigations.
- 1.26** We also want to benefit consumers, particularly where we suspect unauthorised activity. Where firms are unregulated, our tools to prevent and mitigate harm prior to an investigation are significantly reduced. Earlier announcements about these types of investigations will help consumers get more timely information to make decisions and may help to reduce consumer harm. Sharing more information about some of our investigations may also encourage witnesses to come forward, helping the pace and effectiveness of investigations.
- 1.27** Greater visibility about some of our enforcement work, including on an anonymised basis, should also have an educational benefit. For industry, this could help firms identify areas of concern, drive behavioural changes and encourage firms to make improvements more swiftly. For consumers, education about areas of FCA concern could support better-informed decisions, helping to reduce or avoid harm.
- 1.28** We will assess the impact of our revised publicity policy by tracking, so far as reasonably possible, the reasons for whistleblower disclosures and witnesses coming forward, and public and industry confidence in our enforcement work via surveys. We will do the same to assess any positive change in firm behaviour reflected, for example, by potentially better and faster remedial measures. We will proactively monitor other relevant data and stakeholder feedback we receive.

Summary of feedback and our responses

- 1.29** We are grateful for the 133 responses to the first part of our consultation, published in February 2024. We also listened to feedback during extensive in-person meetings with stakeholders. We held over 40 meetings and roundtables with industry. We also met with consumer groups, government, law firms, a range of parliamentarians and regulators. We answered questions about our proposals from both the Treasury Committee and the House of Lords Financial Services Regulation Committee.
- 1.30** Both written and in-person responses showed support for our overall enforcement objectives, and wide recognition of the positive impact that sharing more information about issues we are investigating could bring. Consumer groups, whistle-blower advocates and transparency campaigners favoured greater transparency about our investigations.
- 1.31** Alongside general recognition of the potential benefits of increased transparency, industry respondents raised a range of objections to the proposals to share more information about investigations. As well as objecting to the potential naming of regulated firms under investigation, there were concerns about how the proposed changes would work in practice.
- 1.32** Reflecting that feedback, we revised our publicity proposals, making significant changes that included proposing:
- considering the impact of an announcement on the investigation subject; and
 - the potential for an announcement to seriously disrupt public confidence in the financial system or the market
- as additional explicit factors in the public interest test and additional specific processes to support the operation of the test.
- 1.33** We received 65 responses to the second part of our consultation, published in November 2024. These came from a variety of stakeholders including firms, industry groups and consumer organisations. We continued to engage with industry and consumer representatives about our proposals. We again held a significant number of meetings with external stakeholders, most of whom were firms and trade associations.
- 1.34** We also continued to engage with the Treasury Select Committee and House of Lords Financial Services Regulation Committee. The latter published its own report on 6 February 2025.
- 1.35** In the second part of our consultation, and throughout our external engagement, we provided more details about how our proposals might work. We discussed the types of announcements we envisaged which were:
- Proactive named announcements about regulated firms.
 - Proactive named announcements about unregulated firms.
 - Anonymised announcements.
 - Reactive announcements.

- 1.36** We received broad support around proposals for announcing investigations into unregulated firms. We also received broad support for anonymised and reactive announcements. However, despite our revisions, strong opposition remained to proactive announcements of investigations into regulated firms where a public interest test was met. Firms and industry groups felt strongly that our existing exceptional circumstances policy sufficiently enabled us to make announcements.
- 1.37** The constructive feedback received has significantly contributed to our final policy position. We set out in Chapters 2 and 3 more detail about the feedback and our responses.

Equality and diversity considerations

- 1.38** We have considered the equality and diversity issues that may arise from the changes to the ENFG described in this PS. Overall, we do not consider that those changes materially impact any of the groups with protected characteristics under the Equality Act 2010.

Environmental, social and governance considerations

- 1.39** In developing this PS, we have considered the environmental, social and governance implications of our proposals and our duty under sections 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under section 5 of the Environment Act 2021. Overall, we do not consider that the proposals are relevant to contributing to those targets.

Next steps

- 1.40** The new ENFG accompanying this PS, including the policy on investigation publicity, will come into force on 3 June 2025.

Chapter 2

Greater transparency of our enforcement investigations

Introduction

- 2.1** This chapter summarises the feedback on our proposed changes to our approach to investigation publicity, why we consulted and what we wanted to change. We have summarised the key issues raised in feedback that relate to aspects of the proposals that we have decided to take forward. We set out our responses to that feedback and where we are changing our approach in response to feedback.

Our proposals

Why we consulted

- 2.2** Our current investigation publicity policy was first issued after public consultation in 2001. The policy has been almost unchanged since. It has meant that we rarely say anything about our investigations until they have ended and do not ordinarily confirm the existence of an investigation even where the firm itself has made it public.
- 2.3** We proposed a measured increase in transparency to serve the public interest. This was in line with a 2022 House of Commons Public Accounts Committee recommendation, following its investigation into the British Steel Pension Scheme.
- 2.4** By proposing to give more information about our investigations, at an appropriate moment in time, we sought to:
- Protect consumers – by educating them about worrying conduct, enabling them to act, helping to prevent harm or reduce harm more quickly.
 - Support public confidence and trust – by reassuring consumers and market participants that we are taking appropriate action.
 - Drive positive behavioural change – by being clear about the types of misconduct we think warrant an investigation, allowing other firms to learn lessons and raise their standards sooner.
 - Improve our accountability, particularly as we are regularly asked about specific investigations by parliamentarians and their committees.
 - Support our investigations – by increasing transparency to help encourage witnesses or whistle-blowers.

What we consulted on

- 2.5** We proposed a public interest framework to inform our decisions on whether to announce an enforcement investigation and whether, in doing so, to name the subject. We proposed factors which may indicate whether an announcement would or would not be in the public interest. We stated that we would make decisions to announce and name on a case-by-case basis, taking all relevant facts and circumstances into account.
- 2.6** In response to extensive feedback, in the second part of our CP, we proposed revising the framework to explicitly refer to the potential impact of announcements on firms or third parties, such as current or former employees, as a factor to consider when deciding whether to announce an investigation and whether to name the investigation subject. We also proposed to add the potential for an announcement to seriously disrupt public confidence in the financial system or the market as a factor in the public interest test. We also suggested specific processes to support the operation of the proposed test.

What we wanted to achieve

- 2.7** In the second part of our consultation, and throughout our external engagement, we provided more detail about how our proposals might work. We discussed 4 scenarios in which we expected to share more information under the new framework:
- A small incremental increase in the number of proactive announcements naming regulated firms under investigation.
 - Proactive announcements naming unregulated firms under investigation. Over 60% of our firm investigations are into unregulated firms. In these cases, we often suspect criminality but have limited or no tools to prevent and resolve harm before such investigations.
 - Reactive announcements. Many of our investigations are already in the public domain, generally because firms have announced them. We wanted to be able to reactively confirm the existence of such investigations.
 - Anonymised announcements. We said there would be circumstances where there would be benefits to announcing an investigation but not naming the firm involved.

In paragraphs 2.15 to 2.39 below, we summarise feedback received for each of these 4 scenarios.

Our consultation

- 2.8** We asked a range of questions about our proposals for greater transparency, our suggested public interest test and how we might approach a revised policy in practice. We asked respondents to give reasons for their answers.
- 2.9** We received 133 responses to the first part of our consultation, published in February 2024. 104 of these were from firms, industry and trade bodies and professional advisers. 12 were from consumer and not-for profit organisations. We received 65 responses to the second part of our consultation, published in November 2024. Of these, 61 were from firms, firm bodies and professional advisers. We also held extensive in-person meetings.

Summary of feedback

Benefits of increased transparency

- 2.10** Many respondents welcomed the prospect of us sharing more information about our enforcement investigations. More general support included that increased information about our enforcement work would:
- Help hold us accountable by promoting the pace and efficiency of enforcement activities.
 - Support financial crime compliance and monitoring programmes.
 - Increase scrutiny of our enforcement work, particularly when we close investigations without taking enforcement action.
- 2.11** Consumer groups, whistleblower advocates and transparency campaigners all favoured greater transparency about investigations. There was clear recognition of the benefits for consumers and investors and reasons given in support included:
- Reassurance that action is being taken.
 - Making information more accessible to consumers and investors.
 - Providing education, including for firms, in turn increasing consumer protection or empowering consumers to make better decisions.
 - Providing a greater opportunity to work to raise awareness and support more transparent consumer-focused outcomes.
 - Enabling consumers to be better informed should they wish to raise complaints not only with the FCA, but directly with the firm itself or the Financial Ombudsman Service.
 - In certain circumstances, protecting consumer interests by avoiding potential harm.
- 2.12** Not all respondents considered the potential impact for consumers would be positive. A significant number of industry respondents felt the proposals could have unintended consequences for consumers. Examples included:
- Damaging consumer confidence, leading to consumers moving trading accounts away from the firm involved.
 - Uncertainty and confusion for consumers, who would not know if poor practice had occurred, whether they should close their accounts, what their next steps should be or where to go for further information.
 - Leading consumers to take decisions prematurely which could harm their long-term financial health and/or cause them to crystallise losses, incur early redemption charges and/or lose important benefits.
- 2.13** Several respondents acknowledged or supported our proposals' aim of providing reassurance to the public that we are taking appropriate action. They noted the early publication of investigatory activities with regular updates would reassure the public of progress, and that this was of primary importance to delivering our objectives.

- 2.14** Some respondents agreed that changing our approach to publicity could encourage potential whistleblowers and witnesses to come forward who may not have done so otherwise. This would support evidence-gathering and could help reduce the overall time taken to investigate.

Regulated firm announcements

- 2.15** While many respondents acknowledged the potential benefits of sharing more information about our enforcement investigations, the overwhelming majority opposed any increase in the naming of regulated or listed firms. A significant number of the industry, trade body and professional adviser respondents noted the potential reputational risks for firms and potential detrimental impact on connected individuals which they claimed could cause irreversible damage.
- 2.16** Many respondents said that an announcement about an investigation would be taken as a strong indication that some wrongdoing or regulatory breach has occurred. They suggested there would also be negative media attention if a subject firm was named.
- 2.17** Industry stakeholders also suggested our proposed approach would create significant challenges for firms that are issuers of securities and have securities listed in more than one jurisdiction. The reputational damage to a firm could lead to various adverse consequences, including in other jurisdictions. These could include the loss of business, fall in share price, withdrawal of funding and loss of shareholder, employee and customer confidence, which they argued would all adversely affect the firms' financial and operational stability.
- 2.18** Most of these respondents felt that the proposals could be particularly damaging for smaller/medium-sized firms. The reasons given for this included:
- The reputational damage to small firms and start-ups could be fatal to the business if customer or investor confidence in it is irreparably damaged, even if the investigation concludes with no breach found.
 - Smaller firms may have less resources to recover from any perception of wrongdoing. Or the publicity could lead to a 'run on the bank'. For small and medium-sized firms, this may even call into question whether they could continue as a going concern.
 - Smaller firms with narrow profit margins would be particularly vulnerable to fluctuations in income from a loss of new or existing customers influenced by negative publicity.

Market impact/share prices/investors

- 2.19** Industry and professional bodies also raised concerns about the potential impact on markets. They felt an announcement about an enforcement investigation into a named regulated or listed subject would cause unnecessary concern in the market, lead to a sharp decline in share price and affect financial resilience, causing reputational damage for the industry. Some respondents referred to examples where they believed misunderstandings about our work have led to market disruption and loss of market value.

- 2.20** Industry stakeholders said that for larger listed firms, an announcement would have an immediate, significant impact on share price, exacerbated by the uncertainty of an outcome.
- 2.21** Consumer respondents argued the proposals would protect the interests of investors. However, a significant number of industry respondents felt the proposal would damage investor confidence and would:
- Be likely to result in immediate investor withdrawals, destabilising funds.
 - Put firms under undue financial strain by reducing available finance from existing and potential investors.
 - Adversely affect investment returns.
 - Put firms under intense scrutiny from investors.

Senior managers and individuals

- 2.22** Many industry and professional bodies raised concerns that naming firms under investigation could lead to senior managers and other executives associated with the firms being prejudicially identified. Respondents felt it would be difficult to manage this kind of risk. Examples of how an individual might be so identified included:
- Some firms are synonymous with specific individuals (founders or chief executives).
 - Senior members of the compliance, legal and risk management teams will inevitably come under public scrutiny and be prejudiced, as most investigations will also focus on the compliance and risk management functions.
 - Other individuals in particular groups or departments may also be implicitly identified and prejudiced. The subject matter of the investigation will often further suggest which individuals are likely to be under investigation.
- 2.23** The respondents noted the ways in which an individual or firm could be affected, including the impact on career progression, diverting resources and focus away from core business operations or leading to unjustified speculation about specific, identifiable senior managers.

Competitiveness

- 2.24** Industry and trade bodies and professional services firms commented on the potential for impact they saw for the wider financial services sector. Many suggested potential investors may be reluctant to invest in UK companies where there are reputational issues or perceptions of problems.
- 2.25** They said the uncertainty that they suggested came with the proposed approach would diminish the attractiveness of investing in UK financial services and so appeared inconsistent with our secondary competitiveness and growth objective. Publishing investigation decisions could, they said, raise questions for investors about potential wider issues within the sector, leading to potential implications for market stability and the relative appeal of UK financial services to investors.

- 2.26** Some respondents said they thought the proposals would make the UK an outlier internationally which would be potentially damaging to the public interest and the UK's competitiveness and growth. They suggested this could also damage the FCA's reputation and lower confidence in the UK financial system.

Investigation outcomes and timings

- 2.27** Concerns about potential damage to a firm's reputation increased for cases where we decide that no enforcement action is necessary. Many respondents noted that, at the time of the first part of our CP, about 65% of our enforcement cases resulted in no action being taken. Feedback suggested that including reassuring caveats in announcements or subsequent public statements about discontinuing announced investigations would not effectively reduce those risks.
- 2.28** Industry respondents said there would inevitably be a presumption of guilt which will be worsened by press and social media speculation. The respondents felt this reputational impact at the start of an investigation cannot be justified given the early stage, limited public details and lack of evidence and findings.
- 2.29** Many respondents welcomed our intention to increase the speed of our investigations. However, they suggested this made it unnecessary to publicly announce those investigations. They maintained that continuing to publicise any actions taken when the investigation ends would have the same impact, because of those faster timescales.
- 2.30** Many respondents argued the length of our investigations contributes to the possibly irreversible harm to firms that we publicly name but then take no action against.

Our response

We looked carefully at the data around the impact on firms, as well as the limited examples respondents gave us. The data tells us that, while there can be an impact on share price when we announce regulatory activity, often this is not the case. Any impact is context-specific and typically happens when there is detail on the potential financial impact of our action, such as a likely substantial redress bill. We provided more detail about this, as well as firms' own existing obligations to make market disclosures about ongoing investigations, in the second part of our consultation. We highlighted that, as a result of those obligations, a significant number of our investigations already end up in the public domain during the investigative stage. Some of the supervisory interventions we take prior to investigations have also come into the public domain.

We recognised that, if we publicly name a firm as the subject of one of our investigations, that has the potential to cause harm. We also recognised that, if we were to name a firm as an investigation subject, and a directly connected individual may be identified as a result, we must meet all the associated confidentiality and data protection obligations that protect individuals.

In our revised proposals we expressly included potential impact as a factor we would consider in every case when determining whether it would be in the public interest to name a firm under investigation. We referred to the potential impact on the firm, third parties, and current and former employees and directors. We also referred to the size of the firm and its stage of development as factors we would consider.

We remain of the view that the risks identified would be lower as our investigations are taking less time. We have significantly increased the pace and focus of our enforcement work and will continue to do so. Five of our recent investigations closed with a public outcome in less than 16 months, compared to an average length of 42 months in 2023/24. The number of our open operations has fallen by over 35% since 1 April 2023. None of our investigations into regulated firms opened since April 2023 has closed with no further action.

Nonetheless, considering continued concerns and lack of consensus, we will maintain our existing approach to publicity for regulated and listed firms.

Unauthorised activities announcements

2.31 Many respondents felt this was an area where it could be appropriate to share more information, or share it earlier, once we opened investigations. Respondents who supported this acknowledged the benefits to consumers. For example where:

- We suspect fraudulent activity by unauthorised firms.
- Unauthorised firms' activities pose harm to the mass market.
- Firms are deliberately carrying out regulated activities without authorisation.

2.32 During our in-person meetings, many respondents recognised the specific problems we face with unregulated firms carrying out activities that in fact are required to be regulated. Several stakeholders suggested we take a different publicity approach between regulated and unregulated firms, given the greater risks to consumers from these firms and the lack of supervisory powers we have to address these.

Our response

We have been encouraged by stakeholders' support for this aspect of our proposals. We see clear consumer benefit in these types of announcement to inform existing or potential consumers or investors about possible harms and this is the area where we see potential for the greatest impact.

Reactive announcements

- 2.33** Many respondents agreed that, if the fact we are undertaking an investigation enters the public domain, it makes sense for us to be able to confirm we are investigating the particular subject. They also noted that confirming the fact of an investigation could help to clarify any misunderstandings about the action we are taking.
- 2.34** Of the 65 responses to the second part of our consultation, just under half expressly supported reactive confirmation as a way we might share more information. Just under a fifth expressly opposed reactive announcements. Many, including those who supported the idea in principle, further qualified their responses.
- 2.35** Many said that we should not use a media enquiry as the basis on which to provide information about an investigation. They suggested we should only make a reactive announcement in response to a proper disclosure by a firm, or other regulator, rather than in response to media. Some questioned the additional benefit of us confirming that we are investigating a matter if this is already public.

Our response

We consider that our existing policy does not generally enable us to reactively confirm an investigation where the fact is already in the public domain, for example because a firm has announced it. Given that many of our investigations come into the public domain before we announce them, we want to be able to confirm the action we are taking if the investigation subject, an associated firm or a regulatory, government or public body has made the fact of our investigation public.

Anonymised announcements

- 2.36** Many respondents considered that we could achieve the benefits we wanted without naming the subject. They were in favour of us publishing anonymised information about investigations, for example through quarterly or monthly summary updates.
- 2.37** Some respondents said they found our supervisory 'Dear CEO' letters useful. Others suggested we should expand on data we already publish in our annual reports to include more about investigations. Reasons given for publishing anonymised information included:
- Anonymised, periodic summaries of our enforcement activity would serve the same purposes as identifying those under investigation, but without the potentially harmful effects of naming them in the absence of any adverse finding.
 - Anonymised publications would still have a beneficial effect in encouraging witnesses or whistleblowers to come forward.

- 2.38** There was increased support for us sharing anonymised information following the publication of the second part of our consultation. Around two thirds of responses to that part supported anonymised announcements, with over half of that support coming from industry bodies.
- 2.39** Not all respondents supported anonymised announcements. Others said that, while some announcements may be anonymised, this would not address concerns about stability or share prices. Some also pointed to the 2014 disclosure of our life insurance review as an example of where anonymised information could have a market destabilising effect across many firms, whether or not they are the subject of the investigation.

Our response

We are encouraged by the support for and interest in anonymised announcements, both from our engagement meetings and written responses. We remain of the view that sharing information on an anonymised basis would be beneficial in some cases. For industry, this could help firms to identify areas to address in their own businesses and promote better compliance with our requirements. For consumers, education about areas of concern could support better-informed decisions, helping to reduce or avoid harm.

The public interest test

- 2.40** The majority of industry, trade body and professional adviser respondents opposed the introduction of a public interest test. There were a range of reasons given for this which included:
- The factors lacked detail and clarity. We had not set out how we would balance the competing factors, making any assessment subjective.
 - The list should be complete and contain every criterion we would consider before announcing an investigation.
 - Decision-making under the framework could be inconsistent and the discretion the framework gives could lead to uncertainty for firms, resulting in an impact on markets.
- 2.41** There was also continuing opposition to the framework in our engagement meetings and from our meetings with some of our Panels. One Panel was generally supportive. There continued to be questions about consistency of approach, how we would balance competing interests and uncertainty in how we would approach decisions.
- 2.42** Industry stakeholders and professional advisers preferred the certainty they felt the existing exceptional circumstances test gave. They also said the public interest factors consulted on did not appear materially different to those which establish exceptional circumstances in our existing policy.

- 2.43** Many respondents provided feedback on how we might use or adapt the existing policy. Some suggested that, rather than introduce a new public interest test, we could instead amend our existing policy.

Our overall response

We acknowledge the extensive opposition to our proposals to name more regulated or listed firms as investigation subjects using a public interest test.

We have been encouraged, through written feedback and in-person engagement, by support for sharing more information about investigations into suspected unauthorised activity and sharing more information on an anonymised or reactive basis.

We will maintain our existing exceptional circumstances test as our principal test and will make 3 changes to enable us to achieve the majority of our aims.

At Annex 2 we provide a marked-up version of our investigation publicity policy, to help show the limited extent of the changes.

Our exceptional circumstances test

- 2.44** We will maintain the exceptional circumstances test. This will remain our principal test when deciding whether to announce an investigation including when we generally do so proactively about a regulated or listed firm, and the policy will keep almost all of the current wording.
- 2.45** Our policy will identify 3 additional circumstances in which we may announce our investigations, reflecting those areas where there was wider support. These will enable us, in specified circumstances to:
- Announce and name the subjects of our investigations into suspected unauthorised activity or criminal offences relating to unregulated activity.
 - Share information on an anonymised basis.
 - Reactively confirm that we are investigating in limited circumstances.
- 2.46** Below, we set out more details on each of these 3 additional circumstances, and how we see them working in practice.

Which investigations this will apply to

- 2.47** Our revised policy will apply to all our investigations started on or after 3 June 2025 by way of statutory appointment of investigators, under FSMA or otherwise.

Our approach to individuals

- 2.48** As we said in both parts of our CP, given the specific legal considerations on sharing information about individuals, we will not generally announce when we have opened an investigation into a named individual.

Unauthorised activity

- 2.49** Our addition involves the investigation of suspected regulated financial services or other activities, including financial promotions, carried out without appropriate authorisation, approval or registration. These are investigations where we often have concerns about consumer harm and where we generally have no supervisory, intervention or oversight powers to protect consumers.
- 2.50** We have also included in this category suspected criminal offences relating to unregulated activity. This covers suspected criminal offences involving the unregulated part of an authorised firm's business but not misconduct in its regulated activities. These cases often involve concerns about potential significant consumer harm.
- 2.51** We have used defined terms from the Handbook for consistency. We recognise that the definition of "person" in our Handbook includes firms and individuals.
- 2.52** Specific legal restrictions apply to the naming of individuals. We would not generally announce when we have opened an investigation into a named individual.
- 2.53** For investigations into suspected unauthorised activity, there may be some very limited circumstances where it is necessary for us to name an individual under investigation, for example where an individual holds themselves out to be a firm. These cases often involve considerable consumer harm and our normal supervisory tools are not available to us. Our [Warning List](#) of unauthorised firms also very occasionally lists individuals. The reference to "person" would enable us to name an individual if necessary for the purposes of our investigation. However, in practice we expect these instances would be extremely rare.
- 2.54** There is already a definition of 'unregulated activity' in the Handbook. We have added a definition of 'unauthorised activity' to the Handbook Glossary, as an activity in breach of section 21 of FSMA or carried out in breach of a statutory requirement to be authorised or registered with the FCA or PRA.
- 2.55** The amended policy sets out the specific circumstances where we might share information about these types of investigations. These are where we consider it desirable to:
- Warn or alert consumers or investors.
 - Help the investigation itself, for example to bring forward witnesses.
- 2.56** In deciding whether to make any announcement, we will consider the potential prejudice that may be caused to any persons who are or may be investigation subjects. This replicates the provision in our exceptional circumstances test for proactively naming subjects of our investigations.

Reactive announcements

- 2.57** Our addition for reactive announcements states that we will only reactively confirm that we are investigating a named subject in limited circumstances. These are where the fact of our investigation into the subject has been made public by:
- The investigation subject or an affiliated company (eg a parent company).
 - A regulatory, government or public body.
- 2.58** We envisage that a public announcement under this provision is likely to be a confirmatory statement on our website or by our press office or in response to a parliamentary request for information.
- 2.59** As at 1 June 2025, we had 40 open investigations into regulated, listed or publicly traded firms. Of these 22 are in the public domain (14 were made public by the firm; we made 6 public during the investigation stage; and we made 2 public through our statutory processes).
- 2.60** Any information that we share would not typically go beyond what has already been put in the public domain. Information we share would be limited to simply confirming the name of the subject of the investigation, and might include the subject matter of the investigation.

Anonymised announcements

- 2.61** Our third additional circumstance enables us to make an investigation public, without naming or otherwise identifying the investigation subject. The amended policy provides that we will only rely on this provision where it is desirable:
- For the purposes of education.
 - To encourage compliance with our rules or requirements.
- 2.62** We are exploring ways of sharing information on a general basis, looking at how we might provide more information on themes and trends in our enforcement work. We gave thematic examples in the second part of our CP, which included anti-money laundering, cyber security controls and market abuse investigations. We might also make anonymised announcements about a particular investigation.

Decision makers, timings and process

- 2.63** Whenever we open an investigation, we will consider how our publicity policy applies. All decisions on enforcement investigation publicity will be taken by an Enforcement Executive Director.
- 2.64** We know there will clearly be instances when we would not share any information because of potentially serious impacts on wider financial stability or a risk of wider negative market impact.
- 2.65** Where applicable, we will consider the potential prejudice that may be caused to any persons who are, or who are likely to be, the subject of the investigation.

- 2.66** When considering an anonymised announcement, we would take all reasonable steps to ensure that the investigation subject could not be identified. We will also consider the risk that an announcement, even if fully anonymised, may disproportionately negatively affect firms of the relevant type or in the relevant sector on a case-by-case basis.
- 2.67** Any announcement will be subject to all applicable statutory provisions. This includes the restriction on disclosing confidential information in section 348 of FSMA and restrictions imposed by data protection legislation. We will take all relevant facts and circumstances into account when making a decision. We may discuss a proposed announcement with the investigation subject to inform our considerations.
- 2.68** Should we decide it is appropriate to say anything publicly about an investigation, when we announce or share information will depend on the investigation and the relevant provisions we are relying on. For example, we might reactively confirm an investigation that has become public knowledge many months after that investigation started. Or we might share information to warn consumers about suspected unauthorised activities quite early on in an investigation, provided the investigation was not covert.
- 2.69** The form in which we share information may also vary. For example, we could make a brief reactive confirmation statement via our website. We have also said that we are exploring ways of sharing information on a general basis. We are also considering whether we might show any announcements on our Register, Warning List and the recently launched Firm Checker facility.
- 2.70** We will take decisions on whether to share information about an investigation at the start of the investigation and, where we do not share information at that point, will consider whether to do so at regular review points.
- 2.71** We will report annually on the number of cases where we share information about an investigation and then take no further action.

Chapter 3

Our proposals for a revised Enforcement Guide

Introduction

- 3.1** This chapter summarises the feedback we received on our proposed changes to the rest of the ENFG, why we consulted and what we wanted to change. We set out our responses and explain those areas where we are changing our approach in response to feedback.

Our proposals

Why we consulted

- 3.2** Over the years, the ENFG had material added to it incrementally and had grown to over 300 pages. It was a mix of policy, statutory provisions, and cross-references to material that was set out elsewhere and needed updating. So we comprehensively reviewed the entire document. We wanted to focus its content and purpose, to make it more concise and accessible, and to fit better with other sources of information about enforcement already on our website.
- 3.3** Our revised ENFG now focuses on how we use our powers to investigate and take enforcement action in a typical enforcement investigation. It also explains key aspects of our enforcement policy, where not provided elsewhere.
- 3.4** We aimed to exclude repetition of statements of policy or procedure which sit in our Decision Procedure and Penalties Manual (DEPP) and general insights into our overall approach to enforcement. Our webpages say why enforcement is important and set out our investigation opening criteria. They also include information on other enforcement topics such as our financial penalty scheme and settlement process, as well as containing links to DEPP, the ENFG and our Enforcement Information Guide.
- 3.5** Most of the policies described in the ENFG remained fit-for-purpose. So, the main changes come from:
- Deleting duplicated statements of policy or procedure that are in DEPP.
 - Deleting wording that repeats legislation. For example: deleting descriptions that quote or repeat our legislative powers in FSMA to gather information or conduct investigations.
 - Moving or reducing content that is not focused on enforcement. For example: moving to SUP content on intervention powers, which are primarily used by Supervision.

Overall feedback

- 3.6** Just under half the responses we received (58) to the first part of our CP commented on the wider ENFG proposals. Many respondents fed back on a few particular points rather than commenting on each individual question. Any characterisation of the number of responses on a particular point should be read in the context of the number of responses received on these proposals, and not the total of responses received to the CP.
- 3.7** Overall, we received general support for our intention to streamline the ENFG and make it more concise. Many respondents appreciated the aim of having more focused content to make it easier for readers to navigate and understood we did not generally aim to make changes to our policies.
- 3.8** The proposal that received by far the most feedback was about future consultation. While some appreciated that we are not required to have guidance in the ENFG or to consult on it, and some could see the benefit of a more flexible approach to future consultation, most opposed moving away from consulting on all future changes. Having considered this feedback, we have decided not to go ahead with our proposal to change when we will consult. We say more on this in paragraph 3.13.
- 3.9** A small number of respondents wanted the ENFG to be a comprehensive manual to which readers can turn for information on FCA enforcement. These respondents called for information on our webpages, in legislation and in the Handbook to be duplicated in the ENFG so that readers do not have to look elsewhere. A couple of respondents said that firms generally go to the ENFG rather than our website and so would benefit from having all information about enforcement there, including material that is also elsewhere, so the ENFG serves as a navigational aid. These respondents generally objected to deleting duplicative content, moving information out or reducing content within the ENFG.
- 3.10** Ten respondents said they could not easily understand what we were changing to comment in the detail they wanted to. Some of these respondents asked us to more clearly signpost where changes to the text reflect our intention to do something different and explain our reasons. Some of these asked us to consult further. In response to feedback asking us to do more to enable reading between the old and new versions, we include at Annex 3 below a table showing whether content has been moved, deleted or can be found elsewhere.
- 3.11** In the sections below, we summarise the feedback, set out our responses, and explain any changes we are making together with what that will mean in practice.
- 3.12** Our ENFG remains a statement of our general approach and policies. As has always been the case, specific policies may well need to be adapted or departed from in individual enforcement investigations, where justified by the facts and circumstances of that case. We would expect any issues about the particular application to a case to be something that our case teams and the subjects of an investigation discuss and resolve in the course of that investigation.

Future consultation

- 3.13** In our CP, we noted that we are not required by FSMA to have an ENFG, and consequently FSMA consultation requirements do not apply to our proposed ENFG amendments. Nevertheless, we have historically consulted on all ENFG changes, even where very minor. In our consultation, we proposed to consult where statutorily required or where we believed it necessary to do so.
- 3.14** We received 41 responses to our proposed approach to future consultation. Although some respondents acknowledge that we have no legal obligation to consult on changes to the ENFG, only a small number supported this proposal. Most respondents who commented on this point opposed it, citing concerns about lack of transparency.
- 3.15** Many respondents emphasised that we should always consult when we propose material or substantive changes to the ENFG. They argued that consultation ensures transparency and gives interested parties an opportunity to engage with us, which provides valuable insights into the practical impact of proposed changes. Respondents said that this process helps to identify areas where incorporating industry perspectives would lead to greater clarity, leads to materially better outcomes and better policy and prevents unforeseen consequences.
- 3.16** A few respondents were concerned about the lack of clear criteria for determining when consultation will be 'necessary' and highlighted potential interpretation disagreements between the FCA and firms over what constitutes a 'substantive' change.

Our response

We acknowledge the desire for greater certainty about when we will consult and the concerns about transparency around proposed changes. We have decided to keep our current practice where we consult on all changes to the ENFG and we will continue to apply our usual consultation processes.

Website

- 3.17** We proposed moving information to our website to make all the material setting out our high-level approach to enforcement, our investigation-opening criteria and our Enforcement Information Guide available in one place. We described this as information about our 'broader strategic approach to enforcement'.
- 3.18** We proposed removing the parts of Chapter 2 of the ENFG on case selection, cases where other authorities have an interest, sources of cases and cooperation and parts of the sections in Chapters 2 and 3 on senior management responsibility.

- 3.19** We received 43 responses to this proposal. Most respondents agreed that moving this content makes the information more accessible. It will also be easier to update our website quickly to keep this information current. However, some respondents objected, mainly wanting a 'one-stop shop' comprehensive ENFG or concerned that changes to this content would be less visible, receive less scrutiny and would not benefit from the governance and structure we have for changes to the ENFG (including the use of the Handbook timeline to view previous versions).

Our response

This high-level approach information covers why we enforce and how we prioritise and choose what to action. Putting it on our website aligns with how we publish information on how we approach supervision and our wider FCA Strategy and Business Plan, all of which are also published on our website.

We do not agree that having this information on our clearly signposted enforcement website pages makes this less transparent. In our view, this approach allows people interested in this type of information to access it more easily.

As with our Approach to Supervision and our FCA Strategy, we will not generally consult on our enforcement strategy or changes to it. We will, however, continue to review and update the website.

Investigation policies

- 3.20** We asked for comments on our proposals for changes across Chapters 1-6 of the ENFG. We summarise these below by theme.

Feedback on deletion of duplicate wording generally

- 3.21** Some respondents had concerns about content we proposed deleting. This was content which summarised legislative powers we use or makes a statement about the rights of others. For example, describing statutory provisions that require us to give written notice of a change in scope of an investigation. The general concern was that removing these sentences indicated we planned to exercise our powers differently.

Our response

We can only use statutory powers in the way the relevant legislation provides. We have removed duplication of this wording to make the ENFG more focused. Where we have removed wording quoting or describing something that remains in legislation, there is no impact on the power or how we can and will use it. Similarly, where we have removed statements about the rights of others from the ENFG, these rights are not changed.

Feedback on deletion of other wording from previous Chapters 1-6

3.22 Some respondents identified wording that will no longer feature in the ENFG and were concerned this indicated a change in our policy:

- Some respondents stressed the importance of legal review of a case by a lawyer outside the investigation team before it is sent to decision makers and asked that it be retained in the ENFG.
- A couple of respondents asked that we include in the ENFG a description of the Regulatory Decisions Committee's (RDC's) role in approving press releases where the RDC made the decision to take action.
- Our ENFG also says that we will not usually agree to extensions of time for responding to information or document requirements. One respondent was concerned that removing the wording, 'unless compelling reasons are provided to support an extension request' means that there is no scope for exceptions. This was not our intention. In our view, saying that we will not usually agree to an extension still leaves it open to us to agree to extension in some instances.
- We also proposed to remove the broad principles of enforcement that were set out in Chapter 2.1.2. We always considered and intended that we should maintain and be held to those standards, most of which give commitments to transparency and obligations as a regulator that are also set out elsewhere.

Our response

Given feedback objecting to the deletion of this content, with respondents stating that that all this should remain in ENFG because of its importance to how we conduct investigations, we will keep this content in the revised ENFG

Feedback on changes or clarifications to our policy or procedures

Accepting reports on a limited waiver basis

3.23 To focus the ENFG, together with other descriptive content, we proposed deleting a list of themes we might discuss with firms when considering the potential use of a firm-commissioned report. For example, how far we can rely on the report and whether any conflicts of interest have been identified. It does not signal a change in how we discuss reports with firms.

3.24 We proposed adding to the ENFG that we will accept reports over which legal privilege is asserted without agreeing the fact or extent to which they are legally privileged. Again, this is not a change in approach, but makes it clearer that this is our general approach to this issue.

- 3.25** A couple of respondents said they are concerned that this addition, read with our recent speeches encouraging firms to openly share information with us where they feel they can, encourages firms to waive privilege. They felt it also indicates we take a negative view where privilege is not waived or may suggest that we do not appreciate where there may be legitimate reasons not to do so.

Our response

We strongly encourage firms to take responsibility to put things right where something may have gone wrong and to consider carefully what they can share with us as we look at what has happened. There is no obligation to share legally privileged material with us but we also recognise that many firms choose to do so. We will accept disclosure on a limited waiver basis as set out in the ENFG but it is not necessary for us to reach agreement on how far privilege attaches to all or parts of a report. Whether legal privilege applies is ultimately a question for the courts. We do not consider that this undermines a firm's ability to resist disclosure of a report to third parties.

Having reviewed the wording in the revised ENFG, we have clarified the drafting.

Attendance of legal advisers at compelled interviews

- 3.26** We proposed clarifying our approach to the attendance of legal advisers at a compelled interview. Generally, an interviewee can be accompanied by a legal adviser who acts for them. Rarely, we may refuse attendance of a particular legal adviser where we think their attendance may prejudice the investigation. It may be, for example, that where a legal adviser acts for multiple parties in an investigation, we are concerned their attendance at interview may make the interviewee feel less able to be candid in their answers, or that we see the potential for the interests of the parties to diverge.
- 3.27** Respondents variously said that legal advisers have their own professional obligations to avoid a conflict of interest so it is not for us to assess this, and that there may be good reasons why a person wants a particular legal adviser to attend. For example, that a witness might want to be represented at interview by the legal adviser of a firm under investigation for cost reasons or because that adviser can support them with legal privilege issues.

Our response

We appreciate the benefit of legal advisers acting for multiple parties and that they are obliged to consider conflicts of interest, but it is for us to consider the different question of whether we believe there is potential for an investigation to be prejudiced.

When enforcement case teams consider whether an investigation may be prejudiced by a particular legal adviser attending, we look at all

the relevant circumstances of the particular case, including who is or who might be placed under investigation (which information we cannot disclose) as well as the wishes of the person being interviewed. We have decided to keep this change.

Report on our investigation

- 3.28** FSMA requires the appointed investigators to make a report of their investigation to the FCA. FSMA does not set out any particular form or requirements on what the report must contain. The form in which we do this has moved away from what we used to call preliminary findings letters and preliminary investigation reports. So our proposed ENFG removed these terms. A couple of respondents said they wanted us to go back to using this form of document. Their reasons included the belief that it would lead to shorter warning notices with fewer details but which they felt more people would read.

Our response

As we do not use what we used to call preliminary findings letters and preliminary investigation reports, we intend to make the proposed change.

Commencement of civil and criminal proceedings

- 3.29** Our Executive Directors currently decide whether we should start legal proceedings, and we proposed to extend that to include Directors in Enforcement. One respondent said this was watering down an important safeguard.

Our response

This proposed change was intended to provide additional flexibility at an appropriate level of seniority for both criminal and civil proceedings. We will keep this change to enable flexibility. Who takes decisions will depend on the nature of the case. We expect that decisions to commence criminal prosecutions will continue to be made at Executive Director level.

Scoping meetings

- 3.30** We proposed we move to deciding whether to hold scoping discussions on a case-by-case basis, rather than have a starting presumption that we would always arrange a scoping meeting.
- 3.31** A few respondents were concerned we are indicating we will hold scoping discussions a lot less and noted the benefits of appropriate scoping discussions for focusing and understanding the issues.

- 3.32** One respondent suggested that the FCA should amend the proposal by stating that investigation subjects will always be able to request that a scoping meeting takes place. Another said it would be useful to understand the criteria we would use to decide whether a scoping meeting would take place.

Our response

Some firms do not always want to have a scoping discussion (for example, where there has been extensive discussion of the issues through the supervisory relationship), and we are already flexible about what is the best time to have a scoping discussion when an investigation starts. Firms and individuals have the opportunity to discuss aspects of an investigation with the enforcement case team through the course of the investigation, and not just at a scoping meeting.

We remain of the view it would be helpful to clarify our approach to scoping meetings. It was always our intention that we would generally have a scoping meeting where investigation subjects want or request one, while being flexible where firms or individuals express no such need or agree that one is unnecessary. We have decided to explicitly confirm this in the ENFG.

Private warnings

- 3.33** We said we no longer intend to use private warnings as an enforcement tool and so proposed to remove reference to them. This is because a private warning was never intended to be a determination on whether the recipient has breached our rules.
- 3.34** Just under half of the respondents supported this proposal. They felt that, while private warnings are useful in providing feedback about our expectations to firms and individuals, they lack the transparency of our other enforcement tools.
- 3.35** They suggested we should continue to provide feedback through conversations and correspondence without using private warnings. They also suggested better ways to improve transparency and have wider regulatory impact. These include focusing on formal actions or publishing guidance and anonymised examples for industry to consider.
- 3.36** Respondents also noted that private warnings are not a determination of whether a person has breached rules. However, they still carry significant reputational implications without the protections or options to challenge of other enforcement tools.
- 3.37** Just over half the respondents were opposed to the proposal. The key concern was that we would no longer be providing feedback privately and that following an investigation we would publish findings about specific firms or individuals for wider industry to consider, albeit confirming we had not determined they had breached any rules.

- 3.38** Some respondents argued that we should still use private warnings to resolve cases quickly where appropriate. Some were unclear what we do instead of private warnings and were concerned that removing private warnings as a tool would result in us opening investigations where they felt it is not proportionate to do so.

Our response

Private warnings arose out of practice rather than being a statutory tool. The purpose of a private warning was to make a firm or individual aware that the issues were sufficiently serious for us to consider a disciplinary sanction such as a public censure or fine, even though we had not made a formal decision to do so.

We have not used private warnings for some time. We consider the objectives of a private warning can be met through communicating the issues to the relevant firm or individual, along with our expectations of what they should do to address those concerns. We have done this over the past few years through correspondence with the firm or individual. For that reason, we have decided to make it clear that we will no longer use private warnings as an enforcement tool and we have deleted reference to them.

This position does not affect the type of cases we will refer to Enforcement and investigate. Nor will it mean that we are slower to resolve investigations, or close them where that is appropriate. Our revised approach to enforcement is speeding up investigation times, which includes being quick to close where that is the right thing to do. And where, after investigation, we decide to close a case without imposing a sanction, we will continue (as appropriate) to communicate the nature of the concerns we looked at and may also advise on the future conduct of the firm or individual.

Retention, relocation or deletion of content in Appendix 1

- 3.39** In paragraphs 4.17-4.19 of the first part of our CP we explained we would briefly set out the other powers we may use alongside our investigation and enforcement powers in Appendix 1 to the ENFG. To make it easier to cross reference we identified these by their existing references:

- Injunctions (Chapter 10).
- Insolvency (Chapter 13).
- Collective investment schemes (Chapter 14).
- Disqualification of auditors and actuaries (Chapter 15).
- Disapplication orders against members of the professions (Chapter 16).
- Cancellation of approval as sponsor or primary information provider (Chapter 18).

- 3.40** We asked whether we should keep this material in the ENFG, relocate it elsewhere (either on our website or in separate guidance) or, if these chapters do not help understanding of how we work, we could also delete them.
- 3.41** Only a small number of respondents gave any feedback on these proposals. Most of these either wanted us to keep the chapters or to move the contents elsewhere in our Handbook, or on our website. Generally, these respondents either opposed us reducing guidance or said the content taken out is helpful and should at least be available in other FCA resources.

Our response

We understand that having guidance on how we might use powers is generally useful and that where there is already guidance, respondents are not keen to lose it.

For example, injunctions and insolvency-related powers are part of our regulatory toolkit. FSMA gives us powers to make applications to court for injunctions and in insolvency matters. But the procedures, rules and the approach the court takes in considering these applications are specialist subjects beyond the remit of the revised ENFG.

Given our desire to focus the ENFG on our investigation process, we are not persuaded that we need to keep the detail that was in the previous ENFG or to keep the full chapters available on our website. We believe our revised content is consistent in the main with how we treat other powers.

Moving content to the Supervision Manual

- 3.42** The previous Chapter 8 of the ENFG dealt with using our powers to impose a variation, cancel a permission, impose requirements on our own initiative and intervene against incoming firms. We proposed to remove this chapter and move it to sit between SUP 6 and 7 so that our approach to these powers sits in one place, alongside voluntary impositions of variations or cancellations of permissions and voluntary requirements.
- 3.43** Most respondents who gave feedback on this point were in favour of having all the information involving these powers in SUP, with some noting this will be clearer for readers.
- 3.44** Several respondents said that the chapter should be kept or that the ENFG should refer to or summarise the powers and clearly signpost the content in SUP. They variously said this was because the powers can and are used in an enforcement context or that readers of the ENFG should be aware of the powers or where the content has been moved.

Our response

We wanted to refocus the ENFG to contain key enforcement-related policy that is not elsewhere. Although we may use these powers in an enforcement investigation, they are generally supervisory powers and do not require us to open an investigation.

As we note on our webpages, we will use the appropriate regulatory response to resolve harm, and can use enforcement action and other regulatory tools together. So it may be appropriate to open an investigation alongside use of the powers. However, we still consider it appropriate for all guidance on how we use these powers to be in SUP with a note that these may be used in an enforcement context. These changes will also retain the guidance previously set out in sections 6.2.21 to 6.2.24 of the previous ENFG in SUP 6B.

Removing content on restitution

- 3.45** We proposed to remove Chapter 11 of the ENFG, covering our powers for restitution and redress, as this is a cross-FCA power and most redress schemes are agreed and overseen by our Supervision Division. This was also on the basis that content would be consolidated elsewhere and we set out, in our Business Plan 2023/24, that we intended to consult on guidance for firms on redress exercises.
- 3.46** Most respondents did not provide any comments on this proposal. Those that did broadly supported removing the restitution chapter as long as it was clear elsewhere in the Handbook that we have restitution powers and how we use them. One said that consulting on separate guidance that covers redress more broadly would likely lead to more effective guidance. A few respondents suggested the ENFG should retain a summary of these powers and cross reference to other content.
- 3.47** Some respondents challenged whether it was appropriate to remove Chapter 11 as an enforcement action can lead to using restitution powers, and in some cases, such as those involving unauthorised persons, Supervision would not be involved. So they felt it was important that readers of the ENFG know we have these powers.
- 3.48** A few respondents wanted the opportunity to review where the content would be moved to and see our consultation on redress.

Our response

Since publishing the CP, we have focused on identifying harm earlier, working with stakeholders on mass redress events. Removing the chapter as originally proposed would mean there was no detailed description anywhere of our restitution powers or the relevant factors we consider when using them. And, as one respondent noted, for unauthorised persons, these powers are used only by Enforcement, but used relatively

frequently. So we have decided to retain a summary of these powers in Appendix 1 of the revised ENFG, including the list of factors we consider when exercising our powers to seek or require restitution.

Retaining Chapters 19 and 20

- 3.49** We proposed retaining in Appendix 2 to the ENFG a summary of material from previous Chapters 19 and 20. These chapters relate to our non-FSMA powers under other legislation.
- 3.50** Some respondents supported this, particularly welcoming the streamlined version of these chapters being kept in the ENFG for easy access.
- 3.51** One respondent suggested we retain Chapter 20, on the Consumer Credit Act, in full or provide more detail in Appendix 2 to give more clarity to relevant firms.

Our response

We are going to adopt our proposal, placing summaries of the Chapter 19 and 20 content in Appendix 2 of the ENFG. We have grouped non-FSMA powers requiring a statement of policy in Appendix 2.1 and remaining powers in Appendix 2.2. We are not changing our approach to using these powers and have clarified this in the introduction of each Appendix; we have simply removed duplicative or unnecessary information.

We believe Appendix 2 provides the appropriate level of detail by outlining our enforcement toolkit beyond FSMA and directing readers to relevant resources. This approach ensures stakeholders can easily identify where to find more comprehensive information, such as a statement of policy in DEPP or other specific legislation.

Annex 1

Lists of respondents

The respondents to our consultation CP24/2: Our Enforcement Guide and publicising enforcement investigations – a new approach who have consented to the publication of their names are as follows:

Adam Samuel (individual)
The American Council of Life Insurers
The Association for Financial Markets in Europe
The Association of Financial Mutuals
The Association of Foreign Banks
AXA Insurance UK PLC
Bryan Cave Leighton Paisner LLP
Chiltern Asset Finance Limited
ClearBank Limited
Clifford Chance LLP
The Commodity Markets Council Europe
The Consumer Credit Trade Association
The Credit Services Association
Dechert LLP
Derek Vann (individual)
The Electronic Money Association
The European Principal Traders Association
The Equity Release Council
The Fairbanking Foundation
The Financial Services Consumer Panel
The Financial Services Lawyers Association
Folk2Folk Limited
Freshfields LLP
The Futures Industry Association
Herbert Smith Freehills Kramer LLP
Hogan Lovells International LLP
Innovate Finance
The International Swaps and Derivatives Association
The Investment and Life Assurance Group Limited
Jencap Partners Limited
KPMG LLP
Laterliving Now! Limited
Laven Advisers LLP
Legal & General Group PLC
LegalBeagles Group Limited
The Lloyd's Market Association
Lloyds Banking Group PLC
Marti Jarvis (individual)
Napier Technologies Limited

Noya Wealth Consulting Limited
Osborne Clarke LLP
Owen's TV & Domestic Appliances
Peter Ormosi (individual)
Phoenix Group Holdings PLC
Pinsent Masons LLP
Rebuilding Society Limited
Roger William Lawson (individual)
Schillings International LLP
Simmons & Simmons LLP
SimplyBiz Services Limited
The Transparency Task Force
The UK Individual Shareholders Society
The UK Shareholders' Association
Vanquis Banking Group PLC
Wilmer Cutler Pickering Hale and Dorr LLP

The list of respondents to CP24/2, Part 2: Greater transparency of our enforcement investigations who have consented to the publication of their names is as follows:

Age Partnership Limited
ASC Advisors LLC
Ashurst LLP
The Association of British Insurers
The Association for Financial Markets in Europe
The Association of Investment Companies
The Association of Mortgage Intermediaries
Aviva PLC
AXA Insurance UK PLC
Bankingwise Limited
The British Insurance Brokers' Association
Bryan Cave Leighton Paisner LLP
The Building Societies Association
The Chartered Governance Institute
Citizens Advice Scotland
ClientEarth
Clifford Chance LLP
The Consumer Credit Trade Association
The Credit Services Association
The Equipment Leasing and Finance Association
The European Leveraged Finance Association
The European Venues and Intermediaries Association
The Financial Services Consumer Panel
The Financial Services Lawyers Association
Foot Anstey LLP
Freshfields LLP
The Futures Industry Association
Herbert Smith Freehills Kramer LLP
Hill Dickinson LLP

Hogan Lovells International LLP
Innovate Finance
The International Swaps and Derivatives Association
The International Underwriting Association
The Investment Adviser Association
The Investment and Life Assurance Group Limited
Legal & General Group PLC
Linklaters LLP
Lloyds Banking Group PLC
The Lloyd's Market Association
The London & International Insurance Brokers' Association
The Managed Funds Association
M&G PLC
NEDs in Financial Services
The Personal Investment Management & Financial Advice Association
Phoenix Group Holdings PLC
PricewaterhouseCoopers LLP
The Quoted Companies Alliance
ShareSoc
TheCityUK
The UK Cryptoasset Business Council
UK Finance
West Bromwich Building Society
Yorkshire Building Society

Annex 2

Revised enforcement investigation publicity policy

Marked-up against our existing policy

ENFG 4.1 Publicity during FCA investigations

ENFG 4.1.1 The FCA will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except as described in other sections of this chapter. The following paragraphs deal with the ~~exceptional~~ circumstances in which the FCA may make a public announcement that it is or is not investigating a particular matter.

ENFG 4.1.2 The principal test is that described in ENFG 4.1.4 to ENFG 4.1.5 (the exceptional circumstances test). Notwithstanding this, the FCA may also make announcements concerning suspected *unauthorised activity* or a suspected criminal offence in relation to *unregulated activity* as set out in ENFG 4.1.6, reactive announcements as set out in ENFG 4.1.7 and anonymous announcements as set out in ENFG 4.1.8. Any announcement will be subject to the restriction on disclosure of confidential information in *section 348* of the *Act* and restrictions imposed by *data protection legislation* and other applicable statutory restrictions.

ENFG 4.1.3 Where the matter in question has occurred in the context of a *takeover bid*, and the following circumstances apply, the FCA may make a public announcement that it is not investigating, and does not propose to investigate, the matter. Those circumstances are where the FCA:

- (1) has not appointed, and does not propose to appoint, investigators; and
- (2) considers (following discussion with the *Takeover Panel*) that such an announcement is appropriate in the interests of preventing or eliminating public uncertainty, speculation or rumour.

ENFG 4.1.4 Where it is investigating any matter, the FCA will, in exceptional circumstances, make a public announcement that it is doing so if it considers such an announcement is desirable to:

- (1) maintain public confidence in the *financial system* or the market; or
- (2) protect *consumers* or *investors*; or
- (3) prevent widespread malpractice; or
- (4) help the investigation itself, for example by bringing forward witnesses; or
- (5) maintain the smooth operation of the market.

In deciding whether to make an announcement, the FCA will consider the potential prejudice that it believes may be caused to any *persons* who are, or who are likely to be, a subject of the investigation.

ENFG 4.1.5	<p>The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for the <i>FCA</i> to make public the fact of its investigation in order to allay concern, or contain the speculation or rumour. Where the matter in question relates to a <i>takeover bid</i>, the <i>FCA</i> will discuss any announcement beforehand with the <i>Takeover Panel</i>. Any announcement will be subject to the restriction on disclosure of confidential information in section 348 of the Act.</p>
ENFG 4.1.6	<p>Where the <i>FCA</i> is investigating suspected <i>unauthorised activity</i> or a suspected criminal offence in relation to an <i>unregulated activity</i> there are often concerns around <i>consumer</i> harm and the <i>FCA</i> generally has no supervisory, intervention or oversight powers to protect relevant consumers. The <i>FCA</i> may make public that it is investigating a named <i>person</i> for suspected <i>unauthorised activity</i> or for a suspected criminal offence in relation to an <i>unregulated activity</i> if it considers such an announcement is desirable for the purpose of warning or alerting <i>consumers</i> or <i>investors</i>, or to help the investigation itself, for example by bringing forward witnesses. In deciding whether to make an announcement, the <i>FCA</i> will consider the potential prejudice that it believes may be caused to any <i>persons</i> who are, or who are likely to be, a subject of the investigation.</p> <p><i>[New Glossary definition of "unauthorised activity" is as follows: "Any activity in breach of section 21 of the Act or carried out in breach of a statutory requirement for authorisation by, or registration with, the FCA or PRA."]</i></p>
ENFG 4.1.7	<p>The <i>FCA</i> may make a public announcement confirming that it is investigating a named <i>person</i> if that fact has already been made public by that <i>person</i>, an <i>affiliated company</i> or a <i>regulatory body</i>, government or public body. The <i>FCA</i>'s announcement may also confirm the subject matter of the investigation to the extent that it has already been made public in that manner.</p>
ENFG 4.1.8	<p>The <i>FCA</i> may make public that it is investigating a particular matter without naming or otherwise identifying the subject of the investigation, where it is desirable for the purpose of educating <i>persons</i> generally as to the types of conduct that the <i>FCA</i> is investigating or to encourage compliance with the <i>FCA</i>'s rules or other requirements.</p>
ENFG 4.1.9	<p>The <i>FCA</i> will not normally publish details of the information found or conclusions reached during its investigations. In many cases, statutory restrictions on the disclosure of information obtained by the <i>FCA</i> in the course of exercising its functions are likely to prevent publication (see <i>section 348</i> of the <i>Act</i>). In exceptional circumstances, and where it is not prevented from doing so, the <i>FCA</i> may publish details. Circumstances in which it may do so include those where the fact that the <i>FCA</i> is investigating has been made public, by the <i>FCA</i> or otherwise, and the <i>FCA</i> subsequently concludes that the concerns that prompted the investigation were unwarranted. This is particularly so if the <i>firm</i> under investigation wishes the <i>FCA</i> to clarify the matter.</p>

Annex 3

Enforcement Guide mapping table

The table below is a reference tool which maps information from the previous version of the ENFG to its location in the revised ENFG or elsewhere including SUP, DEPP, FSMA or our website. Only the ENFG sections are detailed in the table, other references provide the general location of the information.

Previous section	Previous heading/sub-heading	Destination/Location
	Chapter 1 – Introduction	
	Overview	
1.1.1		ENFG 1.1.1
1.1.2		FSMA
1.1.3		ENFG 1.1.3
1.1.4 – 5		Deleted
1.1.6	previously removed	N/A
1.1.7 – 8		ENFG 1.1.4 – 5
	Chapter 2 – The FCA's approach to enforcement	
	Case selection and the use of enforcement powers	
2.1.1		Website
2.1.2		ENFG 2.1.1
2.1.3 – 4		Website
2.2.1	previously removed	N/A
2.2.2 – 2.4.3		Website
	Cases where other authorities have an interest	
2.5.1		Website
	Investigations into PRA-authorised persons	
2.5.2		ENFG 3.7.1
	Assisting overseas regulators	
2.6.1		ENFG 3.8.1
	Sources of cases	
2.7.1		Website
	Enforcement and the FCA's Principles for Business ('the Principles')	
2.8.1		Deleted
2.8.2 – 4		ENFG 3.2.1– 3
	FCA guidance and supporting materials	
2.9.1 – 2		ENFG 3.4.1 – 2
2.9.3		ENFG 3.4.2 + DEPP
2.9.4		ENFG 3.4.3
2.9.5		ENFG 3.4.4 + DEPP

Previous section	Previous heading/sub-heading	Destination/Location
2.9.6		ENFG 3.4.5
	Industry guidance	
2.10.1 – 2		ENFG 3.5.1
2.10.3		ENFG 3.5.3
	FCA-recognised industry codes	
2.10A.1 – 2		ENFG 3.5.1 – 2
	Senior management responsibility	
2.11.1		ENFG 3.3.1
2.11.2		Website
	Co-operation	
2.12.1 – 2		Website
	Late reporting or non-submission of reports to the FCA	
2.13.1		DEPP
	Legal review	
2.14.1		ENFG 3.1.1
	Decision making in the context of regulatory enforcement action	
2.15.1 – 3		DEPP
	Chapter 3 – Use of information gathering and investigation power	
	Introduction	
3.1.1 – 2		ENFG 2.5.2 – 3
	Information requests (section 165)	
3.2.1 – 2		FSMA
	Information requests (section 122A)	
3.2A.1 – 2		FSMA
	Information requests (section 122B)	
3.2B.1 – 2		FSMA
	Reports by skilled persons (section 166)	
3.3.1 – 4		FSMA
3.3.5		FSMA + SUP
	Investigations into general and specific concerns (sections 167 and 168)	
3.4.1 – 2		FSMA
	Official listing investigations (section 97)	
3.5.1		FSMA
	Investigations into collective investment schemes (section 284)	
3.6.1		FSMA
	Investigations to assist overseas authorities (section 169)	
3.7.1		ENFG 3.8.2 + FSMA

Previous section	Previous heading/sub-heading	Destination/Location
3.7.2	previously removed	N/A
3.7.3 – 4		FSMA
	Information requests and investigations to assist overseas regulators in relation to short selling	
3.8.1 – 3		FSMA
3.8A	previously removed	N/A
	Information requests and investigations under the enhanced supervision of EEA firms under the Insurance Distribution Directive	FSMA + SUP
3.8B1		FSMA
	Power to require information relating to potentially unfair etc terms and notices	
3.9.1		Consumer Rights Act 2015
	Liaison where other authorities have an interest	
3.10.1		Website
	Information requests in joint investigations with the PRA	
3.10.2		ENFG 3.7 + Website
	FCA approach to firms conducting their own investigations in anticipation of enforcement action	
	Firm-commissioned reports: the desirability of early discussion and agreement where enforcement is anticipated	
3.11.1 – 5		ENFG 3.6.1 – 5
3.11.6		Deleted
3.11.7 – 8		ENFG 3.6.6 – 7
	Firm-commissioned reports: material gathered	
3.11.9 – 11		ENFG 3.6.8 -10
	Firm-commissioned reports: FCA use of reports and the protection of privileged and confidential material	
3.11.12 – 15		ENFG 3.6.11 – 14
Chapter 4 – Conduct of investigations		
	Notifying the person under investigation where notice is a requirement under section 170	
4.1.1		ENFG 2.3.1
	Notifying the person under investigation where notice is not required under the Act	
4.2.1		FSMA
4.2.2		ENFG 2.3.1
	Notification where a particular person is not yet under investigation	
4.3.1		ENFG 2.3.2
	Appointment of additional investigators	

Previous section	Previous heading/sub-heading	Destination/Location
4.4.1		FSMA
	Notice of termination of investigations	
4.5.1		ENFG 2.10.1
	What a subject of investigation can say to third parties	
4.6.1		Notice of Appointment Letter to subjects of investigation
	Use of statutory powers to require the production of documents, the provision of information or the answering of questions	
4.7.1		ENFG 2.6.1
4.7.2		PRIN/APER/COCON
4.7.3		ENFG 2.6.3
4.7.4		ENFG 2.6.2
	Scoping discussions	
4.8.1 – 2		ENFG 2.4.1 – 2
	Involvement of FCA supervisors during the investigation phase	
4.9.1		Deleted
	The timeframe for responding to information and document requirements	
4.10.1 – 2		ENFG 2.7.1 – 2
	Approach to interviews and interview procedures	
4.11.1 – 2		ENFG 2.8.1
4.11.3		ENFG 2.8.2
4.11.4		ENFG 2.8.3/2.8.4
4.11.5 – 10		ENFG 2.8.5 – 10
4.11.11		ENFG 2.8.1
	Search and seizure powers	
4.12.1 – 2		ENFG App 1.7.1 – 2
	Preliminary findings letters and preliminary investigation reports	
4.13.1 – 4		Deleted
	Joint investigations with the PRA	
4.14.1		Deleted
4.14.2 – 3		ENFG 3.7.2 – 3
	Chapter 5 – Settlement	
	Settlement and the FCA – an overview	
5.1.1		ENFG 2.9.1
5.1.2 – 5		DEPP + Website
	When settlement decisions may take place	
5.2.1		ENFG 2.9.3

Previous section	Previous heading/sub-heading	Destination/Location
5.2.2 – 3		DEPP + Website
5.2.4		ENFG 2.9.10
	The basis of settlement discussions	
5.3.1 – 2		DEPP
	Multiple parties and third party rights in enforcement action involving warning and decision notices	
5.4.1		ENFG 2.9.8
5.4.2		DEPP
5.4.3		Deleted
	The settlement discount scheme	
5.5.1		DEPP + Website
5.5.2		ENFG 2.9.5
5.5.3		ENFG 2.9.9
5.5.4		ENFG 2.9.6
5.5.5		ENFG 2.9.4
5.5.6		ENFG 2.9.7
5.5.7		DEPP
	Mediation	
5.6.1		DEPP
5.6.2		Deleted
	The relevance of settled cases to subsequent action	
5.7.1 – 2		DEPP
	Chapter 6 – Publicity	
	Publicity during FCA investigations	
6.1.1		ENFG 4.1.1
6.1.2 – 4		ENFG 4.1.3 – 5
6.1.5	previously removed	N/A
6.1.6		ENFG 4.1.9
	Publicity during, or upon the conclusion of regulatory action	
6.2.1		DEPP
6.2.2		ENFG 4 + DEPP
6.2.3 – 11		ENFG 4.2.1 – 10
	Decision notices and final notices	
6.2.12 – 19A		ENFG 4.2.11 – 19
6.2.20	previously removed	
6.2.21-24	Supervisory notices varying a firm's Part 4A permission, imposing a requirement or varying an approval on the FCA's own initiative (see EG 8 and DEPP 8) and supervisory notices imposing a direction under regulation 74C of the Money Laundering Regulations on the FCA's own initiative	SUP 6B

Previous section	Previous heading/sub-heading	Destination/Location
6.3	Decisions against ECA providers – previously removed	N/A
	Publicity in RDC cases	
6.4.1		ENFG 4.3.1
	Publicity during, or upon the conclusion of civil action	
6.5.1 – 2		ENFG 4.4.1 – 2
	Publicity during, or upon the conclusion of criminal action (see chapter 12)	
6.6.1 – 3		ENFG 4.5.1 – 3
	Behaviour in the context of takeover bid	
6.7.1		ENFG 4.6.1
	The Financial Services register: publication of prohibitions of individuals (see chapter 9)	
6.8.1		ENFG 4.7.1
	The Financial Services register: publication of disciplinary measures against auditors and actuaries (see chapter 15)	
6.9.1		Deleted
	The Financial Services Register: publication of disapplication orders against members of the professions (see chapter 16)	
6.10.1		Deleted
6.10.2		Deleted
	Chapter 7 – Financial penalties and other disciplinary sanctions	
7.1 – 7.4	The FCA's use of sanctions	DEPP
7.5	Payment of financial penalties	Subject's invoice
7.6 – 7.8	Private warnings	Deleted
	Suspensions of voting rights	
7.9.1 – 3		DEPP + FSMA
	Chapter 8 – Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms	SUP 6B
	Chapter 9 Prohibition Orders and withdrawal of approval	
	Introduction	
9.1.1 – 2		ENFG 5.1.1 -2
	The FCA's general policy in this area	
9.2.1		ENFG 5.2.1
9.2.2 – 4		ENFG 5.2.3 – 5
9.2.5		ENFG 5.3.1 – 5.3.7, 5.4.1
	Prohibition orders and withdrawal of approval – approved persons	
9.3.1 – 8		ENFG 5.3.1 – 8

Previous section	Previous heading/sub-heading	Destination/Location
	Prohibition orders against exempt persons and members of professional firms	
9.4.1 – 2		ENFG 5.4.1
	Prohibition orders against other individuals	
9.5.1 – 2		ENFG 5.4.1
	Applications for variation or revocation of prohibition orders	
9.6.1 – 5		ENFG 5.5.1 – 5
	Other powers that may be relevant when the FCA is considering whether to exercise its power to make a prohibition order	
9.7.1		ENFG 5.2.2
	The effect of the FCA's decision to make a prohibition order	
9.8.1		Deleted
	The effect of the FCA's decision to withdraw approval	
9.9.1 – 4		FSMA
	Chapter 10 – Injunctions	ENFG App 1.1
	Chapter 11 – Restitution and redress	ENFG App 1.8
	Chapter 12 – Prosecution of Criminal Offences	
	The FCA's general approach	
12.1.1 – 5		ENFG 6.1.1 – 4
12.1.6	previously removed	N/A
12.1.7		ENFG 6.1.4
	FCA cautions	
12.2.1 – 2		ENFG 6.2.1 – 2
	Criminal prosecutions in cases of market abuse	
12.3.1 – 4		ENFG 6.3.1 – 4
	Liaison with other prosecuting authorities	
12.4.1		Deleted
	Prosecution of Friendly Societies	
12.5.1		ENFG App 2.2
	Chapter 13 – Insolvency	ENFG App 1.2
	Chapter 14 – Collective Investment Schemes	ENFG App 1.3
	Chapter 15 – Disqualification of auditors and actuaries	ENFG App 1.4
	Chapter 16 – Disapplication orders against members of the professions	ENFG App 1.5
	Chapter 17 – previously removed	N/A
	Chapter 18 – Cancellation of approval as sponsor or primary information provider	ENFG App 1.6
	Chapter 19 – Non-FSMA powers	ENFG App 2
	Chapter 20 – Enforcement of the Consumer Credit Act 1974	ENFG App 2.1.1

Previous section	Previous heading/sub-heading	Destination/Location
	Appendix 1 – previously removed	N/A
	Appendix 2 – Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies	Deleted
App 2.1	Purpose, status and application of the guidelines	Deleted
	Appendix 3 – Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies	Deleted

Annex 4

Abbreviations used in this paper

Abbreviation	Description
CP	Consultation Paper
DEPP	Decision Procedure and Penalties Manual
ENFG	Enforcement Guide
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
Handbook	FCA Handbook
PRA	Prudential Regulation Authority
PS	Policy Statement
RDC	Regulatory Decisions Committee
SUP	Supervision sourcebook

Appendix 1

Made guidance (legal instruments)

ENFORCEMENT GUIDE INSTRUMENT 2025

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on 3 June 2025.

Amendments to material outside the Handbook

- C. The material outside the FCA’s Handbook of rules and guidance listed in column (1) below is amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Energy Market Participants guide (EMPS)	Annex A
Oil Market Participants guide (OMPS)	Annex B
Service companies guide (SERV)	Annex C
General guidance on Benchmark Administration, Contribution and Use (BENCH)	Annex D
The Collective Investment Scheme Information Guide (COLLG)	Annex E
Financial Crime Guide: A firm’s guide to countering financial crime risks (FCG)	Annex G
The Unfair Contract Terms and Consumer Notices Regulatory Guide (UNFCOG)	Annex H

New regulatory/registry guide

- D. The Financial Conduct Authority makes the ‘Enforcement Guide (ENFG)’ to form a Regulatory/Registry Guide in accordance with Annex F to this instrument. The Regulatory/Registry Guide does not form part of the Handbook.

Revocation of the Enforcement Guide (EG)

- E. The provisions of the Enforcement Guide (EG) are revoked.

Notes

- F. In the annexes to this instrument, the notes (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Enforcement Guide Instrument 2025.

- H. The guide in Annex F to this instrument may be cited as the Enforcement Guide (ENFG).

By order of the Executive Regulation and Policy Committee
9 May 2025

Annex A

Amendments to the Energy Market Participants guide (EMPS)

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

1 **Special guide for energy market participants**

...

1.2 **Parts of the Handbook applicable to energy market participants**

...

1.2.3 G Applicability of parts of Handbook to energy market participants

...

The following Regulatory Guides may also be relevant to *energy market participants*:

1. The Enforcement Guide ~~(EG)~~ (ENFG)

Annex B

Amendments to the Oil Market Participants guide (OMPS)

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

1 Special guide for oil market participants

...

1.2 Parts of the Handbook applicable to oil market participants

...

1.2.2 G Parts of the Handbook applicable to oil market participants

...

The following Regulatory Guides may also be relevant to *oil market participants*:

1. The Enforcement Guide ~~(EG)~~ (ENFG)

Annex C

Amendments to the Service companies guide (SERV)

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

1 Handbook requirements for service companies

...

1.2 Parts of the Handbook applicable to service companies

...

1.2.2 G Parts of the Handbook applicable to service companies

...

The following Regulatory Guides may also be relevant to *service companies*:

1. The Enforcement Guide ~~(EG)~~ (ENFG)

Annex D

Amendments to General guidance on Benchmark Administration, Contribution and Use (BENCH)

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

2 **Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors**

2.1 **Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors**

...

2.1.2 G Parts of the *Handbook* applicable to the *regulated activity* of *administering a benchmark*.

	Part of the Handbook	Applicability to the <i>regulated activity</i> of <i>administering a benchmark</i>
...		
Regulatory Guides	The Enforcement Guide (EG) <u>(ENFG)</u>	This applies.
	The Perimeter Guidance Manual (<i>PERG</i>)	This applies.
...		

Annex E

Amendments to Collective Investment Scheme Information Guide (COLLG)

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

5A **The COLL sourcebook**

5A.1 **Introduction**

...

Related Sourcebooks

5A.1.4 G ...

- (4) In addition to the listed sourcebooks, Regulatory Guides may also be of relevance. For example ~~EG link 14~~ ENFG App 1.3 (Collective Investment Schemes) sets out the *FCA* 's policies and procedures concerning the use of its enforcement powers in relation to *regulated collective investment schemes*.

...

Annex F

Enforcement Guide (ENFG)

In this Annex, the text is all new and is not underlined. Insert the following new guide, the Enforcement Guide (ENFG).

1 Introduction

1.1 Overview

- 1.1.1 G This guide sets out key aspects of our enforcement policy where these are not provided elsewhere. It should be read alongside the *Act*, other relevant legislation, *DEPP*, the Regulatory Processes block in the *FCA Handbook* and our website at www.fca.org.uk/about/how-we-regulate/enforcement/. This guide applies to all enforcement investigations regardless of *firms'* or *individuals'* regulatory status.
- 1.1.2 G On our website you can find the *FCA's* high-level approach to enforcement strategy, including information on case selection and when we investigate, here: www.fca.org.uk/about/how-we-regulate/enforcement/investigation-opening-criteria.
- 1.1.3 G This guide covers how we conduct a typical enforcement investigation. It also contains information about other powers available, which may not apply in every investigation.
- 1.1.4 G This guide will be reviewed and amended as appropriate in light of further experience and developing law and practice.
- 1.1.5 G The material in this guide does not form part of the *FCA Handbook* and is not *guidance on rules*. It is 'general guidance' as defined in section 139B of the *Act*.

2 Conduct of typical enforcement investigations

2.1 Approach to exercising enforcement powers

- 2.1.1 G The *FCA's* approach to exercising its enforcement powers is guided by the following principles:
 - (1) The effectiveness of the regulatory regime depends to a significant extent on maintaining an open and cooperative relationship between the *FCA* and those it regulates.
 - (2) The *FCA* will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with its publicly stated policies.
 - (3) The *FCA* will seek to ensure fair treatment when exercising its enforcement powers.

- (4) The *FCA* will aim to change the behaviour of the *person* who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

2.2 Starting investigations

- 2.2.1 G Our investigation opening criteria are on our website at www.fca.org.uk/about/how-we-regulate/enforcement/investigation-opening-criteria. For information about publicity, including during *FCA* investigations, see *ENFG* 4.

2.3 Notifying the person under investigation

- 2.3.1 G The *FCA* will always give written notice of the appointment of investigators to the *person* under investigation if it is required under section 170 of the *Act*. The *FCA* is not always required to give written notice of the appointment of investigators. However, it will normally notify the *persons* that they are under investigation when the *FCA* exercises its statutory powers to require information from them, providing such notification will not, in the *FCA*'s view, prejudice its ability to conduct the investigation effectively.
- 2.3.2 G In certain types of investigations, the *FCA* may not know the identity of the perpetrator or may be looking into market circumstances at the outset of the investigation rather than investigating a particular *person*. These investigations could relate to potential *insider dealing*, *market abuse*, misleading statements and impressions offences, breaches of the *general prohibition*, the restriction on *financial promotion* or the prohibition on promoting *collective investment schemes*. In those circumstances, the *FCA* will give an indication of the nature and subject matter of its investigation to those who are required to provide information to assist with the investigation. As soon as a *person* becomes the focus of the *FCA*'s enquiries, the *FCA* will consider whether it is appropriate to notify that *person* that they are under investigation.
- 2.3.3 G If a decision to open an enforcement investigation into an *individual* or *firm* is made, the *FCA* will, considering the criteria applied in coming to the decision, give the reason for the referral, a summary of the circumstances and potential breaches at the start of the investigation or when otherwise notifying the *person* under investigation.

2.4 Scoping discussions

- 2.4.1 G For cases involving *firms*, *approved persons* or *conduct rules staff*, the *FCA* will determine on a case-by-case basis whether to hold scoping discussions with the *firm* or individuals concerned but will generally do so when specifically requested. Where scoping discussions are appropriate, they will normally be held close to the start of the investigation. The purpose of these discussions is to give the *firm* or individuals concerned

in the investigation an indication of: why the *FCA* has appointed investigators (including the nature of and reasons for the *FCA*'s concerns); the scope of the investigation; how the process is likely to unfold and an indication of the likely timing, if possible, of the key milestones and next steps in the investigation; the individuals and documents the team will need access to initially and so on. There may be a limit, however, as to how specific the *FCA* can be about the nature of its concerns in the early stages of an investigation. The *FCA* team for the purposes of the scoping discussions may include the nominated supervisor if the subject is a relationship-managed *firm*.

- 2.4.2 G Throughout the investigation process, there will be an ongoing dialogue with the *firm* or individuals. We will aim to give periodic updates at least on a quarterly basis covering the steps taken in the investigation to date as well as the next steps in the investigation and indicative timelines. Where the nature of the *FCA*'s concerns changes significantly from that notified to the *person* under investigation and the *FCA*, having reconsidered the case, is satisfied that it is appropriate in the circumstances to continue the investigation, the *FCA* will notify the *person* of the change in scope.

2.5 Information gathering and investigation powers

- 2.5.1 G There are several ways by which the *FCA* gathers or receives information for its investigations – for example, by using its statutory powers under the *Act* or other legislation, requesting information from others (national or international authorities), and receiving voluntary information from others (*firms*, *individuals*, *whistleblowers*, other authorities or agencies).
- 2.5.2 G The *FCA* has various powers to gather information and appoint investigators. These include, under Part XI of the *Act*, powers to compel the production of documents and provision of information, to compel attendance at an interview to answer questions, and to require the production of a report by a *skilled person*. Some of these powers can support both the *FCA*'s supervisory and enforcement functions – for example, under sections 122A, 122B, 165 and 166 of the *Act*. In any particular case, the *FCA* will decide which powers, or combination of powers, are most appropriate to use, having regard to all the circumstances. The *FCA* also has powers to gather information and appoint investigators on behalf of an *overseas regulator* on request.
- 2.5.3 G Information may also be provided to the *FCA* voluntarily. For example, *firms* may at times commission an internal investigation or a report from an external law firm or other professional adviser and decide to pass a copy of this report to the *FCA*. Such reports can be very helpful for the *FCA* in circumstances where enforcement action is anticipated or underway. The *FCA*'s approach to using *firm*-commissioned reports in an enforcement context is set out in *ENFG* 3.6.

2.6 Use of statutory powers to require the production of documents, the provision of information or the answering of questions

- 2.6.1 G The *FCA*'s standard practice is to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice. For example:
- (1) For suspects or possible suspects in criminal or *market abuse* investigations, the *FCA* may prefer to question that *person* on a voluntary basis, possibly under caution. In such a case, the interviewee does not have to answer but, if they do, those answers may be used against them in subsequent proceedings, including criminal or *market abuse* proceedings.
 - (2) In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the *FCA* will usually seek information voluntarily.
 - (3) In some cases, the *FCA* is asked by *overseas regulators* to obtain documents or information or conduct interviews on their behalf. In these cases, the *FCA* will consider with the *overseas regulator* the most appropriate method for obtaining evidence required – for example, by obtaining it voluntarily.
- 2.6.2 G If a *person* does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The *FCA* may also choose to bring proceedings for breach of *Principle 11*, *Statement of Principle 4* or *COCON 2.1.3R* as this is a serious form of non-cooperation.
- 2.6.3 G The *FCA* will not bring enforcement proceedings against a *person* for failing to be open and cooperative with the *FCA* simply because, during an investigation, they choose not to attend or answer questions at a purely voluntary interview. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of a *person* (whether they are a *firm* or individual) to participate in a voluntary interview. If a *person* provides the *FCA* with misleading or untrue information, the *FCA* may consider acting against them.

2.7 Timeframe for responding to information and document requirements

- 2.7.1 G Delays in the provision of information and/or documents can have a significant impact on the efficient progression of an investigation, and so the *FCA* expects *persons* to respond to information and document requirements in a timely manner to appropriate deadlines. When an investigation is complex (and the timetable allows), the *FCA* may decide to issue an information or document requirement in draft, allowing a specified period (of usually no more than 3 *business days*) for the *person* to comment on the practicality of providing the information or

documentation by the proposed deadline. After considering any comments, the *FCA* will then confirm or amend the request.

- 2.7.2 G Once it has formally issued a requirement (whether or not this has been preceded by a draft), the *FCA* will not usually agree to an extension of time for complying with the requirement unless compelling reasons are provided to support an extension request.

2.8 Approach to interviews and interview procedures

- 2.8.1 G The type of interview (eg, being voluntary or compelled) is a decision for the *FCA*. A *person* required to attend an interview using statutory powers has no entitlement to insist that the interview takes place voluntarily. If someone does not attend an interview required under the *Act*, they can be dealt with by the court as if they were in contempt (where the penalties can be a fine, imprisonment or both).
- 2.8.2 G Similarly, a *person* asked to attend an interview on a purely voluntary basis is not entitled to insist that they be served with a requirement. A *person* is not obliged to attend a voluntary interview or to answer questions put to them at that time. But they should be aware that, in an appropriate case, an adverse inference may be drawn from the failure to attend a voluntary interview, or a refusal to answer any questions at such an interview.

Interviews generally

- 2.8.3 G Where the *FCA* interviews a *person*, it will allow the *person* to be accompanied by their own legal adviser. Depending on the particular facts of the case, the *FCA* may refuse the attendance of a particular legal adviser, where it may reasonably be assessed as potentially prejudicing the investigation or any other ongoing investigation – for example, where that legal adviser has a conflict of interest or owes a duty of disclosure to another *person* (including the interviewee's employer).
- 2.8.4 G The *FCA* will also, where appropriate, explain what use can be made of the answers in proceedings against the *person*. Where the interview is recorded, the *person* will be given a copy of the audio of the interview once available and, where a transcript is made, a copy of the transcript.

Interviews under caution

- 2.8.5 G Individuals suspected of a criminal offence may be interviewed under caution. These interviews will be subject to all the safeguards of the relevant Police and Criminal Evidence Act Codes and are voluntary on the part of the suspect. The *FCA* will warn the suspect at the start of the interview of their right to remain silent (and the consequences of remaining silent) and will inform the suspect that they are entitled to have their own legal adviser present. The *FCA* will also give a cautionary warning in similar terms to interviewees who are the subject of *market abuse* investigations.

Subsequent interviews

- 2.8.6 G If a suspect has been interviewed by the *FCA* using statutory powers, before they are re-interviewed on a voluntary basis (under caution or otherwise), the *FCA* will explain the difference between the 2 types of interview. The *FCA* will also tell the individual about the limited use that can be made of their previous answers in criminal proceedings or in proceedings in which the *FCA* seeks a penalty for *market abuse* under Part VIII of the *Act*.
- 2.8.7 G Where a suspect has been interviewed under caution, and the *FCA* later wishes to conduct a compulsory interview with them, the *FCA* will explain the difference between the 2 types of interview and will notify the individual of the limited use that can be made of their answers in the compulsory interview.

Interviews under arrest

- 2.8.8 G On occasion, where the police have a power of arrest, the *FCA* may make a request to the police for assistance to arrest the individual for questioning by the *FCA* (*FCA* investigators do not have powers of arrest) – for example:
- (1) where it appears likely that inviting an individual to attend on a voluntary basis would prejudice an ongoing investigation or risk the destruction of evidence or the dissipation of assets; or
 - (2) where a suspect declines an invitation to attend a voluntary interview.

Interviews in response to a request from an overseas regulator

- 2.8.9 G Where the *FCA* has appointed an investigator in response to a request from an *overseas regulator*, it may, under sections 131FA or 169(7) of the *Act*, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.
- 2.8.10 G The factors that the *FCA* may consider when deciding whether to make a direction under section 169(7) include the following:
- (1) the complexity of the case;
 - (2) the nature and sensitivity of the information sought;
 - (3) the *FCA*'s own interest in the case;
 - (4) costs, and the availability of resources; and
 - (5) the availability of similar assistance to *UK* authorities in similar circumstances.

- 2.8.11 G Under sections 131FA and 169(9) respectively, the *FCA* is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators*. The statement is set out in *DEPP* 7.

2.9 Settlement and the FCA

- 2.9.1 G The *FCA* resolves many enforcement cases by settlement. Early settlement has many potential advantages as it can result, for example, in *consumers* obtaining compensation earlier than would otherwise be the case, the saving of *FCA* and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. The *FCA* therefore considers that it is in the public interest for matters to settle, and settle early, if possible. It can also be advantageous to subjects of investigations as it will save resources and time and bring the dispute to an end.
- 2.9.2 G The *FCA*'s policy for settlement is set out in *DEPP* 5 and the discount scheme for early settlement is set out in *DEPP* 6.7. General information regarding the settlement process can be found on the Enforcement section of the *FCA*'s website at www.fca.org.uk/about/how-we-regulate/enforcement/settlement-mediation-enforcement-cases.
- 2.9.3 G Settlement discussions between *FCA* staff and the *person* concerned are possible at any stage of the enforcement process if both parties agree.
- 2.9.4 G When the *FCA* has a 'sufficient understanding of the nature and gravity of the breach to make a reasonable assessment of the appropriate penalty' (as set out in *DEPP* 6.7.3G), it will normally send a letter to the subject of the investigation to commence the settlement process (a 'stage 1 letter').
- 2.9.5 G The *FCA* will aim to give 28 *days*' notice prior to the beginning of the settlement process, or stage 1, to allow the parties involved to make administrative arrangements – for example, ensuring that key staff can be available to participate where necessary in any settlement discussions. Where appropriate, the *FCA* will offer a preliminary without prejudice meeting to explain the *FCA*'s view of the misconduct (including the key factual and legal bases for our view), and to give the *firm* or individual an opportunity to identify where they believe there are errors in the factual basis and to indicate the extent to which they agree with the outline findings.
- 2.9.6 G There is no set form for a stage 1 letter, though it will always explain the nature of the misconduct, the *FCA*'s view on the sanction and the period within which the *FCA* expects any settlement discussions to be concluded. In some cases, a draft *statutory notice* setting out the alleged *rule* breaches and the proposed sanction may form part of the letter, to convey the substance of the case team's concerns and reasons for arriving at a particular level of sanction. The *FCA* will identify the key evidence on which its case relies at the commencement of stage 1. While the *FCA* will identify the key evidence that underpins our outline findings, the *FCA*

will not generally provide evidence where that evidence is already in the possession of the *firm* or individual.

- 2.9.7 G The *FCA* considers that 28 *days* following a stage 1 letter will normally be the ‘reasonable opportunity to reach agreement as to the amount of penalty’ before the expiry of stage 1 contemplated by *DEPP* 6.7.3G. Extensions to this period will be granted in exceptional circumstances only. Factors that will be taken into account in considering a request for extension will include the extent to which factors outside the *firm*’s or individual’s control will have a material impact on their ability to engage in settlement negotiations within the period set out in the stage 1 letter.
- 2.9.8 G Enforcement cases often involve multiple parties – for example, a *firm* and individuals in the *firm*. Enforcement action may be appropriate against just the *firm*, just the individuals or both. In some cases, it will not be possible to reach an acceptable settlement unless all parties are able to reach agreement.
- 2.9.9 G The *settlement discount scheme* does not apply to civil or criminal proceedings brought in the courts, or to *public censures*, *prohibition orders*, withdrawal of *authorisation* or approval, limitations of the period for which any approval is to have effect, or the payment of compensation or redress.
- 2.9.10 G The *FCA* will engage senior management in discussions (either heads of department or directors), liaising where appropriate with the *settlement decision makers*, attending a without prejudice meeting during discussions or arranging for the attendance of an appropriately senior *FCA* representative.
- 2.9.11 G A *firm* or individual may agree to resolve part of a case by entering into a *focused resolution agreement* with the *FCA*. Information about *focused resolution agreements* and the process is in *DEPP* 5.1.8AG.

2.10 Notice of termination of investigations

- 2.10.1 G Except where the *FCA* has issued a *warning notice*, and the *FCA* has subsequently discontinued the proceedings, the *Act* does not require the *FCA* to provide notification of the termination of an investigation or subsequent enforcement action. However, where the *FCA* has given a *person* written notice that it has appointed an investigator and later decides to discontinue the investigation without any present intention to take further action, it will confirm this to the *person* concerned as soon as it considers it is appropriate to do so, bearing in mind the circumstances of the case.

3 Other matters relevant to enforcement investigations

3.1 Legal review

- 3.1.1 G Before a case is referred to the *RDC*, it will be subject to a legal review by a lawyer who has not been a part of the investigation team. A lawyer who has not been a part of the investigation team will also review warning notices before they are submitted to the *settlement decision makers*.

3.2 Enforcement and the FCA's Principles for Businesses ('the Principles')

- 3.2.1 G The *FCA* will, in appropriate cases, take enforcement action on the basis of the *Principles* alone (see *DEPP* 6.2.14G).
- 3.2.2 G The *FCA* wishes to encourage *firms* to exercise judgement about, and take responsibility for, what the *Principles* mean for them in terms of how they conduct their business. But we also recognise the importance of an environment in which *firms* understand what is expected of them. So we have indicated that *firms* must be able reasonably to predict, at the time of the action concerned, whether the conduct would breach the *Principles*. The *FCA* will not take enforcement action unless it was possible to determine at the time that the relevant conduct fell short of our requirements.
- 3.2.3 G To determine whether there has been a failure to comply with a *Principle*, the standards we will apply are those required by the *Principles* at the time the conduct took place. The *FCA* will not apply later, higher standards to behaviour when deciding whether to take enforcement action for a breach of the *Principles*. However, where conduct falls below expected standards, the *FCA* considers that it is legitimate for consequences to follow, even if the conduct is widespread within the industry or the *Principle* is expressed in general terms.

3.3 Enforcement and the FCA's individual conduct rules and senior management responsibility

- 3.3.1 G The conduct *rules* in *COCON* set minimum standards of individual behaviour in financial services. Where senior managers have failed to meet our standards, the *FCA* will, where appropriate, bring cases against individuals as well as, or instead of, *firms*. The *FCA* believes that deterrence will most effectively be achieved by making these individuals realise the consequences of their actions. The *FCA*'s policy on disciplinary action against senior management and against other individuals under section 66 of the *Act* is set out in *DEPP* 6.2.4G to *DEPP* 6.2.9-BG. The *FCA*'s policy on prohibition and withdrawal of approval is set out in *ENFG* 5.

3.4 FCA guidance and supporting materials

- 3.4.1 G The *FCA* uses *guidance* and other materials to supplement the *Principles* or other *rules* where it considers that this would help *firms* to decide what action they need to take to meet the necessary standard.
- 3.4.2 G *Guidance* is not binding on those to whom the *FCA*'s *rules* apply. Nor are the variety of materials (such as case studies showing good or bad

practice, *FCA* speeches and generic letters written by the *FCA* to chief executives in particular sectors) published to support the *rules* and *guidance* in the *Handbook*. These materials are intended to illustrate ways (but not the only ways) in which a *person* can comply with the relevant *rules*. If a *firm* has complied with the *Principles* and other *rules*, it does not matter whether it has also complied with other material the *FCA* has issued (see *DEPP* 6.2.1G(4)).

- 3.4.3 G *Guidance* and supporting materials are, however, potentially relevant to an enforcement case and a decision maker may take them into account in considering the matter. Examples of the ways in which the *FCA* may seek to use *guidance* and supporting materials in an enforcement context include, but are not limited to:
- (1) helping to assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by the *Principles*;
 - (2) explaining the regulatory context;
 - (3) informing a view of the overall seriousness of the breaches;
 - (4) informing the consideration of a *firm's* defence that the *FCA* was judging the *firm* on the basis of retrospective standards; and
 - (5) being considered as part of expert or supervisory statements in relation to the relevant standards at the time.
- 3.4.4 G The extent to which *guidance* and supporting materials are relevant will depend on all the circumstances of the case. It is for the decision maker – whether the *RDC*, *Tribunal* or an executive decision maker – to determine this on a case-by-case basis.
- 3.4.5 G The *FCA* may take action in areas in which it has not issued *guidance* or supporting materials.

3.5 Industry guidance and FCA-recognised industry codes

- 3.5.1 G The *FCA* believes that industry guidance and industry codes of conduct have an important part to play in a principles-based regulatory environment, and that *firms* and individuals may choose to follow such guidance, and *firms* to have regard to such codes, as a means of seeking to meet the *FCA's* requirements and to conform to proper standards of market conduct. This will be true especially where industry guidance and industry codes of conduct have been ‘confirmed’ or ‘recognised’ by the *FCA* – see *DEPP* 6.2.1G(4) and *DEPP* 6.2.1G(4A).
- 3.5.2 G However, *FCA*-confirmed industry guidance, *FCA-recognised industry codes* and non-recognised codes are not mandatory. The *FCA* does not regard adherence to industry guidance, or to industry or market codes, as the only means of complying with applicable *FCA rules* and *Principles*.

- 3.5.3 G Industry guidance may be relevant to an enforcement case in similar ways to those described at *ENFG* 3.4.3G. The specific status of *FCA*-confirmed industry guidance will be considered when the *FCA* assesses the relevance of industry guidance in its investigations.

3.6 **FCA approach to firms conducting their own investigations in anticipation of enforcement action**

Firm-commissioned reports: the desirability of early discussion and agreement where enforcement is anticipated

- 3.6.1 G The *FCA* recognises that there are good reasons for *firms* to carry out their own investigations. This might be for, for example, disciplinary purposes, general good management, or operational and risk control. A *firm* needs to know the extent of any problem, and it may want advice about immediate or short-term measures it needs to take to mitigate or correct any problems identified. The *FCA* encourages this proactive approach and does not wish to interfere with a *firm's* legitimate procedures and controls.
- 3.6.2 G A *firm's* report – produced internally or by an external third party – may also be useful to the *FCA* where there is an issue of regulatory concern. Sharing the outcome of an investigation can potentially save time and resources for both parties, particularly where there is a possibility of the *FCA* taking enforcement action in relation to a *firm's* perceived misconduct or failing. This does not mean that *firms* are under any obligation to share the content of legally privileged reports they are given or advice they receive. It is for the *firm* to decide whether to provide such material to the *FCA*. But a *firm's* willingness to volunteer the results of its own investigation, whether protected by legal privilege or otherwise, is welcomed by the *FCA* and is something the *FCA* may take into account when deciding what action to take, if any. (The *FCA's* approach to deciding whether to take action is described in more detail in *DEPP* 6.2.)
- 3.6.3 G Work done or commissioned by the *firm* does not prevent the *FCA* from using its statutory powers – for example, to require a *skilled person's* report under section 166 of the *Act* or to carry out a formal enforcement investigation. A report commissioned by the *firm* cannot be a substitute for regulatory action, although it may help the *FCA* decide on the appropriate action to take – for example, by narrowing the issues or removing the need for certain work.
- 3.6.4 G The *FCA* invites *firms* to consider, in particular, whether to discuss the commissioning and scope of a report with *FCA* staff where:
- (1) *firms* have informed the *FCA* of an issue of potential regulatory concern, as required by *SUP* 15; or
 - (2) the *FCA* has indicated that an issue or concern has or may result in an enforcement investigation.

- 3.6.5 G The *FCA*'s approach in commenting on the proposed scope and purpose of the report will vary according to the circumstances in which the report is commissioned; it does not follow that the *FCA* will want to be involved in discussing the scope of a report in every situation. But if the *firm* anticipates that it will proactively disclose a report to the *FCA* in the context of an ongoing or prospective enforcement investigation, the potential use and benefit to be derived from the report will be greater if the *FCA* has had the chance to comment on its proposed scope and purpose.
- 3.6.6 G In certain circumstances the *FCA* may prefer that a *firm* does not commission its own investigation (whether an internal audit report or a report by external advisers) because action by the *firm* could itself be damaging to an *FCA* investigation. This is true in particular of criminal investigations, where alerting the suspects could have adverse consequences. For example, where the *FCA* suspects that individuals are abusing positions of trust within financial institutions and that an *insider dealing* ring is operating, it might notify the relevant *firm* but would not want the *firm* to embark on its own investigation: to do so would alert those under investigation and prejudice ongoing monitoring of the suspects and other action. *Firms* are therefore encouraged to be alive to the possibility that their own investigations could prejudice or hinder a subsequent *FCA* investigation and, if in doubt, to discuss this with the *FCA*. The *FCA* recognises that *firms* may be under time and other pressures to establish the relevant facts and implications of possible misconduct, and will have regard to this in discussions with the *firm*.
- 3.6.7 G Nothing in *ENFG* 3.6.1G to *ENFG* 3.6.6G extends or increases the scope of the existing duty to report facts or issues to the *FCA* in accordance with *SUP* 15 or *Principle* 11.

Firm-commissioned reports: material gathered

- 3.6.8 G Where a *firm* does conduct or commission an investigation, it is very helpful if the *firm* maintains a proper record of the enquiries made and interviews conducted. This will inform the *FCA*'s judgement about whether any further work is needed and, if so, where the *FCA*'s efforts should be focused.
- 3.6.9 G How the results of an investigation are presented to the *FCA* may differ from case to case. The *FCA* will take a pragmatic and flexible approach when deciding how to receive the results of an investigation. However, if the *FCA* is to rely on a report as the basis for taking action or not, it is important that the *firm* should be prepared to give the *FCA* underlying material on which the report is based as well as the report itself. This includes, for example, notes of interviews conducted by the lawyers, accountants or other professional experts carrying out the investigation, etc.

- 3.6.10 G The *FCA* is not able to require the production of ‘protected items’, as defined in the *Act*, but it is not uncommon for there to be disagreement with *firms* about the scope of this protection and whether certain documents attract privilege. If a *firm* decides to give a report to the *FCA*, the *FCA* considers that the greatest mutual benefit is most likely to flow from disclosure of the report itself and any supporting papers. A reluctance to disclose these source materials will, in the *FCA*’s opinion, devalue the usefulness of the report and may require the *FCA* to undertake additional enquiries.

Firm-commissioned reports: *FCA* use of reports and the protection of privileged and confidential material

- 3.6.11 G *Firms* may seek to restrict the use to which a report can be put, or assert that the report attracts legal privilege. The *FCA* will accept reports or other materials on a limited waiver of privilege basis as set out below but without agreeing the fact or extent to which they are legally privileged.
- 3.6.12 G The *FCA* understands that the concept of a limited waiver of legal privilege is not one which is recognised in all jurisdictions: the *FCA* considers that English law does permit such ‘limited waiver’ and that legal privilege could still be asserted against third parties notwithstanding disclosure of a report to the *FCA*. However, the *FCA* cannot accept any condition or stipulation which would purport to restrict its ability to use the information in the exercise of the *FCA*’s statutory functions. In this sense, the *FCA* cannot ‘close its eyes’ to information received or accept that information should, for example, be used only for the purposes of supervision but not for enforcement.
- 3.6.13 G This does not mean that information provided to the *FCA* is unprotected. The *FCA* is subject to strict statutory restrictions on the disclosure of confidential information (as defined in section 348 of the *Act*), breach of which is a criminal offence (under section 352 of the *Act*). Reports and underlying materials provided voluntarily to the *FCA* by a firm, whether covered by legal privilege or not, are confidential for these purposes and benefit from the statutory protections.
- 3.6.14 G Even in circumstances where disclosure of information would be permitted under the ‘gateways’ set out in the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, the *FCA* will consider carefully whether it would be appropriate to disclose a report provided voluntarily by a *firm*. If the *FCA* contemplates disclosing a report voluntarily provided by a *firm*, the *firm* will normally be notified and given the opportunity to make representations about the proposed disclosure. The exceptions to this include circumstances where disclosure is urgently needed, where notification might prejudice an investigation or defeat the purpose for which the information had been requested, or where notification would be inconsistent with the *FCA*’s international obligations.

3.7 Joint investigations with the PRA

- 3.7.1 G A need for a joint investigation with the *PRA* may arise where either the *FCA* or the *PRA* identifies circumstances which suggest that a *firm* or individual has committed misconduct that adversely affects both regulators' statutory objectives. In such cases, the regulators will determine whether they should carry out separate but coordinated investigations, or whether it would be more appropriate for one of the regulators to carry out an investigation, keeping the other informed.
- 3.7.2 G In such cases, the *FCA* will attempt to ensure that the subject of the investigation is not prejudiced or unduly inconvenienced by the fact that there are 2 investigating authorities. The *FCA* and *PRA* investigation teams will keep each other and their respective supervisory teams informed about the progress of the investigation. Discussions with the *firm* or individual under investigation should normally occur with the representatives of both regulators present.
- 3.7.3 G Both the *FCA* and the *PRA* will seek to ensure that, as far as possible, their respective processes (whether for contested or settlement decision-making) occur in a coordinated and timely manner in a joint investigation. For example, the regulators will, where appropriate, endeavour to settle a joint investigation into a relevant *firm* or individual simultaneously.

3.8 Assisting overseas authorities

- 3.8.1 G The *FCA* views cooperation with its *overseas* counterparts as an essential part of its regulatory functions. Section 354A of the *Act* imposes a duty on the *FCA* to take such steps as it considers appropriate to cooperate with others who exercise functions similar to its own. This duty extends to authorities in the *UK* and *overseas*. In fulfilling this duty, the *FCA* may share information which it is not prevented from disclosing, including information obtained in the course of the *FCA*'s own investigations, or exercise certain of its powers under Part XI of the *Act*.
- 3.8.2 G The *FCA* has various powers to assist *overseas regulators*, including to conduct investigations on their behalf, to compel the production of documents and provision of information, and to compel attendance at an interview to answers questions.

3.9 Commencing civil proceedings

- 3.9.1 G Decisions about whether to apply to the civil courts for:
- (1) *injunctions* (or in Scotland, *interdicts*);
 - (2) restitution orders; or
 - (3) *insolvency orders*,

under the *Act*, or other enactments giving the *FCA* the power to apply for such orders, will be made by an executive director or a director in Enforcement.

4 Publicity

4.1 Publicity during FCA investigations

- 4.1.1 G The *FCA* will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except as described in other sections of this chapter. The following paragraphs deal with the circumstances in which the *FCA* may make a public announcement that it is or is not investigating a particular matter.
- 4.1.2 G The principal test is that described in *ENFG 4.1.4G* to *ENFG 4.1.5G* (the exceptional circumstances test). Notwithstanding this, the *FCA* may also make announcements concerning suspected *unauthorised activity* or a suspected criminal offence in relation to *unregulated activity* as set out in *ENFG 4.1.6G*, reactive announcements as set out in *ENFG 4.1.7G* and anonymous announcements as set out in *ENFG 4.1.8G*. Any announcement will be subject to the restriction on disclosure of confidential information in section 348 of the *Act* and restrictions imposed by *data protection legislation* and other applicable statutory restrictions.
- 4.1.3 G Where the matter in question has occurred in the context of a *takeover bid*, and the circumstances in (1) and (2) apply, the *FCA* may make a public announcement that it is not investigating, and does not propose to investigate, the matter. Those circumstances are where the *FCA*:
- (1) has not appointed, and does not propose to appoint, investigators; and
 - (2) considers (following discussion with the *Takeover Panel*) that such an announcement is appropriate in the interests of preventing or eliminating public uncertainty, speculation or rumour.
- 4.1.4 G Where it is investigating any matter, the *FCA* will, in exceptional circumstances, make a public announcement that it is doing so if it considers such an announcement is desirable to:
- (1) maintain public confidence in the *UK financial system* or the market;
 - (2) protect *consumers* or investors;
 - (3) prevent widespread malpractice;
 - (4) help the investigation itself, for example by bringing forward witnesses; or

- (5) maintain the smooth operation of the market.

In deciding whether to make an announcement, the *FCA* will consider the potential prejudice that it believes may be caused to any *persons* who are, or who are likely to be, a subject of the investigation.

- 4.1.5 G The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for the *FCA* to make public the fact of its investigation in order to allay concern, or contain the speculation or rumour. Where the matter in question relates to a *takeover bid*, the *FCA* will discuss any announcement beforehand with the *Takeover Panel*.
- 4.1.6 G Where the *FCA* is investigating suspected *unauthorised activity* or a suspected criminal offence in relation to an *unregulated activity*, there are often concerns around *consumer* harm and the *FCA* generally has no supervisory, intervention or oversight powers to protect relevant *consumers*. The *FCA* may make public that it is investigating a named *person* for suspected *unauthorised activity* or for a suspected criminal offence in relation to an *unregulated activity* if it considers such an announcement is desirable for the purpose of warning or alerting *consumers* or investors, or to help the investigation itself – for example, by bringing forward witnesses. In deciding whether to make an announcement, the *FCA* will consider the potential prejudice that it believes may be caused to any *persons* who are, or who are likely to be, a subject of the investigation.
- 4.1.7 G The *FCA* may make a public announcement confirming that it is investigating a named *person* if that fact has already been made public by that *person*, an *affiliated company* or a *regulatory body*, government or public body. The *FCA*'s announcement may also confirm the subject matter of the investigation to the extent that it has already been made public in that manner.
- 4.1.8 G The *FCA* may make public that it is investigating a particular matter without naming or otherwise identifying the subject of the investigation, where it is desirable for the purpose of educating *persons* generally as to the types of conduct that the *FCA* is investigating or to encourage compliance with the *FCA*'s rules or other requirements.
- 4.1.9 G The *FCA* will not normally publish details of the information found or conclusions reached during its investigations. In many cases, statutory restrictions on the disclosure of information obtained by the *FCA* in the course of exercising its functions are likely to prevent publication (see section 348 of the *Act*). In exceptional circumstances, and where it is not prevented from doing so, the *FCA* may publish details. Circumstances in which it may do so include those where the fact that the *FCA* is investigating has been made public, by the *FCA* or otherwise, and the *FCA* subsequently concludes that the concerns that prompted the

investigation were unwarranted. This is particularly so if the *firm* under investigation wishes the *FCA* to clarify the matter.

4.2 Publicity of statutory notices

Warning notice statements

- 4.2.1 G The *FCA* has discretion to publish information about *warning notices* which fall within section 391(1ZB) of the *Act*. These are essentially disciplinary *warning notices* – for example, where the *FCA* is proposing to censure, fine, or impose a suspension, restriction, condition or limitation on a *firm* or individual. The power to publish information does not apply to *warning notices* that propose only protective measures – for example, to prohibit an individual, withdraw the approval of an individual or cancel the *permission* of a *firm*.
- 4.2.2 G The *RDC* will take the decisions on whether to exercise the power to publish information about a *warning notice* and, if so what information to publish, after it has consulted with the *persons* to whom the *warning notice* has been given or copied. The procedure the *FCA* will follow when making these decisions is set out in *DEPP* 3.
- 4.2.3 G Where the *settlement decision makers* decide to issue a *warning notice*, they may also take the decision on whether to exercise the power to publish information about a *warning notice*. The *FCA* expects that the *settlement decision makers* are unlikely to decide that it is appropriate to publish information about a *warning notice* where a *focused resolution agreement* has been entered into and where it is likely that a *final notice* will shortly follow, save in exceptional circumstances. The procedure the *FCA* will follow when making these decisions is set out in *DEPP* 5.
- 4.2.4 G The principal purpose of this power is to promote the early transparency of enforcement proceedings. This has several benefits, including the following:
- (1) *consumers, firms* and market users will be able to understand the types of behaviour that the *FCA* considers unacceptable at an earlier stage, which in turn should encourage more compliant behaviour;
 - (2) by showing at an earlier stage that the *FCA* is taking action, confidence in the *FCA* and the regulatory system should be enhanced;
 - (3) there will be more openness in respect of the enforcement process, which will generally be in the public interest; and
 - (4) it aligns the stage at which publicity is given in regulatory cases with the stage at which publicity is given in civil and criminal cases.

- 4.2.5 G The *FCA* will take the following steps in considering whether it is appropriate to exercise this power:
- (1) It will consider whether it is appropriate to publish details of the *warning notice* in order to enable *consumers*, *firms* and market users to understand the nature of the *FCA*'s concerns. The *FCA* will consider the circumstances of each case but expects normally to consider it appropriate to publish these details.
 - (2) Where the *FCA* considers it is appropriate to publish details of the *warning notice*, it will consider whether it is also appropriate to identify the subject of the *warning notice*. The *FCA* will consider the circumstances of each case but expects normally that it will be appropriate to identify a *firm*, but that it will not be appropriate to identify an individual. This is because the potential harm caused to an individual from publication at this stage of the enforcement proceedings will normally exceed the benefits of early transparency. However, there may be circumstances where the *FCA* considers identification of an individual appropriate – for example, where:
 - (a) it is not possible to describe the nature of its concerns without making it possible to identify the individual;
 - (b) it is necessary to avoid other *persons* being mistakenly believed to be the individual in breach;
 - (c) it would help to protect *consumers* or investors;
 - (d) it is necessary to maintain public confidence in the *UK financial system* or the market; or
 - (e) it is desirable to quash rumours in the market.
 - (3) The *FCA* will then consider whether any of the grounds set out in section 391(6) of the *Act* prohibiting publication apply. One of these grounds is whether publication would be unfair. In considering this ground, the *FCA* will have regard to, among other matters, whether the *person* with respect to whom the action was proposed to be taken is a *firm* or an individual, the size of a *firm*, and the extent to which the *person* has been made aware of the case against them during the course of the investigation.
 - (4) The *FCA* will also have regard to restrictions imposed by the *data protection legislation* when deciding whether to publish a *warning notice* statement relating to an individual.
 - (5) Where the *FCA* considers it is appropriate either to publish details of the *warning notice* without identifying its subject, or to publish details of the *warning notice* and identify its subject, it will consult the *persons* to whom the notice is given or copied.

- 4.2.6 G A *person* to whom the *warning notice* is given or copied who seeks to demonstrate potential unfairness from publication must provide clear and convincing evidence of how that unfairness may arise and how they could suffer a disproportionate level of damage. For example, this may be the case if publication could materially affect the *person's* health, result in bankruptcy or insolvency, a loss of livelihood or a significant loss of income, or prejudice criminal proceedings to which they are a party. The *FCA* is more likely to consider that the negative impact of publication on a *person's* reputation amounts to unfairness if the *person* also provides evidence of the harm that they could suffer as a consequence of the damage to their reputation. Arguments made solely on the basis that it is unfair for the *FCA* to have the power to publish information at this point of the enforcement process will have no effect on the *FCA's* decision. Similarly, arguments about the merits of the *warning notice* itself will not be material to publication decisions.
- 4.2.7 G If, after consulting the *persons* to whom the notice is given or copied, the *FCA* still considers it is appropriate to publish information about a *warning notice*, it will publish this information in a statement (a *warning notice* statement). This will ordinarily include a summary of the facts which gave rise to the *warning notice* to enable *consumers*, *firms* and market users to understand the nature of the *FCA's* concerns. Where the *FCA* considers it appropriate to identify the subject of the *warning notice*, it will also include details of:
- (1) the name of the *firm* or individual;
 - (2) additional information to enable the identification of the *firm* or individual; and
 - (3) in the case of an *approved person* or *conduct rules staff*, their employer at the relevant time.
- 4.2.8 G As the *FCA* may only publish information about disciplinary *warning notices*, it will not publish details of all the sanctions it is seeking to impose (for example, the fact that it is proposing to prohibit an individual as well as impose a fine).
- 4.2.9 G Any *warning notice* statement the *FCA* publishes will make clear that:
- (1) the *warning notice* is not the final decision of the *FCA*;
 - (2) the recipient has the right to make representations to the *RDC* which, in light of those representations, will decide on the appropriate action and whether to *issue* a *decision notice*; and
 - (3) if a *decision notice* is issued, the subject of the notice will have the right to refer the matter to the *Tribunal*, which will reach an independent decision on the appropriate action for the *FCA* to take.

- 4.2.10 G Publication will generally include placing the *warning notice* statement on the *FCA* website. The *FCA* will also consider what information about the matter should be included on the *Financial Services Register*, if any.

Decision notices and final notices

- 4.2.11 G The *FCA* will consider the circumstances of each case, but will ordinarily publicise enforcement action where this has led to the issue of a *final notice*. The *FCA* may also publicise enforcement action where this has led to the issue of a *decision notice*. The *FCA* will decide on a case-by-case basis whether to publish information about the matter to which a *decision notice* relates, but expects normally to publish a *decision notice* if the subject of enforcement action decides to refer the matter to the *Tribunal*. The *FCA* may also publish a *decision notice* before a *person* has decided whether to refer the matter to the *Tribunal* if the *FCA* considers that there is a compelling reason to do so. If a *person* decides not to refer a matter to the *Tribunal*, the *FCA* will generally only publish a *final notice*.
- 4.2.12 G If the *FCA* intends to publish a *decision notice*, it will give advance notice of its intention to the *person* to whom the *decision notice* is given and to any third party to whom a copy of the notice is given. The *FCA* will consider any representations made, but will normally not decide against publication solely because it is claimed that publication could have a negative impact on a *person's* reputation. The *FCA* will also not decide against publication solely because a *person* asks for confidentiality when they refer a matter to the *Tribunal*.
- 4.2.13 G Publication will generally include placing the *decision notice* or *final notice* on the *FCA* website and this will often be accompanied by a press release. If a *decision notice* or *final notice* is published, the *FCA* will update the *Financial Services Register* to reflect the actions taken.
- 4.2.14 G However, as required by the *Act*, the *FCA* will not publish information if publication of it would, in its opinion, be unfair to the *person* in respect of whom the action is taken, prejudicial to the interests of *consumers* or detrimental to the stability of the *UK financial system*.
- 4.2.15 G Publishing notices is important to ensure the transparency of *FCA* decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. The *FCA* will on request review *warning notice* statements, *decision notices*, *final notices* and related press releases that are published on the *FCA's* website. The *FCA* will determine at that time whether continued publication is appropriate, or whether notices and publicity should be removed or amended.
- 4.2.16 G In carrying out its review, the *FCA* will consider all relevant factors. In particular, the *FCA* will take into account:
- (1) the seriousness of the *person's* misconduct;

- (2) the nature of the action taken by the *FCA* and the level of any sanction imposed on the *person*;
- (3) whether the *FCA* has continuing concerns in respect of the *person* and any risk they might pose to the *FCA*'s objectives;
- (4) whether the *person* is a *firm* or an individual;
- (5) whether the publication sets out the *FCA*'s expectations regarding behaviour in a particular area and, if so, whether that message still has educational value;
- (6) public interest in the case (both at the time and subsequently);
- (7) whether continued publication is necessary for deterrence, *consumer* protection or market confidence reasons;
- (8) how much time has passed since publication; and
- (9) any representations made by the *person* on the continuing impact on them of the publication.

4.2.17 G The *FCA* expects usually to conclude that *warning notice* statements, notices and related press releases that have been published for less than 6 years should not be removed from the website, and that notices and related press releases relating to *prohibition orders* which are still applicable should not be removed from the website, regardless of the length of time they have been published. If applicable, the *FCA* will have regard to *data protection legislation* when determining whether continued publication is appropriate.

4.2.18 G In cases where the *FCA* publishes a *warning notice* statement and the *FCA* subsequently decides not to take any further action, or where it publishes a *decision notice* and the subject of enforcement action successfully refers the matter to the *Tribunal*, the *FCA* will make it clear on its website that the *warning notice* or the *decision notice* no longer applies. The *FCA* will normally do this by publishing a *notice of discontinuance* with the consent of the *person* to whom the *notice of discontinuance* has been copied, or by adding a note at the top of the first page of published notices on its website with information about its decision.

4.2.19 G In other cases where a case is resolved following the publication of a *warning notice* statement, the *FCA* will consider on a case-by-case basis whether to update its website to explain what the outcome was of the case described in the *warning notice* statement. Where the *warning notice* statement was issued on an anonymised basis, the *FCA* will at the same time consider the extent to which it is appropriate to identify the subject of the statement.

4.3 Publicity in RDC cases

- 4.3.1 G The chair of the *RDC*, or their relevant deputy, will approve the contents of press releases to be published by the *FCA* in cases in which the decision to take action was made by the *RDC*, unless the *RDC*'s decision is superseded by a decision of the *Tribunal*.

4.4 Publicity during, or upon the conclusion of, civil action

- 4.4.1 G Civil court proceedings nearly always take place in public from the time they begin. Therefore, civil proceedings for an *injunction* (see *ENFG App 1.1*) or a restitution order, for example, will often be public as soon as they start.
- 4.4.2 G The *FCA* considers it generally appropriate to publish details of its successful applications to the court for civil remedies, including *injunctions* or restitution orders. For example, where the court has ordered an *injunction* to prohibit further illegal *regulated activity*, the *FCA* thinks it is appropriate to publicise this to tell *consumers* of the position and help them avoid dealing with the *person* who is the subject of the *injunction*. Similarly, a restitution order may be publicised to protect and inform *consumers* and maintain market confidence. However, there may be circumstances when the *FCA* decides not to publicise, or not to do this immediately. These circumstances might, for example, be where publication could damage confidence in the *UK financial system* or undermine market integrity in a way that would be prejudicial to the interests of *consumers*.

4.5 Publicity during, or on the conclusion of, criminal action (see chapter 6)

- 4.5.1 G The *FCA* will normally publicise the outcome of public hearings in criminal prosecutions.
- 4.5.2 G When conducting a criminal investigation, the *FCA* will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid. A public announcement may also be made at other stages of the investigation when this is considered appropriate.
- 4.5.3 G The *FCA* will always be very careful to ensure that any *FCA* publicity does not prejudice the fairness of any subsequent trial.

4.6 Behaviour in the context of takeover bid

- 4.6.1 G Where the behaviour to which a *decision notice*, *final notice*, civil action, or criminal action relates has occurred in the context of a *takeover bid*, the *FCA* will consult the *Takeover Panel* over the timing of publication if the *FCA* believes that publication may affect the timetable or outcome of that bid, and will give due weight to the *Takeover Panel*'s views.

4.7 The Financial Services Register: publication of prohibitions of individuals (see chapter 5)

- 4.7.1 G Once the decision to make a *prohibition order* is no longer open to review, the *FCA* will consider what additional information about the circumstances of the *prohibition order* to include on the *Financial Services Register*. The *FCA* will balance any possible prejudice to the individual concerned against the interests of *consumer* protection. The *FCA*'s normal approach to maintaining information about a *prohibition order* on the *Financial Services Register* is as follows:
- (1) The *FCA* will maintain an entry on the *Financial Services Register* while a *prohibition order* is in effect. If the *FCA* grants an application to vary the order, it will make a note of the variation on the *Financial Services Register*.
 - (2) Where the *FCA* grants an application to revoke a *prohibition order*, it will make a note on the *Financial Services Register* that the order has been revoked, giving reasons for the revocation. The availability to *firms* and *consumers* of a full record of *FCA* action taken in relation to an individual's fitness and propriety will help the *FCA* in furthering its *statutory objectives*. In particular, it will help with protecting *consumers* and the maintaining of confidence in the *UK financial system*.
 - (3) The *FCA* will maintain an annotated record of revoked *prohibition orders* for 6 years from the date of the revocation, after which time it will remove the record from the *Financial Services Register*.

5 Prohibition orders and withdrawal of approval

5.1 Introduction

- 5.1.1 G The *FCA*'s power under section 56 of the *Act* to prohibit individuals who are not fit and proper from carrying out functions in relation to *regulated activities* helps the *FCA* to work towards achieving its *statutory objectives*. The *FCA* may exercise this power to make a *prohibition order* where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to *regulated activities*, or to restrict the functions which they may perform.
- 5.1.2 G The *FCA*'s effective use of the power to withdraw approval from an *approved person* will also help ensure high standards of regulatory conduct by preventing an *approved person* from continuing to perform the *controlled function* to which the approval relates if they are not a fit and proper *person* to perform that function. Where it considers this is appropriate, the *FCA* may prohibit an *approved person*, in addition to withdrawing their approval.

5.2 The *FCA*'s general policy

- 5.2.1 G In deciding whether to make a *prohibition order* and/or, in the case of an *approved person*, to withdraw its approval, the *FCA* will consider all the

relevant circumstances, including whether other enforcement action should be taken or has been taken already against that individual by the *FCA*. The *FCA* will also consider whether enforcement action has been taken against the individual by other enforcement agencies or *designated professional bodies*.

- 5.2.2 G In appropriate cases, the *FCA* will take other enforcement action against the individual in addition to seeking a *prohibition order* and/or withdrawing their approval, including the use of its powers to: impose a financial penalty or issue a *public censure*; apply for an *injunction* to prevent dissipation of assets; stop any continuing misconduct; order restitution; apply for an *insolvency order* or an order against debt avoidance; and/or prosecute certain criminal offences.
- 5.2.3 G The *FCA* has the power to make a range of *prohibition orders* depending on the circumstances of each case and the range of *regulated activities* to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the *FCA* may seek to prohibit individuals from performing any class of function in relation to any class of *regulated activity*, or it may limit the *prohibition order* to specific functions in relation to specific *regulated activities*. The *FCA* may also make an order prohibiting an individual from being employed by a particular *firm*, type of *firm* or any *firm*.
- 5.2.4 G The scope of a *prohibition order* will depend on the range of functions which the individual concerned performs in relation to *regulated activities*, the reasons why they are not fit and proper and the level of risk which they pose to *consumers* or the market generally.
- 5.2.5 G Where the *FCA* issues a *prohibition order*, it may indicate in the *decision notice* or *final notice* that it would be minded to revoke the order on the application of the individual in the future, in the absence of new evidence that the individual is not fit and proper. If the *FCA* gives such an indication, it will specify the number of years after which it would be minded to revoke or vary the prohibition on an application. However, the *FCA* will only adopt this approach in cases where it considers it appropriate in all the circumstances. The *FCA* would not be obliged to revoke an order after the specified period even where it gave such an indication. Further, if an individual's *prohibition order* is revoked, they would still have to satisfy the *FCA* as to their fitness for a particular role in relation to any future application for approval to perform a *controlled function*.

5.3 Prohibition orders and withdrawal of approval – approved persons

- 5.3.1 G When the *FCA* has concerns about the fitness and propriety of an *approved person*, it may consider whether it should prohibit that *person* from performing functions in relation to *regulated activities*, withdraw its approval or both. In deciding whether to withdraw its approval and/or make a *prohibition order*, the *FCA* will consider in each case whether its

statutory objectives can be achieved adequately by imposing disciplinary sanctions – for example, *public censures* or financial penalties.

- 5.3.2 G When the *FCA* decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to, those set out below:
- (1) the matters set out in section 61(2) of the *Act*;
 - (2) whether the individual is fit and proper to perform functions in relation to *regulated activities*. The criteria for assessing the fitness and propriety of *approved persons* are set out in *FIT* 2.1 (Honesty, integrity and reputation), *FIT* 2.2 (Competence and capability) and *FIT* 2.3 (Financial soundness);
 - (3) whether, and to what extent, the *approved person* has:
 - (a) failed to comply with the *Statements of Principle* or *COCON*, as applicable, issued by the *FCA* with respect to the conduct of *approved persons*; or
 - (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*), the *AIFMD UK regulation* or any qualifying provision specified, or of a description specified, for the purpose of section 66(2) by the Treasury by order;
 - (4) whether the *approved person* has engaged in *market abuse*;
 - (5) the relevance and materiality of any matters indicating unfitness;
 - (6) the length of time since the occurrence of any matters indicating unfitness;
 - (7) the particular *controlled function* the *approved person* is (or was) performing, the nature and activities of the *firm* concerned and the markets in which they operate;
 - (8) the level of risk which the individual poses to *consumers* and to confidence in the *UK financial system*;
 - (9) the previous disciplinary record and general compliance history of the individual, including whether the *FCA*, any *previous regulator*, *designated professional body* or other domestic or international regulator has previously imposed a disciplinary sanction on the individual; and
 - (10) where the *approved person* is an *SMF manager*, whether they would be a fit and proper *person* to perform functions in relation to *regulated activities* if the *FCA* varied their approval by

imposing one or more conditions and, if so, whether it is appropriate for the *FCA* to exercise its power to impose such conditions, instead of making a *prohibition order* or withdrawing the *approved person's* approval.

- 5.3.3 G The *FCA* may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a *controlled function* or other function in relation to *regulated activities*. It may also take account of the particular *controlled function* which an *approved person* is performing for a *firm*, the nature and activities of the *firm* concerned and the markets within which it operates.
- 5.3.4 G Due to the diverse nature of the activities and functions which the *FCA* regulates, it is not possible to produce a definitive list of matters which the *FCA* might take into account when considering whether an individual is not a fit and proper *person* to perform a particular, or any, function in relation to a particular, or any, *firm*.
- 5.3.5 G The following are examples of types of behaviour which have previously resulted in the *FCA* deciding to issue a *prohibition order* or withdraw the approval of an *approved person*:
- (1) providing false or misleading information to the *FCA*, including information relating to identity, ability to work in the *United Kingdom* and business arrangements;
 - (2) failure to disclose material considerations on application forms, such as details of county court judgments, criminal convictions and dismissal from employment for regulatory or criminal breaches. The nature of the information not disclosed can also be relevant;
 - (3) acts of dishonesty;
 - (4) serious lack of competence; and
 - (5) serious breaches of *APER* or *COCON*, for *approved persons*, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, *consumers* or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; and failing to remedy breaches of the *general prohibition* or to ensure that a *firm* acted within the scope of its *permissions*.
- 5.3.6 G Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances, the *FCA* will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

- 5.3.7 G Where the *FCA* considers that it is appropriate to withdraw an individual's approval to perform a *controlled function* within a particular *firm*, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.
- 5.3.8 G The *FCA* will consult the *PRA* before withdrawing an approval given by the *PRA*.

5.4 Prohibition orders against other individuals

- 5.4.1 G Where the *FCA* is considering making a *prohibition order* against an individual other than an individual referred to in *ENFG 5.3.1G* to *ENFG 5.3.7G*, the *FCA* will consider the level of the risk posed by the individual, and may prohibit the individual where it considers that this is appropriate to achieve one or more of its *statutory objectives*. For that, the *FCA* will consider all the relevant circumstances of the case, including the factors set out in *ENFG 5.3.2G*, if appropriate.

5.5 Applications for variation or revocation of prohibition orders

- 5.5.1 G When considering whether to grant or refuse an application to revoke or vary a *prohibition order*, the *FCA* will consider all the relevant circumstances of a case. These may include, but are not limited to:
- (1) the seriousness of the misconduct or other unfitness that resulted in the order;
 - (2) the amount of time since the original order was made;
 - (3) any steps taken subsequently by the individual to remedy the misconduct or other unfitness;
 - (4) any evidence which, had it been known to the *FCA* at the time, would have been relevant to the *FCA*'s decision to make the *prohibition order*;
 - (5) all available information relating to the individual's honesty, integrity or competence since the order was made, including any repetition of the misconduct which resulted in the *prohibition order* being made;
 - (6) where the *FCA*'s finding of unfitness arose from incompetence rather than from dishonesty or lack of integrity, evidence that this unfitness has been or will be remedied. For example, this may be achieved by the satisfactory completion of relevant training and obtaining relevant qualifications, or by supervision of the individual by their employer;
 - (7) the financial soundness of the individual concerned; and

- (8) whether the individual will continue to pose the level of risk to *consumers* or confidence in the *UK financial system* which resulted in the original prohibition if it is lifted.

- 5.5.2 G When considering whether to grant or refuse an application to revoke or vary a *prohibition order*, the *FCA* will take into account any indication given by the *FCA* in the *final notice* that it is minded to revoke or vary the *prohibition order* on application after a certain number of years (see *ENFG 5.2.5G*).
- 5.5.3 G If the individual applying for a revocation or variation of a *prohibition order* proposes to take up an offer of employment to perform a *controlled function*, the *FCA* will take this into account when considering whether to grant or refuse the application.
- 5.5.4 G The *FCA* will not generally grant an application to vary or revoke a *prohibition order* unless it is satisfied that: the proposed variation will not result in a reoccurrence of the risk to *consumers* or confidence in the *UK financial system* that resulted in the order being made; and the individual is fit to perform functions in relation to *regulated activities* generally, or to those specific *regulated activities* in relation to which the individual has been prohibited. The *FCA* will assess the individual's fitness and propriety to perform these functions on the basis of the criteria in *FIT 2.1* (Honesty, integrity and reputation), *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).
- 5.5.5 G The *FCA* will consult the *PRA* before varying or revoking a *prohibition order* if, as a result of the variation or revocation, an individual will either be prohibited from, or no longer be prohibited from, a function of interest to the *PRA* as defined in section 56(7B) of the *Act*.

6 Prosecution of criminal offences

6.1 The FCA's general approach

- 6.1.1 G The *FCA* has powers under sections 401 and 402 of the *Act* to prosecute a range of criminal offences in England, Wales and Northern Ireland. The *FCA* may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives.
- 6.1.2 G The *FCA*'s general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland, it will apply the basic principles set out in the Code for Crown Prosecutors (<https://www.cps.gov.uk/publication/code-crown-prosecutors>). When considering whether to prosecute a breach of the Money Laundering Regulations, the *FCA* will also have regard to whether the *person* concerned has followed the Guidance for the UK

financial sector issued by the Joint Money Laundering Steering Group (www.jmlsg.org.uk/guidance/current-guidance/).

Commencing criminal proceedings

- 6.1.3 G In cases where criminal proceedings have commenced or will be commenced, the *FCA* may consider whether also to take civil or regulatory action (for example, where this is appropriate for the protection of *consumers*) and how such action should be pursued. That action might include: applying to court for an *injunction*; applying to court for a restitution order; variation and/or cancellation of *permission*; and prohibition of individuals. The factors the *FCA* may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to, the following:
- (1) whether, in the *FCA*'s opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences;
 - (2) whether, in the *FCA*'s opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and
 - (3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts.
- 6.1.4 G Decisions to commence criminal proceedings will be made by an executive director or a director in Enforcement.

6.2 FCA cautions

- 6.2.1 G In some cases, the *FCA* may decide to issue a formal caution rather than to prosecute an offender. In these cases, the *FCA* will follow the Home Office Guidance on the cautioning of offenders, currently contained in the Ministry of Justice – Simple Caution for Adult Offender Guidance (www.cps.gov.uk/legal-guidance/cautioning-and-diversion).
- 6.2.2 G Where the *FCA* decides to administer a formal caution, a record of the caution will be kept by the *FCA* and on the Police National Computer. The *FCA* will not publish the caution, but it will be available to parties with access to the Police National Computer. The issue of a caution may influence the *FCA* and other prosecutors in their decision as to whether or not to prosecute the offender if they offend again. A caution given by the *FCA* will form part of the *person*'s regulatory record for the purposes of *DEPP* 6.2.1G(3). If relevant, the *FCA* will take the caution into account in deciding whether to take action for subsequent misconduct by the *person*. The *FCA* may also take a caution into account when considering a *person*'s honesty, integrity and reputation and their fitness or propriety to perform controlled or other functions in relation to *regulated activities* (see *FIT* 2.1.3G).

6.3 Criminal prosecutions in cases of market abuse

- 6.3.1 G In some cases, there will be instances of market misconduct that may arguably involve a breach of the criminal law as well as *market abuse*. When the *FCA* decides whether to commence criminal proceedings rather than impose a sanction for *market abuse* in relation to that misconduct, it will apply the basic principles set out in the Code for Crown Prosecutors (<https://www.cps.gov.uk/publication/code-crown-prosecutors>).
- 6.3.2 G The factors which the *FCA* may consider when deciding whether to commence a criminal prosecution for market misconduct rather than impose a sanction for *market abuse* include, but are not limited to, the following:
- (1) the seriousness of the misconduct – if the misconduct is serious and prosecution is likely to result in a significant sentence, criminal prosecution may be more likely to be appropriate;
 - (2) whether there are victims who have suffered loss as a result of the misconduct – where there are no victims, a criminal prosecution is less likely to be appropriate;
 - (3) the extent and nature of the loss suffered – where the misconduct has resulted in substantial loss and/or loss has been suffered by a substantial number of victims, criminal prosecution may be more likely to be appropriate;
 - (4) the effect of the misconduct on the market – where the misconduct has resulted in significant distortion or disruption to the market and/or has significantly damaged market confidence, a criminal prosecution may be more likely to be appropriate;
 - (5) the extent of any profits accrued or loss avoided as a result of the misconduct – where substantial profits have accrued or loss avoided as a result of the misconduct, criminal prosecution may be more likely to be appropriate;
 - (6) whether there are grounds for believing that the misconduct is likely to be continued or repeated – if it appears that the misconduct may be continued or repeated and the imposition of a financial penalty is unlikely to deter further misconduct, a criminal prosecution may be more appropriate than a financial penalty;
 - (7) whether the *person* has previously been cautioned or convicted in relation to market misconduct or has been subject to civil or regulatory action in respect of market misconduct;
 - (8) the extent to which redress has been provided to those who have suffered loss as a result of the misconduct and/or whether steps have been taken to remedy any failures in systems or controls which gave rise to the misconduct – where such steps are taken

promptly and voluntarily, criminal prosecution may not be appropriate; however, potential defendants will not avoid prosecution simply because they are able to pay compensation;

- (9) the effect that a criminal prosecution may have on the prospects of securing redress for those who have suffered loss – where a criminal prosecution will have adverse effects on the solvency of a *firm* or individual in circumstances where loss has been suffered by *consumers*, the *FCA* may decide that criminal proceedings are not appropriate;
- (10) whether the *person* is being or has been voluntarily cooperative with the *FCA* in taking corrective measures – however, potential defendants will not avoid prosecution merely by fulfilling a statutory duty to take those measures;
- (11) whether an individual’s misconduct involves dishonesty or an abuse of a position of authority or trust;
- (12) where the misconduct in question was carried out by a group, and a particular individual has played a leading role in the commission of the misconduct – in these circumstances, criminal prosecution may be appropriate in relation to that individual;
- (13) where the misconduct in question was carried out by 2 or more individuals acting together and one of the individuals provides information and gives full assistance in the *FCA*’s prosecution of the other(s) – the *FCA* will take this cooperation into account when deciding whether to prosecute the individual who has assisted the *FCA* or bring *market abuse* proceedings against them; and
- (14) the personal circumstances of an individual may be relevant to a decision whether to commence a criminal prosecution.

6.3.3 G The importance attached by the *FCA* to these factors will vary from case to case and the factors are not necessarily cumulative or exhaustive.

6.3.4 G It is the *FCA*’s policy not to impose a sanction for *market abuse* where a *person* is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it is the *FCA*’s policy not to commence a prosecution for market misconduct where the *FCA* has brought or is seeking to bring enforcement proceedings for *market abuse* arising from substantially the same allegations.

App 1 FSMA and other powers

App 1.1 Injunctions

Injunctions (or in Scotland, interdicts)

- App 1.1.1 G The *FCA* has powers under the *Act* to seek *injunctions* for breaches of a relevant requirement or in cases of *market abuse*. It also has powers under the courts' inherent jurisdiction – for example, to apply for asset freezing *injunctions*. The broad test the *FCA* will apply when it decides whether to seek an *injunction* is whether the application would be the most effective way to deal with the *FCA*'s concerns.

Injunctions under Schedule 3 to the CRA or regulation 12 of the Unfair Terms Regulations

- App 1.1.2 G The *FCA* also has powers under Schedule 3 to the *CRA* to seek an *injunction* if it considers that a term or notice in a consumer contract is unfair, purportedly restrictive or exclusionary or non-transparent within the meaning of the *CRA*. Schedule 3 to the *CRA* provides the process the *FCA* should follow in these circumstances.
- App 1.1.3 G For contracts entered into before 1 October 2015, the *Unfair Terms Regulations* still apply. The pre-1 October 2015 version of the Enforcement Guide contains the *FCA*'s approach and policy relating to its powers under the *Unfair Terms Regulations*.

App 1.2 Insolvency

- App 1.2.1 G The *FCA* has specific rights and powers under the *Act* to apply to the court for orders under existing insolvency legislation and to participate in proceedings under that legislation. The *FCA* also has powers under other legislation in relation to insolvency, including under the Payment and Electronic Money Institution Insolvency Regulations 2021, the Investment Bank Special Administration Regulations 2011 and the Corporate Insolvency and Governance Act 2020. The *FCA*'s effective use of its powers and rights in insolvency proceedings in order to meet its operational objectives enables it to apply to court to:
- (1) stop *firms* and *unauthorised persons* carrying on insolvent or unlawful business; and
 - (2) ensure the orderly realisation and distribution of their assets.

App 1.3 Collective investment schemes

- App 1.3.1 G The *FCA* has powers in respect of authorised unit trust schemes (*AUT*) and authorised contractual schemes (*ACS*) under relevant sections of the *Act*. These are sections 254 (Revocation of authorisation order otherwise than by consent), 257 (Directions), 258 (Applications to the court) in relation to an *AUT*; and sections 261U (Revocation of authorisation order otherwise than by consent), 261X (Directions) and 261Y (Applications to the court) in relation to an *ACS*.

- App 1.3.2 G The *FCA* may use its powers individually or together, and in addition to direct enforcement action against a *depository* or *authorised fund manager* in their capacity as *firms*.
- App 1.3.3 G Where the *FCA* has a concern about an *AUT* or *ACS* that must be dealt with urgently, it will generally use its power to give directions in the first instance.
- App 1.3.4 G The *FCA* also has powers in respect of *recognised schemes* under sections 271L, 271N and 271R of the *Act* in relation to *schemes* recognised under section 271A, and sections 279, 281 and 282B of the *Act* in relation to *schemes* recognised under section 272. These powers allow the *FCA* to suspend or revoke a *scheme's* recognition or to issue the *operators* of such *schemes* with a *public censure*.

[**Note:** The table in *ENFG* App 2.2 sets out the *FCA's* general policy on the exercise of powers in relation to *OEICs* under the *OEIC Regulations*.]

App 1.4 Disqualification of auditors and actuaries

- App 1.4.1 G Auditors and *actuaries* fulfil a vital role in the management and conduct of *firms*, *AUTs* and *ACSs*. Provisions of the *Act*, *rules* made under the *Act* and the *OEIC Regulations* impose various duties on auditors and *actuaries*. The *FCA* has powers to disqualify auditors and *actuaries* that breach their duties under these provisions. The *FCA* also has powers to disqualify auditors in breach of duties imposed by *trust scheme rules*, *contractual scheme rules* or the similar *FCA rules* that apply to *ICVCs*.
- App 1.4.2 G Additionally, the *FCA* has the power under section 345 of the *Act* to impose a financial penalty and a *public censure* on an auditor or *actuary* in respect of a failure to comply with a duty imposed on the auditor or *actuary* by *rules* made by the *FCA* (ie, *SUP 3*, *SUP 4*, for *ICVCs* in *COLL 4*, *COLL 7*), or a failure to comply with a duty imposed under the *Act* to communicate information to the *FCA*. *Actuaries* carrying out a *designated senior management function* as specified in *PRA rules* will be subject to *COCON*, and other *actuaries* that are *conduct rules staff* will also be subject to parts of *COCON* applicable to *conduct rules staff*.
- The *FCA* has the power under sections 249 and 261K of the *Act* to impose a financial penalty and a *public censure* on an auditor in respect of a failure to comply with a duty imposed on them by *trust scheme rules* and *contractual scheme rules*. The *FCA* has similar powers under Schedule 5 of the *OEIC Regulations* for breaches of those *FCA rules* that apply to *ICVCs*.

[**Note:** The table in *ENFG* App 2.2 sets out the *FCA's* general policy on the exercise of powers in relation to *OEICs* under the *OEIC Regulations*.]

- App 1.4.3 G The *FCA's* statement of policy in relation to the imposition of financial penalties is set out in *DEPP 6.2* (Deciding whether to take action) and

DEPP 6.4 (Financial penalty or public censure). The *FCA*'s statement of policy in relation to determining the amount of a financial penalty is set out in *DEPP* 6.5 to *DEPP* 6.5D.

App 1.5 Disapplication orders against members of the professions

- App 1.5.1 G The *FCA* has the power under section 329 of the *Act* to make an order disapplying an exemption from the *general prohibition* in relation to a *person* who is a *member* of the professions on the grounds that the *member* is not a fit and proper *person* to conduct *exempt regulated activities*. Additionally, the *FCA* has powers to maintain a public record of disapplication orders.
- App 1.5.2 G When exercising the power to make a disapplication order, the *FCA* will consider whether other action would be more appropriate – in particular, whether to make a *prohibition order*. The *FCA* will also have regard to any disciplinary action taken, or to be taken, against the *person* by the relevant *designated professional body*.
- App 1.5.3 G In cases where the *FCA* considers making an order prohibiting the individual from performing functions in relation to *exempt regulated activities*, it will consider all the relevant circumstances of the case, including the factors set out in *ENFG* 5.3.2G.

App 1.6 Cancellation of approval as sponsor or primary information provider

- App 1.6.1 G The *FCA* has powers to cancel a *sponsor's* approval under section 88 of the *Act* if it considers that a *sponsor* has failed to meet the criteria for approval as a *sponsor* as set out in *UKLR* 24.4.5R.
- App 1.6.2 G The *FCA* may also cancel a *primary information provider's* approval under section 89P of the *Act* if it considers that a *primary information provider* has failed to meet the criteria for approval as a *primary information provider* as set out in *DTR* 8.3.

App 1.7 Search and seizure powers

- App 1.7.1 G Under sections 122D and 176 of the *Act*, the *FCA* has the power to apply to a justice of the peace for a warrant to enter premises where documents or information is held. The circumstances under which the *FCA* may apply for a search warrant include:
- (1) where a *person* on whom an information requirement has been imposed fails (wholly or in part) to comply with it; or
 - (2) where there are reasonable grounds for believing that if an information requirement were to be imposed, it would not be complied with, or that the documents or information to which the

information requirement relates would be removed, tampered with or destroyed.

- App 1.7.2 G A warrant obtained pursuant to sections 122D and 176 of the *Act* authorises a police constable or an *FCA* investigator in the company, and under the supervision of, a police constable, to do the following, among other things: to enter and search the premises specified in the warrant and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them.

App 1.8 **Restitution orders**

- App 1.8.1 G The *FCA* has power to apply to the court for a restitution order under section 382 of the *Act* and (in the case of *market abuse*) under section 383 of the *Act*. It also has an administrative power to require restitution under section 384 of the *Act*.

- App 1.8.2 G In deciding whether to exercise its powers to seek or require restitution, the *FCA* will consider all the circumstances of the case, including, but not limited to:

- (1) whether quantifiable profits have been made;
- (2) whether there are indefinable losses;
- (3) the number of *persons* affected;
- (4) *FCA* costs;
- (5) whether redress is available through the *Financial Ombudsman Service* or the *compensation scheme*;
- (6) whether redress is available through another regulator, such as the *Takeover Panel*;
- (7) whether *persons* who have suffered losses are able to bring their own civil proceedings;
- (8) whether the *firm* or *unauthorised persons* concerned are solvent;
- (9) what other powers are available to the *FCA*, including to obtain a compulsory insolvency order against the *firm* or *unauthorised person* concerned, to apply to the court for the appointment of a receiver, obtain an administration order, winding up order or bankruptcy order against a *firm* or *unauthorised person* carrying out regulated activities in breach of the general prohibition; and

(10) the behaviour of the *persons* suffering loss.

App 1.8.3 G In cases where it is appropriate to exercise its powers to obtain restitution from *firms*, the *FCA* will first consider using its own administrative powers under section 384 of the *Act* before considering taking court action.

App 2 Non-FSMA powers

App 2.1 Statements of policy

App 2.1.1 G The table below identifies the statements of policy which the *FCA* is required to make under legislation other than the *Act*.

In each case, references in *DEPP* to the *Act*, provisions of the *Act* and *persons* regulated under or otherwise subject to the *Act* are to be read as references to that other legislation, equivalent or otherwise applicable provisions of that other legislation and *persons* regulated under or otherwise subject to that other legislation, as appropriate.

App 2.1.2 G The *FCA's* approach to the exercise of the powers listed in the table below is consistent with the use of powers under the *Act* and the *FCA's* general policy outlined in this guide, unless stated otherwise.

Legislation	Description	Statement of Policy
<p>Consumer Credit Act 1974 (www.legislation.gov.uk/ukpga/1974/39/contents)</p>	<p>The <i>CCA order</i> gives the <i>FCA</i> the power to enforce the <i>CCA</i> through the application of its investigation and sanctioning powers in the <i>Act</i> by reference to the contravention of <i>CCA requirements</i> and criminal offences under the <i>CCA</i>.</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose suspension or restriction <i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension or restriction).</p>
<p>The Regulated Covered Bonds Regulations 2008 (www.legislation.gov.uk/uksi/2008/346/contents)</p>	<p>The <i>RCB Regulations</i> provide a framework for issuing <i>covered bonds</i> in the <i>UK</i>. <i>Covered bonds</i> issued under the <i>RCB Regulations</i> are subject to strict quality controls and both bonds and issuers must be registered with the <i>FCA</i>. The <i>RCB Regulations</i> give the <i>FCA</i> powers to enforce these regulations.</p>	<p>Penalty policy <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D as appropriate, and having regard to other specific matters such as the likely impact of the penalty on the interests of investors in the relevant bonds, as set out in <i>RCB</i> 4.2.5G.</p> <p>Giving warning or decision notices <i>DEPP</i> 3.2 and <i>DEPP</i> 3.3.</p>
<p>Credit Rating Agencies (CRA) Regulation</p>	<p>The <i>CRA Regulation</i> aims to enhance the integrity, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the <i>United Kingdom</i> while achieving high levels of investor protection. The <i>CRA Regulation</i> imposes requirements including, among other things, obligations on <i>credit rating agencies</i> relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures.</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B and <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>

<p>The Electronic Money Regulations 2011 (www.legislation.gov.uk/ukxi/2011/99/contents)</p>	<p>The <i>Electronic Money Regulations</i> impose requirements including, among other things, various provisions regulating the rights and obligations of electronic money institutions.</p>	<p>Penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Suspension powers <i>DEPP</i> 6A.</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>Electronic Money Regulations</i>).</p>
<p>The Alternative Investment Fund Managers Regulations 2013 (www.legislation.gov.uk/ukxi/2013/1773/contents)</p>	<p>The <i>AIFMD UK regulation</i> transposed <i>AIFMD</i> and made the necessary changes to <i>UK</i> legislation in relation to the implementation of the Regulation (EU) No 346/2013, the Regulation (EU) No 345/2013, the Regulation (EU) 2015/760 and the <i>Money Market Funds Regulation</i>.</p>	<p>Penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>AIFMD UK regulation</i>).</p>

<p>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (www.legislation.gov.uk/ukxi/2013/504/contents)</p>	<p>The <i>OTC derivatives, CCPs and trade repositories regulation</i> adds to the powers available to the <i>FCA</i> for dealing with breaches of <i>EMIR requirements</i> and sets out information gathering and sanctioning powers enabling the <i>FCA</i> to investigate and take action for breaches of the <i>EMIR requirements</i> by <i>non-authorised counterparties</i> and for certain breaches of the <i>OTC derivatives, CCPs and trade repositories regulation</i> by <i>authorised persons</i>.</p> <p>The <i>FCA</i> has additional powers in relation to trade repositories under the <i>Trade Repositories (EU Exit) Regulations</i> (see below).</p>	<p>Penalty policy</p> <p>The <i>FCA</i> will adopt policies akin to those under the <i>Act</i>. Where the <i>FCA</i> exercises its power to impose a financial penalty under the <i>OTC derivatives, CCPs and trade repositories regulation</i> or the <i>Act</i> for breaches in relation to <i>EMIR</i>, it must publish a statement to that effect unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.</p> <p>Sanctioning powers</p> <p>Relevant factors in <i>DEPP</i> 6.2.1G and <i>DEPP</i> 6.4.</p> <p>Penalty policy</p> <p><i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7.</p>
<p>The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (www.legislation.gov.uk/ukxi/2013/1635/contents)</p>	<p>The <i>Referral Fees Regulations</i> give the <i>FCA</i> investigation and sanctioning powers in relation to the contravention of the rules against referral fees contained in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as well as the contravention of requirements imposed by, or under, the <i>Referral Fees Regulations</i>.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose suspension or restriction</p> <p><i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension or restriction).</p> <p>The <i>FCA</i> does not have the power to suspend an authorised person's permission under the <i>Referral Fees Regulations</i>.</p>

<p>The Immigration Act 2014 (Bank Account) Regulations 2014 (www.legislation.gov.uk/ukxi/2014/3085/contents)</p>	<p>The <i>Immigration Regulations</i> (as amended by the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016) give the FCA investigation and sanctioning powers in relation to the contravention of sections 40, 40A, 40B and 40G of the Immigration Act 2014 (as amended by the Immigration Act 2016), as well as the contravention of requirements imposed by, or under, the <i>Immigration Regulations</i>.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose suspension or restriction</p> <p><i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension or restriction).</p>
<p>The Mortgage Credit Directive Order 2015 (www.legislation.gov.uk/ukxi/2015/910/contents)</p>	<p>The Mortgage Credit Directive (Directive 2014/17/EU) allowed for an exemption not to apply the directive to buy-to-let lending if there was in place an appropriate framework for the regulation of these mortgages. The Mortgage Credit Directive Order is the vehicle through which the framework for ‘consumer buy-to-let’ mortgages was established in order to comply with the Mortgage Credit Directive.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5, <i>DEPP</i> 6.5A, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose suspension</p> <p><i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension).</p>
<p>The Payment Accounts Regulations 2015 (www.legislation.gov.uk/ukxi/2015/2038/contents)</p>	<p>The <i>Payment Accounts Regulations</i> (‘the PARs’) implemented the Payment Accounts Directive. They entitle <i>consumers</i> who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle <i>consumers</i> to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5, <i>DEPP</i> 6.5A, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p>

Securities Financing Transactions Regulation	Supervisory and enforcement functions in respect of <i>trade repositories</i> under the <i>Securities Financing Transactions Regulation</i> were transferred from <i>ESMA</i> to the <i>FCA</i> through the <i>SFTR (EU Exit) Regulations</i> on <i>IP completion day</i> .	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B and <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>
The Small and Medium Sized Business (Credit Information) Regulations 2015 (www.legislation.gov.uk/ukxi/2015/1945/contents)	The <i>Small and Medium Sized Business (Credit Information) Regulations</i> were made under the <i>Small Business, Enterprise and Employment Act</i> . The <i>Small and Medium Sized Business (Credit Information) Regulations</i> impose a duty on designated banks to provide information about their small and medium sized business customers (with the consent of those businesses) to designated credit reference agencies.	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5, <i>DEPP</i> 6.5A, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose restriction</p> <p><i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of restriction).</p>
The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (www.legislation.gov.uk/ukxi/2015/1946/contents)	The <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> were made under the <i>Small Business, Enterprise and Employment Act</i> . The <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> require <i>designated banks</i> to provide <i>specified information</i> about rejected loan applications made by small and medium sized business customers (with their consent) to <i>designated finance platforms</i> which must then provide such information to <i>finance providers</i> on request.	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5, <i>DEPP</i> 6.5A, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose restriction</p> <p><i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of restriction).</p>

<p>The Data Reporting Services Regulations 2017 (www.legislation.gov.uk/uksi/2017/699/contents)</p>	<p>The <i>DRS Regulations</i> implemented <i>MiFID</i>. The <i>FCA</i> has investigation and enforcement powers in relation to both criminal and non-criminal breaches of the <i>DRS Regulations</i> (including requirements imposed on <i>persons</i> subject to the <i>DRS Regulations</i> by <i>MiFIR</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under <i>MiFIR</i> or <i>MiFID</i>).</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>DRS Regulations</i>).</p>
<p>The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (www.legislation.gov.uk/uksi/2017/701/contents)</p>	<p>The <i>MiFI Regulations</i> in part implemented <i>MiFID</i>. The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the <i>MiFI Regulations</i> (including requirements imposed on <i>persons</i> subject to the <i>MiFI Regulations</i> by <i>MiFIR</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under <i>MiFIR</i> or <i>MiFID</i>).</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>MiFI Regulations</i>).</p>
<p>The Packaged Retail and Insurance-based Investment Products Regulations 2017 (www.legislation.gov.uk/uksi/2017/1127/contents)</p>	<p>The Packaged Retail and Insurance-based Investment Products Regulations implemented the <i>PRIIPs Regulation</i> (before it was brought into <i>UK</i> law). The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations, <i>PRIIPs Regulation</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under the <i>PRIIPs Regulation</i>. The <i>PRIIPs Regulation</i> imposes requirements on both authorised and unauthorised <i>persons</i> who manufacture, advise on, market or sell a <i>PRIIP</i>.</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>

<p>The Payment Services Regulations 2017 (www.legislation.gov.uk/uksi/2017/752/contents)</p>	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Payment Services Regulations</i>.</p> <p>[Note: <i>ENFG</i> App 2.2 sets out the <i>FCA</i>'s general approach to the exercise of powers under the <i>Payment Services Regulations</i>.]</p>	<p>Penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>The <i>RDC</i> is the <i>FCA</i>'s decision maker for some of the decisions under the <i>Payment Services Regulations</i> as set out in <i>DEPP</i> 2 Annex 1G.</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>Payment Services Regulations</i>).</p>
<p>The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (www.legislation.gov.uk/uksi/2018/135/contents)</p>	<p>The <i>UK Benchmarks Regulations 2018</i> in part implemented the <i>benchmarks regulation</i> (before it was brought into <i>UK</i> law). The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the <i>UK Benchmarks Regulations 2018</i> (including requirements imposed on <i>persons</i> subject to the <i>UK Benchmarks Regulations 2018</i> by the <i>benchmarks regulation</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under the <i>benchmarks regulation</i>).</p>	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>UK Benchmarks Regulations 2018</i>).</p>

<p>The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc, and Transitional Provision) (EU Exit) Regulations 2019 (www.legislation.gov.uk/uksi/2019/335/contents)</p>	<p>Supervisory and enforcement functions in respect of <i>trade repositories</i> under <i>EU EMIR</i> were transferred from <i>ESMA</i> to the <i>FCA</i> through the <i>Trade Repositories (EU Exit) Regulations</i> on <i>IP completion day</i>.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B and <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>
<p>The Proxy Advisors (Shareholders' Rights) Regulations 2019 (www.legislation.gov.uk/uksi/2019/926/contents/made)</p>	<p>The <i>Proxy Advisors (Shareholders' Rights) Regulations</i> in part implement the revised <i>Shareholder Rights Directive (SRD)</i>. The <i>FCA</i> has investigative and sanctioning powers in relation to breaches of the <i>Proxy Advisors (Shareholders' Rights) Regulations</i>.</p>	<p>Penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty), in addition to those set out in the <i>Proxy Advisors (Shareholders' Rights) Regulations</i>, where appropriate.</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>

<p>The Securitisation Regulations 2024 (www.legislation.gov.uk/ukxi/2024/102/contents)</p>	<p>The <i>Securitisation Regulations 2024</i> form part of HM Treasury’s programme to deliver a Smarter Regulatory Framework (SRF) for Financial Services. The Financial Services and Markets Act 2023 (FSMA 2023) repeals assimilated law relating to financial services and replaces it with rules set by regulators within the framework established by Parliament under Part 5A of the <i>Act</i>. The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the <i>Securitisation Regulations 2024</i>. The new framework consolidates existing requirements, including those for simple transparent securitisation (STS) and securitisation repositories, and strengthens the legislation on securitisation.</p>	<p>Public censure and penalty policy Procedures in <i>DEPP</i> 6.</p> <p>Temporary prohibition Factors in <i>DEPP</i> 6A, when determining whether to impose a temporary prohibition and what the length of any temporary prohibition would be.</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>
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App 2.2 Other general policy

App 2.2.1 G The table below sets out the *FCA*'s general policy on the exercise of powers under the legislation listed.

App 2.2.2 G The *FCA*'s approach to the exercise of the powers listed in the table below is consistent with the use of powers under the *Act* and the *FCA*'s general policy outlined in this guide, unless stated otherwise.

Legislation	Description	Policy
<p>Friendly Societies Act 1974 (FSA74) www.legislation.gov.uk/ukpga/1974/46/contents</p>	<p>The <i>FCA</i> has certain functions in relation to ‘registrant-only’ mutual societies including <i>registered societies</i> or <i>registered friendly societies</i>. These societies are not regulated or supervised under the <i>Act</i>. Instead, they are subject to the provisions of FSA74, FSA92, CCBSA14 and CCBSA(NI)69, which require them to register with the <i>FCA</i> and fulfil certain other obligations, such as the requirement to submit annual returns.</p> <p>Key powers under this legislation are:</p> <ul style="list-style-type: none"> • to refuse registration under the acts; • to prosecute registrant-only societies that fail to submit annual returns; and • to petition for the society’s winding up. 	<p>The <i>FCA</i>’s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i> general policy, including that:</p> <ul style="list-style-type: none"> • the decision as to whether to initiate criminal and other proceedings will be taken in accordance with <i>ENFG</i> 6; and • the procedure for giving statutory notices under the FSA92 will be in accordance with <i>DEPP</i> 2.5.18G.
<p>Friendly Societies Act 1992 (FSA92) www.legislation.gov.uk/ukpga/1992/40/contents</p>		
<p>Co-operative and Community Benefit Societies Act 2014 (CCBSA14) www.legislation.gov.uk/ukpga/2014/14/contents</p>		

<p>Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (CCBSA(NI)69) (as modified by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018)</p> <p>(www.legislation.gov.uk/apni/1969/24/contents)</p>		
<p>Credit Unions Act 1979 (CUA79)</p> <p>(www.legislation.gov.uk/ukpga/1979/34/contents)</p>	<p>The CUA79 and CU(NI)O85 enable certain societies in Great Britain and Northern Ireland to be registered under CCBSA14 and CU(NI)O85, respectively. CUA79 and CU(NI)O85 also make provisions in</p>	<p>The <i>FCA's</i> approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA's</i> general policy as explained in <i>ENFG</i>, including that the</p>

<p>Credit Unions (Northern Ireland) Order 1985 (CU(NI)O85) (as modified by the Credit Unions and Co-operative and Community benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018)</p> <p>(www.legislation.gov.uk/nisi/1985/1205/contents)</p>	<p>respect of these societies, and give the <i>FCA</i> additional powers in respect of those credit unions which are <i>authorised persons</i>.</p> <p>Powers under this legislation include the power to:</p> <ul style="list-style-type: none"> • require production of books, accounts and other documents in the exercise of certain functions; • appoint an investigator or to call a special meeting of the <i>credit union</i>; • cancel the registration of the <i>credit union</i>; • petition the High Court to wind up the <i>credit union</i> in particular circumstances; and • prosecute offences under the acts. 	<p>decision as to whether to initiate criminal and other proceedings will be taken in accordance with <i>ENFG</i> 6.</p> <p>Where the <i>FCA</i> decides to cancel or suspend a <i>credit union</i>'s registration, the <i>credit union</i> may appeal that decision to the High Court or, in Scotland, the Court of Session.</p>
<p>The Unfair Terms in Consumer Contracts Regulations 1999 (as amended by SI 2001/1186 and SI 2001/3649)</p> <p>(www.legislation.gov.uk/ukxi/1999/2083/contents)</p>	<p>The <i>FCA</i> has general powers under the <i>Unfair Terms Regulations</i>, including its powers to obtain undertakings and seek information from firms.</p>	<p><i>UNFCOG</i> describes how the <i>FCA</i> will use the general powers under the <i>Unfair Terms Regulations</i>.</p> <p><i>ENFG</i> App 1.1 describes how the <i>FCA</i> will use its injunctive powers under these regulations.</p>
<p>Regulation of Investigatory Powers Act 2000 (RIPA)</p> <p>(www.legislation.gov.uk/ukpga/2000/23/contents)</p>	<p>RIPA and IPA provide methods of surveillance and information gathering from various sources to assist the <i>FCA</i> in the prevention and detection of crime, where the methods to be used potentially infringe individuals' right to privacy.</p>	<p>Authorisations under RIPA cover activity such as directed surveillance and the use of CHIS, as well as access to 'protected' (encrypted) electronic information. Where the <i>FCA</i> seeks to use the powers granted to it under RIPA, authorisation is sought from a trained head of department in</p>

<p>Investigatory Powers Act 2016 (IPA) www.legislation.gov.uk/ukpga/2016/25/contents</p>	<p>Under these enactments, the <i>FCA</i> is able to:</p> <ul style="list-style-type: none"> • carry out directed surveillance; • make use of covert human intelligence sources (CHIS); • access ‘protected’ (encrypted) electronic information; and • apply for access to communications data. 	<p>Enforcement. Authorisation will only be given where the proposed action is justified, necessary and proportionate to the objective it seeks to meet in each circumstance. Consideration will be given to the actual or potential infringement of the privacy of individuals who are not the subjects of the investigation or operation (collateral intrusion), including steps taken to avoid or minimise any such intrusion. When considering whether the proposed action is necessary and proportionate, the following non-exhaustive list of factors is likely to be relevant:</p> <ul style="list-style-type: none"> • the seriousness of the offence; • the amount of material that might be gathered; • the nature of the material that might be gathered; • whether there are other less intrusive ways of obtaining the same result; • whether the proposed activity is likely to satisfy the objective; and • where surveillance is proposed, the location of the surveillance operation. <p>The approach to applications for access to communications data under IPA is consistent with applications for use of the powers under RIPA and the same considerations are relevant. However, authorisation to access communications data under IPA is provided by the Investigatory Powers Commissioner’s Office (IPCO).</p> <p>The <i>FCA</i> can use specific powers under RIPA to require:</p>
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		<ul style="list-style-type: none"> • a person who holds ‘protected’ electronic information (that is, information which is encrypted) to put that information into an eligible format; and • where the person has a key to the encrypted information, to require the person to disclose the key for this purpose. <p>These powers require the <i>FCA</i> to obtain written permission from an appropriate judicial authority. The <i>FCA</i> does not anticipate using powers under Part III of RIPA very often as it expects firms and individuals to provide information in intelligible format pursuant to requirements to provide information under the <i>Act</i>.</p> <p>In exercising powers under RIPA and IPA, the <i>FCA</i> has regard to the relevant RIPA and IPA codes of practice. The Codes are available on the Home Office websites: www.gov.uk/government/collections/ripa-codes and www.gov.uk/government/collections/investigatory-powers-act-codes-of-practice.</p>
<p>The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (www.legislation.gov.uk/ukxi/2001/544/contents)</p>	<p>Part V of the <i>Regulated Activities Order</i> requires the <i>FCA</i> to maintain a register of all those people who are not authorised by the <i>FCA</i> but who carry on <i>insurance distribution activities</i>. Under article 95 <i>Regulated Activities Order</i>, the <i>FCA</i> has the power to remove from the register an <i>appointed representative</i> who carries on <i>insurance distribution activities</i> if it considers that they are not fit and proper.</p>	<p>The <i>FCA</i>’s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>’s general policy, including:</p> <ul style="list-style-type: none"> • when the <i>FCA</i> gives the person a <i>warning notice</i> and a <i>decision notice</i>; • that the decision to give a <i>warning notice</i> or a <i>decision notice</i> will be taken under the <i>executive procedures</i>; and • referral to <i>Tribunal</i> by the person receiving a <i>decision notice</i>.

<p>The Open-Ended Investment Companies Regulations 2001 (www.legislation.gov.uk/ukxi/2001/1228/contents)</p>	<p>The <i>OEIC Regulations</i> set out requirements relating to the way in which collective investment management may be carried on by open-ended investment companies. Under the <i>OEIC Regulations</i>, the <i>FCA</i> has the power, among other things, to:</p> <ul style="list-style-type: none"> • revoke an open-ended investment company's authorisation in several situations, including where the firm breaches relevant requirements or provides us with false or misleading information (regulation 23); • give, vary and revoke certain directions, including that the affairs of the company be wound up (regulations 25 and 28); • apply to court for an order that a depositary or director of a company be removed and replaced (regulation 26); and • appoint one or more competent persons to investigate and report on the affairs of the company and specified others (regulation 30). <p>[Note: See <i>ENFG</i> App 1.3 for <i>Act</i> powers in relation to <i>AUTs</i> and <i>ACs</i> and <i>ENFG</i> App 1.4 for powers in relation to auditors and <i>actuaries</i>.]</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy as explained in <i>ENFG</i>, including:</p> <ul style="list-style-type: none"> • when the <i>FCA</i> gives the person a <i>warning notice</i> and a <i>decision notice</i>; • that the decision to give a <i>warning notice</i> or a <i>decision notice</i> will be taken under <i>executive procedures</i>; • referral to the <i>Tribunal</i> by the person receiving a <i>decision notice</i>; • adopting the approach in <i>ENFG</i> App 1.3 for <i>AUTs</i> or <i>ACs</i>, and for <i>ICVCs</i>, having regard to the relevant conduct of the <i>director</i> or <i>directors</i> of the <i>ICVC</i> and its <i>depositary</i>; • taking disciplinary action against an <i>ICVC</i> as an <i>authorised person</i>; • that when choosing which powers to use, the <i>FCA</i> will adopt the approach in <i>ENFG</i> App 1.3; and • that the <i>FCA</i> may use its disqualification powers against auditors who fail to comply with a duty imposed on them under <i>FCA rules</i>, as in <i>ENFG</i> App 1.4.
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<p>Enterprise Act 2002 (www.legislation.gov.uk/ukpga/2002/40/contents)</p>	<p>The <i>FCA</i> has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. The Enterprise Act identifies 2 types of breach which trigger the Part 8 enforcement powers. These are referred to as:</p> <ul style="list-style-type: none"> • ‘domestic infringements’, which are breaches of particular <i>UK</i> enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied: <ul style="list-style-type: none"> ○ to or for a person in the <i>UK</i>; or ○ by a person with a place of business in the <i>UK</i>; and • ‘Schedule 13 infringements’, which are breaches of the legislation listed in Schedule 13 to the Enterprise Act. <p>In both cases the breach must, to trigger those powers, harm the collective interests of <i>consumers</i>.</p> <p>The <i>FCA</i> has powers under Part 8 of the Enterprise Act both as a ‘designated enforcer’ in relation to domestic and Schedule 13 infringements and as a ‘Schedule 13 enforcer’ which gives the <i>FCA</i> additional powers in relation to Schedule 13 infringements under the <i>CRA</i>. The <i>FCA</i>’s investigative powers in support of its Enterprise Act enforcement powers are set out in Schedule 5 to the <i>CRA</i>.</p>	<p>Where a breach has been committed, the <i>FCA</i> will liaise with other authorities, particularly the Competition and Markets Authority (CMA), to determine which authority is best placed to take enforcement action. The <i>FCA</i> would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to <i>regulated activities</i>.</p> <p>The <i>FCA</i> anticipates that its powers under the <i>Act</i> will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the <i>FCA</i> does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the CMA’s website: www.gov.uk/government/organisations/competition-and-markets-authority.</p>
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<p>Proceeds of Crime Act 2002 (POCA) www.legislation.gov.uk/ukpga/2002/29/contents</p>	<p>POCA provides the legislative framework for the confiscation from criminals of the proceeds of their crime. Under POCA, the <i>FCA</i> can apply to the Crown Court for a restraint order when it is investigating or prosecuting criminal cases.</p> <p>POCA also contains various powers of investigation which the <i>FCA</i> may use in specified circumstances.</p>	<p>The <i>FCA</i> may apply for a restraint order under POCA where a criminal investigation has been started or where proceedings have started but not concluded; in either case there must be reasonable cause to believe that the defendant has benefited from criminal conduct. In this context, a person benefits from criminal conduct if they obtain property or a pecuniary advantage as a result of or in connection with conduct that would be an offence if it took place in England or Wales, regardless of whether they also obtain it in some other connection. The court is required to exercise its powers with a view to securing that the value of realisable assets is not diminished.</p> <p>Where the powers in POCA overlap with powers under the <i>Act</i>, the <i>FCA</i> will in most cases consider it more appropriate to rely on its investigation powers under the <i>Act</i>.</p>
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<p>The Financial Conglomerates and Other Financial Groups Regulations 2004 www.legislation.gov.uk/ukxi/2004/1862/contents</p>	<p>These regulations implemented part of the Financial Conglomerates Directive (2002/87/EC), which imposed certain procedural requirements on the <i>FCA</i> as a competent authority under the Directive. These regulations also made specific provision about the exercise of certain supervisory powers in relation to financial conglomerates.</p> <p>The <i>FCA</i>'s powers to vary a <i>firm's Part 4A permission</i> or to impose requirements under sections 55J and 55L of the <i>Act</i> were extended under these regulations.</p>	<p>The <i>FCA</i> is able to use these powers where it is desirable to do so for the purpose of:</p> <ul style="list-style-type: none"> • supervision in accordance with the <i>Financial Groups Directive Regulations</i>; • acting in accordance with specified provisions of the <i>Capital Requirements Regulations 2013</i>; and • acting in accordance with specified provisions that implemented or supplemented <i>Solvency II Directive</i>. <p>The duty imposed by section 55B(3) (The threshold conditions) of the <i>Act</i> does not prevent the <i>FCA</i> from exercising its own-initiative power for these purposes. But subject to that, when exercising this power under these regulations, the <i>FCA</i> will do so in a manner consistent with its approach generally to variation under the <i>Act</i>.</p>
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<p>The Financial Services (Distance Marketing) Regulations 2004 www.legislation.gov.uk/ukxi/2004/2095/contents</p>	<p>The <i>FCA</i> can enforce breaches of these regulations concerning ‘specified contracts’. Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract.</p> <p>The <i>FCA</i> may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of these regulations. The <i>FCA</i> may also accept undertakings from the person who committed the breach that they will comply with these regulations.</p> <p>The <i>FCA</i> may also prosecute offences under these regulations which relate to specified contracts.</p>	<p>The <i>FCA</i>’s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>’s general policy as explained in <i>ENFG</i>.</p> <p>The <i>FCA</i> must publish details of any applications it makes for injunctions, the terms of any orders that the court subsequently makes, and the terms of any undertakings given to it or to the court.</p> <p>It will generally be appropriate for the <i>FCA</i> to seek to resolve the breach by obtaining an undertaking before it applies for an injunction or initiates a prosecution. Where a failure by a firm to meet the requirements of the regulations also amounts to a breach of the <i>FCA</i>’s <i>rules</i>, the <i>FCA</i> will consider all the circumstances of the case when deciding whether to take action for a breach of its <i>rules</i> or under the regulations. This will include, among other things, having regard to appropriate factors set out in <i>DEPP</i> 6 and the considerations in <i>ENFG</i> 6.</p>
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<p>Counter-Terrorism Act 2008 www.legislation.gov.uk/ukpga/2008/28/contents</p>	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the Counter-Terrorism Act 2008 ('the Counter-Terrorism Act'). These powers are similar to those given to the <i>FCA</i> by the <i>Money Laundering Regulations</i>.</p> <p>The <i>FCA</i> is responsible for monitoring and enforcing compliance with requirements imposed by the Treasury under the Counter-Terrorism Act by 'credit institutions' that are authorised persons and by 'financial institutions' (except money service businesses that are not authorised persons and consumer credit financial institutions). 'Credit institutions' and 'financial institutions' are defined in Part 2 of Schedule 7 to the Counter Terrorism Act.</p>	<p>The <i>FCA</i>'s approach to using its powers under the Counter-Terrorism Act will be consistent with its approach to using its powers under the <i>Money Laundering Regulations</i>.</p>
<p>The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 www.legislation.gov.uk/uksi/2008/1950/contents</p>	<p>These regulations give the <i>FCA</i> the power to institute criminal proceedings for an offence committed under the regulations.</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy as explained in <i>ENFG</i>, including that the decision whether to initiate criminal proceedings will be taken in accordance with <i>ENFG</i> 6.</p>
<p>The Recognised Auction Platforms Regulations 2011 www.legislation.gov.uk/uksi/2011/2699/contents</p>	<p>The <i>FCA</i>'s powers given to it by the <i>RAP regulations</i>.</p>	<p>The <i>FCA</i>'s policy for using the powers given to it by the <i>RAP regulations</i> is set out in <i>REC</i>.</p> <p>This includes, for example, its policy in relation to the power to impose a financial penalty on or censure a <i>RAP</i> (<i>REC</i> 2A.4) and its policy in relation to the power to give directions to a <i>RAP</i> (<i>REC</i> 4.6).</p>

<p>The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (www.legislation.gov.uk/ukxi/2017/692/contents)</p>	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Money Laundering Regulations</i>.</p> <p>The <i>FCA</i> is responsible for monitoring and enforcing compliance with the <i>Money Laundering Regulations</i> not only by authorised firms who are within the scope of the <i>Money Laundering Regulations</i>, but also by what the regulations describe as ‘Annex 1 financial institutions’, and <i>cryptoasset exchange providers</i> and <i>custodian wallet providers</i>. These are businesses which are not otherwise authorised by us, but which carry out certain of the activities which were listed in Annex I of the Banking Consolidation Directive (2013/36/EU), then in Annex I of the Capital Requirements Directive, the relevant text of which is set out in Schedule 2 of the <i>Money Laundering Regulations</i>.</p> <p>[Note: Money service businesses are also outside the definition of ‘Annex 1 financial institution’, which is set out in Regulation 55(2) of the <i>Money Laundering Regulations</i>.]</p> <p>The <i>FCA</i> is also responsible for monitoring and enforcing compliance with the Funds Transfer Regulation by payment service providers specified under regulation 62(1) of the <i>Money Laundering Regulations</i>.</p> <p>The <i>Money Laundering Regulations</i> add to the range of options available to the <i>FCA</i> for dealing with anti-money laundering and anti-terrorist financing failures. These options include:</p>	<p>The <i>FCA</i>’s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>’s general policy as explained in <i>ENFG</i>, including:</p> <ul style="list-style-type: none"> • conduct of an investigation under the <i>Money Laundering Regulations</i>; • when prosecuting <i>Money Laundering Regulations</i> offences – <i>ENFG</i> 6; • when investigation and sanctioning powers should be used; • when the <i>FCA</i> proposes or decides to censure a person, impose a penalty on a person, suspend, cancel or restrict an authorisation or registration or impose a prohibition on a person under the <i>Money Laundering Regulations</i>, it must give the person a <i>warning notice</i> or a <i>decision notice</i>; • when imposing or determining the level of a financial penalty under regulation 76 of the <i>Money Laundering Regulations</i> – <i>DEPP</i> 6.2.1G and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D. The <i>FCA</i> may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirements of the <i>Money Laundering Regulations</i> would be met. In deciding whether a person has failed to comply with a requirement of the <i>Money Laundering Regulations</i>, the <i>FCA</i> must consider whether they followed any relevant guidance which was issued by a European Supervisory Authority in accordance with articles 17, 18.4 or 48.10
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	<ul style="list-style-type: none"> • to prosecute a relevant person, including but not limited to an authorised firm or an Annex 1 financial institution or an <i>auction platform</i>, a <i>cryptoasset exchange provider</i> or a <i>custodian wallet provider</i>, as well as any responsible officer; • to fine or censure a relevant person, including but not limited to an authorised firm or an Annex 1 financial institution or an <i>auction platform</i>, a <i>cryptoasset exchange provider</i> or a <i>custodian wallet provider</i>, as well as any officer knowingly concerned in the breach, under regulation 76 of the <i>Money Laundering Regulations</i>; • to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the <i>Money Laundering Regulations</i>; and • to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an authorised firm or Annex 1 financial institution, a payment service provider, a <i>cryptoasset exchange provider</i> or a <i>custodian wallet provider</i> under regulation 78 of the <i>Money Laundering Regulations</i>. <p>In addition to the powers available under the <i>Money Laundering Regulations</i>, the <i>FCA</i> will have the power to take regulatory action against authorised firms for</p>	<p>of the Fourth Money Laundering Directive, with article 25 of the Funds Transfer Regulation, or with any relevant guidance which was issued at the time by a supervisory authority or other appropriate body, including the Joint Money Laundering Steering Group;</p> <ul style="list-style-type: none"> • when cancelling, suspending or restricting an authorisation or limitation under regulation 77 of the <i>Money Laundering Regulations</i> or determining the duration of any such suspension or restriction, and when imposing or determining the duration of a prohibition under regulation 78 of the <i>Money Laundering Regulations</i> – <i>DEPP</i> 6A; • the <i>settlement discount scheme</i> (<i>DEPP</i> 6.7) which applies to penalties, suspensions, restrictions and temporary prohibitions imposed under regulations 76, 77 and 78 of the <i>Money Laundering Regulations</i>; and • when publicity provisions apply in regulation 84 of the <i>Money Laundering Regulations</i> – <i>ENFG</i> 4. <p>In the majority of cases where both the <i>Money Laundering Regulations</i> and the <i>FCA rules</i> apply and regulatory action, as opposed to criminal proceedings, is appropriate, the <i>FCA</i> generally expects to continue to discipline authorised firms under the <i>Act</i>.</p> <p>The <i>FCA</i> will adopt a risk-based approach to its enforcement under the <i>Money Laundering Regulations</i>. Failures in anti-money laundering or counter-terrorist financing controls will not automatically result in disciplinary sanctions, although enforcement action is more likely where a firm has not taken adequate steps to identify its risks or put in place appropriate</p>
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	<p>failures which breach the <i>FCA's rules</i> and requirements (for example, under <i>Principle 3, SYSC 3.2.6R</i> or <i>SYSC 6.1.1R</i>). This means that there will be situations in which the <i>FCA</i> has powers to investigate and take action under both the Act and the <i>Money Laundering Regulations</i>.</p> <p>The <i>FCA</i> also has powers under regulation 74C to impose a direction on a <i>cryptoasset business</i> or Annex 1 financial institution to:</p> <ul style="list-style-type: none"> • remedy a failure to comply with a requirement under the <i>Money Laundering Regulations</i>; • prevent a failure to comply, or continued non-compliance with a requirement under the <i>Money Laundering Regulations</i>; or • prevent the <i>cryptoasset business</i> or Annex 1 financial institution from being used for money laundering, terrorist financing or proliferation financing. <p>The <i>FCA</i> may impose a direction requiring or prohibiting the taking of specified action. <i>Cryptoasset businesses</i> or Annex 1 financial institutions can also apply for a direction to be imposed, varied or rescinded.</p> <p>Under these regulations, the <i>FCA</i> has investigation powers that it can use when investigating whether breaches have taken place, including:</p> <ul style="list-style-type: none"> • the power to require information from, and attendance of, relevant persons, payment 	<p>controls to mitigate those risks, and failed to take steps to ensure that controls are being effectively implemented.</p> <p>The <i>FCA</i> will exercise powers under regulation 74C of the <i>Money Laundering Regulations</i>, to impose a direction on a <i>cryptoasset business</i> or Annex 1 financial institution, where:</p> <ul style="list-style-type: none"> • it has serious concerns about its compliance with the <i>Money Laundering Regulations</i>; • it is concerned that a failure of the <i>cryptoasset business</i> or Annex 1 financial institution to take the desired steps may result in a breach of the <i>Money Laundering Regulations</i>; • the imposition of a direction reflects the importance the <i>FCA</i> attaches to the need for the <i>cryptoasset business</i> or Annex 1 financial institution to address its concerns; and • the imposition of a direction may assist the <i>cryptoasset business</i> or Annex 1 financial institution to take steps which would otherwise be difficult because of legal obligations owed to third parties. <p>The <i>FCA</i> will also exercise its powers to:</p> <ul style="list-style-type: none"> • vary a direction; or • cancel a direction, <p>where it considers it appropriate to do so.</p> <p>The <i>FCA</i> may impose a direction so that it takes effect immediately or on a specified date if it reasonably considers it necessary to do so, having regard to the ground on which it is exercising this power.</p>
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	<p>service providers and connected persons (regulation 66); and</p> <ul style="list-style-type: none"> • powers of entry and inspection without or under warrant (regulations 69 and 70). <p>The use of these powers will be limited to those cases in which the <i>FCA</i> is exercising functions under the <i>Money Laundering Regulations</i>. In addition, the <i>FCA</i> may use its powers to require information or attendance at the request of foreign authorities.</p>	<p>The <i>FCA</i> will consider imposing a direction as a matter of urgency where:</p> <ul style="list-style-type: none"> • the information available to it indicates serious concerns about the <i>cryptoasset business</i> or Annex 1 financial institution that need to be addressed immediately; and • circumstances indicate that it is appropriate to impose a direction immediately to require and/or prohibit certain actions by the <i>cryptoasset business</i> or Annex 1 financial institution to ensure the <i>cryptoasset business</i> or Annex 1 financial institution addresses these concerns. <p>The <i>FCA</i> will consider the full circumstances of each case when it decides whether an urgent imposition of a direction is appropriate.</p>
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<p>The Payment Services Regulations 2017 www.legislation.gov.uk/uksi/2017/752/contents)</p>	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Payment Services Regulations</i>.</p> <p>The regulatory powers which the <i>Payment Services Regulations</i> provide to the <i>FCA</i> include:</p> <ul style="list-style-type: none"> • the power to require information; • powers of entry and inspection; • power of public censure; • the power to impose financial penalties; • the power to prosecute or fine unauthorised providers; and • the power to vary an authorisation on its own initiative. <p>[Note: <i>ENFG</i> App 2.1 identifies the <i>FCA</i>'s statements of policy in relation to financial penalties, and conduct of interviews in response to <i>overseas regulators</i>' requests, which the <i>FCA</i> is required to make under the <i>Payment Services Regulations</i>.]</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy as explained in <i>ENFG</i>.</p> <p>The <i>Payment Service Regulations</i> do not require the <i>FCA</i> to have published procedures to launch criminal prosecutions. However, in these situations, the <i>FCA</i> expects that it will normally follow its decision-making procedures for the equivalent decisions under the <i>Act</i>.</p>
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<p>The EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 www.legislation.gov.uk/ukxi/2018/1149/contents</p>	<p>Regulations 28 and 34 of the <i>EU Exit Passport Regulations</i> make provision for certain qualifying persons to be treated as having <i>Part 4A permission</i>. The <i>EU Exit Passport Regulations</i> provide a supervised run-off regime, which enables such <i>persons</i> to run off existing <i>UK</i> contracts and conduct an orderly exit from the <i>UK</i> market.</p> <p>The <i>FCA</i> has power under the <i>EU Exit Passport Regulations</i> to direct that the regime should not apply to a particular <i>person</i>. The effect of such a direction would be to remove that <i>person's</i> deemed permission to conduct <i>regulated activities</i> in the <i>UK</i>.</p>	<p>The <i>FCA's</i> approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and <i>FCA's</i> general policy as explained in <i>ENFG</i>, including:</p> <ul style="list-style-type: none"> • the approach to enforcement and cancellation under the <i>Act</i>; and • the approach to making decisions under <i>executive procedures</i>.
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Annex G

Amendments to the Financial Crime Guide: A firm's guide to countering financial crime risks (FCG)

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

1 Introduction

1.1 What is the FCG?

...

- 1.1.8 Our focus, when supervising firms, is on whether they are complying with our rules and their other legal obligations. Firms can comply with their financial crime obligations in ways other than following the good practice set out in *FCG*. But we expect firms to be aware of what we say where it applies to them and to consider applicable guidance when establishing, implementing and maintaining their anti-financial crime systems and controls. More information about *FCA* guidance and its status can be found in our Reader's Guide: an introduction to the Handbook; *DEPP* 6.2.1G(4) and ~~*EG* 2.9.1G—2.9.6G~~ *ENFG* 3.4.

...

- 1.1.10 The Joint Money Laundering Steering Group's (JMLSG) guidance for the UK financial sector on the prevention of money laundering and combating terrorist financing is 'relevant guidance' and is approved by HM Treasury under the *Money Laundering Regulations*. As confirmed in *DEPP* 6.2.3G, ~~*EG* 12.1.2G~~ *ENFG* 6.1.2G and ~~*EG* 19.15.5G~~ *ENFG* App 2.2, the *FCA* will continue to have regard to whether firms have followed the relevant provisions of JMLSG's guidance when deciding whether conduct amounts to a breach of relevant requirements.

...

Annex H

Amendments to the Unfair Contract Terms and Consumer Notices Regulatory Guide (UNFCOG)

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

1 The Unfair Contract Terms and Consumer Notices Regulatory Guide

1.1 Application and purpose

...

- 1.1.3 G Where the firm concerned is not a *firm* or an *appointed representative*, the *FCA* will liaise with the CMA or (as appropriate) another *CRA* regulator (~~see *EG* 10.19~~).

...

1.3 The CRA

...

The main powers of the courts, regulators and unfair contract terms enforcers under the CRA

...

- 1.3.5 G ...

- (3) The *FCA* is a regulator for the purposes of Schedule 3. Our approach to seeking an injunction under the *CRA* is set out in ~~*EG* 10~~ *ENFG* App 1.1.

...

1.4 The CRA: the FCA's role and policy

...

Interaction with the FCA's powers under the Act

- 1.4.5 G ...

- (4) However, the use of our powers under the *Act* will not be possible in all cases where a firm has used an unfair term. If we consider using an enforcement power under the *Act*, we will do so in accordance with the policy relating to that power as set out in ~~*EG*~~ *ENFG*.

...

1.6 Redress

1.6.1 G ...

- (2) If the use of an unfair term also amounts to a *rule* breach, and that breach causes loss to *consumers*, the *FCA* can apply to court for restitution or require restitution. The *FCA* will consider whether to use these powers in accordance with the policy in ~~EG 11~~ ENFG App 1.8.

...

ENFORCEMENT GUIDE (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2025

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 section 88A: statement of policy);
 - (4) section 89S (Action under section 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 137A (The FCA’s general rules);
 - (9) section 137T (General supplementary powers);
 - (10) section 139A (Power of the FCA to give guidance);
 - (11) section 142V (Imposition of penalties under section 142S: statement of policy);
 - (12) section 143Y (Statement of policy for penalties under section 143W);
 - (13) section 192N (Imposition of penalties under section 192K: statement of policy);
 - (14) section 192Z2 (Directions and penalties: statement of policy);
 - (15) section 210 (Statements of policy);
 - (16) section 312J (Statement of policy);
 - (17) section 345D (Imposition of penalties on auditors or actuaries: statement of policy); and
 - (18) 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 3 June 2025.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Threshold Conditions sourcebook (COND)	Annex B
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex C
General Provisions sourcebook (GEN)	Annex D

Supervision manual (SUP)	Annex E
Decision Procedure and Penalties manual (DEPP)	Annex F
Consumer Redress Schemes sourcebook (CONRED)	Annex G
Collective Investment Schemes sourcebook (COLL)	Annex H
Credit Unions sourcebook (CREDS)	Annex I
Professional Firms sourcebook (PROF)	Annex J
Regulated Covered Bonds sourcebook (RCB)	Annex K
Recognised Investment Exchanges sourcebook (REC)	Annex L
UK Listing Rules sourcebook (UKLR)	Annex M
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex N

Citation

- E. This instrument may be cited as the Enforcement Guide (Consequential Amendments) Instrument 2025.

By order of the Board
22 May 2025

Annex A

Amendments to the Glossary of definitions

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

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

unauthorised activity any activity in breach of section 21 of the *Act* or carried out in breach of a statutory requirement for authorisation by, or registration with, the *FCA* or *PRA*.

Amend the following definitions as shown.

~~EG~~ ENFG the Enforcement Guide.

firm ...

- (13) (in ~~EG~~ ENFG and *DEPP*) includes a *designated coordination body* with responsibility for operating or managing *cash access coordination arrangements* designated by the Treasury pursuant to section 131R (Designation) of the *Act* for the purposes of Part 8B (Cash access services) of the *Act*.

issue (in relation to *units*):

- (1) ~~(except in EG 14)~~ the issue of new *units* by the *trustee* of an *AUT*, the *depository* of an *ACS* or by an *ICVC*;
- (2) ~~(in EG 14):~~
- (a) ~~an issue in accordance with (1); and~~
- (b) ~~the sale of units.~~

- member*
- (1) (except in *PROF*, *UKLR*, ~~EG 16~~ ENFG App 1.5 and *REC*) a *person* admitted to membership of the *Society* or any *person* by law entitled or bound to administer their affairs.
- (2) (in *PROF*, *UKLR* and ~~EG 16~~ ENFG App 1.5) (as defined in section 325(2) of the *Act* (FCA's general duty)) (in relation to a profession) a *person* who is entitled to practise that profession and, in practising it, is subject to the rules of the relevant *designated professional body*, whether or not they are a member of that body.

...

<i>non-authorised counterparty</i>	in EG <u>ENFG</u> , in relation to <i>EMIR</i> : ...
<i>operator</i>	(1) (except in EG <u>ENFG</u>): ... (2) (in EG <u>ENFG</u>) (in accordance with section 237(2) of the <i>Act</i> (Other definitions)):
<i>redemption</i>	(1) (except in EG 14 (Collective investment schemes)) (in relation to <i>units</i> in an <i>authorised fund</i>) the purchase of them from their <i>holder</i> by the <i>authorised fund</i> manager acting as a <i>principal</i> . (2) (in EG 14 (Collective investment schemes)) redemption as in (1) but including their cancellation by: (a) the trustee of an AUT; (b) the depositary of an ACS; or (b) an ICVC.
<i>securities financing transaction</i>	... (1A) (in <i>COLL</i> , <i>DEPP</i> , EG , <i>FEEs</i> and <i>FUND</i>) a transaction defined in article 3(11) of the <i>Securities Financing Transactions Regulation</i> as follows:
<i>senior staff committee</i>	(in <i>DEPP</i> and EG) a committee consisting of senior <i>FCA</i> staff members that is empowered to make <i>statutory notice decisions</i> and <i>statutory notice associated decisions</i> by <i>executive procedures</i> .
<i>settlement decision makers</i>	(in <i>DEPP</i> and EG <u>ENFG</u>) two members of the <i>FCA</i> 's senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level, with responsibility for deciding whether to give <i>statutory notices</i> in the circumstances described in <i>DEPP</i> 5. At least one of the decision makers will not be

from the Enforcement and ~~Financial Crime~~ Market Oversight Division.

*settlement discount
scheme*

(in *DEPP* and ~~*EG ENFG*~~) the scheme described in *DEPP* 6.7 by which the financial penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *person's* misconduct or contravention may be reduced to reflect the timing of any *settlement agreement*.

Annex B

Amendments to the Threshold Conditions sourcebook (COND)

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

1 Introduction

...

1.2 Purpose

...

Exercise of the FCA's own-initiative powers

- 1.2.3 G (1) If, among other things, a *firm* is failing to satisfy any of the *FCA threshold conditions*, or is likely to fail to do so, the *FCA* may exercise its *own-initiative powers* under either section 55J (Variation or cancellation on initiative of regulator) or section 55L (Imposition of requirements by FCA) of the *Act*. Use of the *FCA's own-initiative powers* is explained in *SUP 7* (Individual requirements), and ~~*EG 8*~~ *SUP 6B* (Variation and cancellation of permission on the FCA's own initiative and intervention against incoming firms).

...

...

Annex C

Amendments to the Financial Stability and Market Confidence Sourcebook (FINMAR)

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

2 Short selling

2.1 Application and purpose

...

Purpose

- 2.1.2 G The purpose of this chapter is to provide *guidance* in relation to the *FCA* 's functions under the *short selling regulation*.

Note: Other parts of the *Handbook* that may also be relevant to natural and legal persons to whom the *short selling regulation* applies include:

Chapter 2 of *SUP* (the Supervision manual) and *DEPP* (the Decision Procedure and Penalties manual).

The following Regulatory Guides are also relevant:

1. the Enforcement Guide ~~(EG)~~ (ENFG)

Annex D

Amendments to the General Provisions sourcebook (GEN)

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

1 FCA approval and emergencies

...

1.3 Emergency

...

- 1.3.5 G *GEN* 1.3.2R operates on the *FCA's rules*. It does not affect the *FCA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FCA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part 4A permission* based on a failure or potential failure to satisfy the *threshold conditions* (see *SUP 7* (Individual requirements) and ~~*EG 8*~~ *SUP 6B* (Variation and cancellation of permission and imposition of requirements on the *FCA's* own initiative)).

Annex E

Amendments to the Supervision manual (SUP)

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

2 Information gathering by the FCA or PRA on its own initiative

2.1 Application and purpose

...

Purpose

...

2.1.5 G Part XI of the *Act* (Information Gathering and Investigations) gives the *FCA* statutory powers, including:

(1) to require the provision of information (see sections 165 and ~~EG-3~~ ENFG 2);

...

(3) to appoint investigators (see sections 167, 168 and 169 of the *Act* and ~~EG-3~~ ENFG 2); and

(4) to apply for a warrant to enter premises (see section 176 of the *Act* and ~~EG-4~~ ENFG App 1.7).

...

2.3 Information gathering by the FCA on its own initiative: cooperation by firms

...

Information requested on behalf of other regulators

...

2.3.12A G In complying with *Principle 11*, the *FCA* considers that a *firm* should cooperate with it in providing information for other regulators. ~~Sections~~ Section 169 (Investigations etc. in support of overseas regulator) of the *Act* gives the *FCA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see *DEPP 7*, ~~EG-3~~ ENFG 2 and ENFG 3).

...

5 Reports by skilled persons

...

5.3 Policy on the use of skilled persons

...

Alternative tools available, including other statutory powers

- 5.3.5 G The *FCA* will have regard to alternative tools that may be available, including for example:

...

- (3) appointing investigators to carry out general investigations under [section 167](#) of the *Act* (Appointment of investigator in general cases) (see ~~EG-3~~ [ENFG 2](#) for the *FCA* policy on the use of this power); and
- (4) appointing investigators to carry out investigations in particular cases under [section 168](#) of the *Act* (Appointment of investigator in specific cases) (see ~~EG-3~~ [ENFG 2](#) for the *FCA* 's policy on the use of this power).

...

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

6.1 Application, interpretation and purpose

...

Purpose

...

- 6.1.6 G This chapter does not cover the *FCA* 's use of its *own-initiative variation power* or, in respect of *FCA-authorised persons*, its *additional own-initiative variation power* to vary or cancel a *firm* 's *Part 4A permission* or its *own-initiative requirement power* to impose, vary or cancel a *requirement* (see *SUP 7* (Individual requirements) and ~~EG-8~~ [SUP 6B](#) (Variation and cancellation of permission and imposition of requirements on the *FCA* 's own initiative and intervention against incoming firms)).

6.2 Introduction

...

Firms with long term liabilities to customers

...

- 6.2.10A G In certain circumstances the *FCA* and/or the *PRA* may use their *own-initiative powers* or the *FCA* may use its *additional own-initiative variation power* (see *SUP 7* and ~~*EG 8*~~ *SUP 6B* (Variation and cancellation of permission and imposition of requirements on the *FCA*'s own initiative and intervention against incoming firms)).

...

6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

...

Commencing new regulated activities

...

- 6.3.42 G ...

- (1A) The *appropriate regulator* may exercise its *own-initiative variation power* to cancel an *investment firm's Part 4A permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 55Z(1) of the *Act* is given (see ~~*EG 8*~~ *SUP 6B*) and, if the *investment firm* is an *FCA-authorised person*, note also the *FCA's additional own-initiative variation power*.

...

...

6.4 Applications for cancellation of permission

...

The *FCA* and the *PRA* enforcement and investigation powers against a former authorised person

- 6.4.23 G If an application for cancellation of a *firm's Part 4A permission* has been granted and a *firm's* status as an *authorised person* has been withdrawn (see *SUP 6.5*) it will remain subject to certain investigative and enforcement powers as a former *authorised person*. These include:
- (1) information gathering and investigation powers in [Part XI](#) of the *Act* (Investigation gathering and investigations) (see ~~*EG 3*~~ (Use of information gathering and investigation powers) *ENFG 2* (Conduct of typical enforcement investigations));
 - (2) powers to apply to court for injunctions and restitution orders in [Part XXV](#) of the *Act* (Injunctions and restitution) (see ~~*EG 10*~~ *ENFG App*);

1.1 (Injunctions) and ~~EG-11~~ ENFG App 1.8 (Restitution and redress));

- (3) powers in Part XXIV of the *Act* (Insolvency) to petition for administration orders or winding up orders against *companies* or insolvent *partnerships*, or bankruptcy orders (or in Scotland sequestration awards) against individuals (see ~~EG-13~~ ENFG App 1.2 (Insolvency));
- (4) powers in Part XXVII of the *Act* (Offences) to prosecute offences under the *Act* and other specified provisions (see ~~EG-12~~ ENFG 6 (Prosecution of criminal offences)).

...

6 Annex 4 Additional guidance for a firm winding down (running off) its business

6 Annex G 4.1

...	
Use of own-initiative powers	
5.	If, for example, the <i>FCA</i> or the <i>PRA</i> has concerns relating to any of the <i>statutory objectives</i> (limited to the operational objectives in the case of the <i>FCA</i>), it may use its <i>own-initiative variation power</i> (see <i>SUP 7</i> (Individual requirements) and EG-8 <u><i>SUP 6B</i></u> (Variation and cancellation of permission on the <i>FCA</i> 's own initiative and intervention against incoming firms)), to vary the <i>Part 4A permission</i> of a <i>firm</i> which is winding down or transferring its <i>regulated activities</i> .
...	

...

Insert the following new chapter after *SUP 6A* (Permission to approve financial promotions). This text is all new and is not underlined.

6B Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

6B.1 Introduction

- 6B.1.1 G The *FCA* has powers under section 55J of the *Act* to vary or cancel an *authorised person's Part 4A permission* and a power under section 55L to

impose requirements on an authorised person. The *FCA* may use these powers where:

- (1) the person is failing or is likely to fail to satisfy the *threshold conditions* for which the *FCA* is responsible;
- (2) the person has not carried on a *regulated activity* to which the *Part 4A permission* relates for a period of at least 12 months (or 6 months in the case of a *full-scope UK AIFM*);
- (3) it is desirable to exercise the power in order to advance one or more of its operational objectives; or
- (4) the person has failed to comply with a requirement in Part 5 of the *AIFMD UK regulation* (AIFs which acquire *control* of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.

6B.1.2 G The powers under sections 55J and 55L of the *Act* to vary and cancel a *person's Part 4A permission* and to impose requirements are exercisable in the same circumstances. However, the statutory procedure for the exercise of the *own-initiative powers* to vary a *permission* or impose a *requirement* is different to the statutory procedure for the exercise of the cancellation power under section 55J and this may determine how the *FCA* acts in a given case. Certain types of behaviour which may cause the *FCA* to cancel *permission* in one case may lead it to impose *requirements*, vary, or vary and later cancel, *permission* in another, depending on the circumstances. The non-exhaustive examples provided below are therefore illustrative but not conclusive of which action the *FCA* will take in a given case.

6B.1.3 G Separately, the *FCA* has its *additional own-initiative variation power*, under Schedule 6A to the *Act*, to vary or cancel the *Part 4A permission* of a *firm* that is an *FCA-authorised person* if:

- (1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and
- (2) that *person* has failed to respond as directed by the *FCA* to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Guidance on that power, which may be used in an enforcement context, is provided in *SUP 7*.

6B.2 Varying a firm's Part 4A permission or imposing requirements on the FCA's own initiative

6B.2.1 G When it considers how it should deal with a concern about a *firm*, the *FCA* will have regard to its *statutory objectives* and the range of regulatory tools that are available to it. It will also have regard to:

- (1) the responsibilities of a *firm's* management to deal with concerns about the *firm* or about the way its business is being or has been run; and
 - (2) the principle that a restriction imposed on a *firm* should be proportionate to the objectives the *FCA* is seeking to achieve.
- 6B.2.2 G The *FCA* will proceed on the basis that a *firm* (together with its directors and senior management) is primarily responsible for ensuring the *firm* conducts its business in compliance with the *Act*, the *Principles* and other *rules*.
- 6B.2.3 G In the course of its supervision and monitoring of a *firm* or as part of an enforcement action, the *FCA* may make it clear that it expects the *firm* to take certain steps to meet regulatory requirements. In the vast majority of cases the *FCA* will seek to agree with a *firm* those steps the *firm* must take to address the *FCA's* concerns. However, where the *FCA* considers it appropriate to do so, it will exercise its formal powers under [sections 55J](#) or [55L](#) of the *Act* to vary a *firm's* permission or to impose a requirement to ensure such requirements are met. This may include where:
- (1) the *FCA* has serious concerns about a *firm*, or about the way its business is being or has been conducted;
 - (2) the *FCA* is concerned that the consequences of a *firm* not taking the desired steps may be serious;
 - (3) the imposition of a formal statutory requirement reflects the importance the *FCA* attaches to the need for the *firm* to address its concerns;
 - (4) the imposition of a formal statutory requirement may assist the *firm* to take steps which would otherwise be difficult because of legal obligations owed to third parties.
- 6B.2.4 G *SUP 7* provides more information about the situations in which the *FCA* may decide to take formal action in the context of its supervision activities, including the use of its *additional own-initiative variation power*.
- 6B.2.5 G Examples of circumstances in which the *FCA* will consider varying a *firm's Part 4A permission* because it has serious concerns about a *firm*, or about the way its business is being or has been conducted include where:
- (1) in relation to the grounds for exercising the power under section 55J(1)(a) or section [55L\(2\)\(a\)](#) of the *Act*, the *firm* appears to be failing, or appears likely to fail, to satisfy the *threshold conditions* relating to one or more, or all, of its *regulated activities*, because for instance:
 - (a) the *firm's* material and financial resources appear inappropriate for the scale or type of *regulated activity* it is

carrying on – for example, where it has failed to take *account* of the need to manage risk professional indemnity insurance or where it is unable to meet its liabilities as they have fallen due; or

- (b) the *firm* appears not to be a fit and proper *person* to carry on a *regulated activity* because:
 - (i) it has not conducted its business in compliance with high standards which may include putting itself at risk of being used for the purposes of *financial crime* or being otherwise involved in such crime;
 - (ii) it has not been managed soundly and prudently and has not exercised due skill, care, and diligence in carrying on one or more, or all, of its *regulated activities*;
 - (iii) it has breached requirements imposed on it by or under the *Act* (including the *Principles* and the *rules*) – for example, in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;
 - (c) the *firm's* business model is not suited to its *regulated activities* – for example, where the *firm's* business model is not compatible with its affairs being conducted in a sound and prudent manner;
 - (d) the *firm* is not capable of effective supervision by the *FCA*, for example, where the way in which its business is organised or its membership of a group is likely to prevent effective supervision;
- (2) in relation to the grounds for exercising the power under section 55J(1)(c)(i) or section 55L(2)(c), it appears that the interests of *consumers* are at risk because the *firm* appears to have breached any of *Principles* 6 to 10 of the *FCA's Principles* (see *PRIN* 2.1.1R) to such an extent that it is desirable that limitations, restrictions, or prohibitions are placed on the *firm's regulated activity*.

6B.3 Use of the own-initiative powers

- 6B.3.1 G The *FCA* may impose, under sections 55J or 55L of the *Act*, a variation of *permission* or a *requirement* so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation or *requirement* to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its *own-initiative powers*.
- 6B.3.2 G The *FCA* will consider exercising its own-initiative power 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.

6B.3.3 G It is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of the following characteristics:

- (1) information indicating significant loss, risk of loss or other adverse effects for *consumers*, where action is necessary to protect their interests;
- (2) information indicating that a *firm's* conduct has put it at risk of being used for the purposes of *financial crime*, or of being otherwise involved in crime;
- (3) evidence that the *firm* has submitted to the *FCA* inaccurate or misleading information so that the *FCA* becomes seriously concerned about the *firm's* ability to meet its regulatory obligations; and
- (4) circumstances suggesting a serious problem within a *firm* or with a *firm's controllers* that calls into question the *firm's* ability to continue to meet the *threshold conditions*.

6B.3.4 G The *FCA* will consider the full circumstances of each case when it decides whether a variation of *Part 4A permission* under section 55J of the *Act* or an imposition of a *requirement* under section 55L of the *Act* 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* 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. 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* 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*.
- (4) The seriousness of any suspected breach of the requirements of the legislation or the *rules* and the steps that need to be taken to correct that breach.
- (5) The financial resources of the *firm*. Serious concerns may arise where it appears the *firm* may be required to pay significant amounts of compensation to *consumers*. In those cases, the extent to which the *firm* has the financial resources to do so will affect the *FCA's* decision about whether exercise of the *FCA's* own-initiative powers is appropriate to preserve the *firm's* assets, in the interests of the consumers. The *FCA* will take account of any insurance cover held by the *firm*. It will also consider the likelihood of the *firm's* assets being dissipated without the *FCA's* intervention, and whether the exercise of the *FCA's* power to petition for the winding up of the *firm* is more appropriate than the use of its *own-initiative powers* (see *ENFG App 1.2*).
- (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* use of its *own-initiative powers* may well be appropriate.
- (7) The risk that the *firm's* conduct or business presents to the *financial system* and to confidence in the *financial system*.
- (8) The *firm's* conduct. The *FCA* will take into account:
- (a) whether the *firm* identified the issue (and if so whether this was by chance or as a result of the *firm's* normal controls and monitoring);
 - (b) whether the *firm* brought the issue promptly to the *FCA's* attention;

- (c) the *firm's* past history, management ethos and compliance culture;
 - (d) steps that the *firm* has taken or is taking to address the issue.
- (9) The impact that use of the *FCA's own-initiative powers* will have on the *firm's* business and on its *customers*. The *FCA* will take into account the (sometimes significant) impact that a variation of *permission* may have on a *firm's* business and on its *customers'* interests, including the effect of variation on the *firm's* reputation and on market confidence. The *FCA* will need to be satisfied that the impact of any use of the *own-initiative power* is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its *statutory objectives*.

6B.4 Limitations and requirements that the FCA may impose when exercising its section 55J and 55L powers

- 6B.4.1 G When varying *Part 4A permission* at its own-initiative under its section 55J power (or section 55Q power), the *FCA* may include in the *Part 4A permission* as varied any *limitation* or restriction which it could have imposed if a fresh *permission* were being given in response to an application under [section 55A](#) of the *Act*.
- 6B.4.2 G Examples of the limitations that the *FCA* may impose when exercising its *own-initiative variation power* include *limitations* on: the number, or category, of *customers* that a *firm* can deal with; the number of specified investments that a *firm* can deal in; and the activities of the *firm* so that they fall within specific regulatory regimes (for example, so that *oil market participants*, *corporate finance advisory firms* and service providers are permitted only to carry on those types of activities).
- 6B.4.3 G Under its section 55L power (or section 55Q power), the *FCA* may, at any time and of its own initiative, impose on an *authorised person* such requirements as it considers appropriate.
- 6B.4.4 G Examples of requirements that the *FCA* may consider imposing when exercising its *own-initiative power* are: a *requirement* not to take on new business; a *requirement* not to hold or control *client money*; a *requirement* not to trade in certain categories of *specified investment*; a *requirement* that prohibits the disposal of, or other dealing with, any of the *firm's* assets (whether in the United Kingdom or elsewhere) or restricts those disposals or dealings; and a *requirement* that all or any of the *firm's* assets, or all or any assets belonging to investors but held by the *firm* to its order, must be transferred to a trustee approved by the *FCA*.

6B.5 Cancelling a firm's Part 4A permission on its own initiative

- 6B.5.1 G The *FCA* will consider cancelling a *firm's Part 4A permission* using its *own-initiative powers* contained in [sections 55J](#) and [55Q](#) respectively of the *Act* in 2 main circumstances:
- (1) where the *FCA* has very serious concerns about a *firm*, or the way its business is or has been conducted;
 - (2) where the *firm's regulated activities* have come to an end and it has not applied for *cancellation* of its *Part 4A permission*.
- 6B.5.2 G The grounds on which the *FCA* may exercise its power to cancel an authorised person's permission under [section 55J](#) of the *Act* are the same as the grounds for variation and for imposition of requirements. They are set out in section 55J(1) and section 55L(2) and described in *SUP* 6B.1.1G. Examples of the types of circumstances in which the *FCA* may cancel a *firm's Part 4A permission* include:
- (1) non-compliance with a *Financial Ombudsman Service* award against the *firm*;
 - (2) material non-disclosure in an application for authorisation or approval or material non-notification after authorisation or approval has been granted. The information which is the subject of the non-disclosure or non-notification may also be grounds for cancellation;
 - (3) failure to have or maintain adequate financial resources, or a failure to comply with regulatory capital requirements;
 - (4) non-submission of, or provision of false information in, regulatory returns, or repeated failure to submit such returns in a timely fashion;
 - (5) non-payment of *FCA* fees or repeated failure to pay *FCA* fees except under threat of enforcement action;
 - (6) failure to provide the *FCA* with valid contact details or failure to maintain the details provided, such that the *FCA* is unable to communicate with the *firm*;
 - (7) repeated failures to comply with *rules* or requirements;
 - (8) a failure to cooperate with the *FCA* which is of sufficient seriousness that the *FCA* ceases to be satisfied that the *firm* is fit and proper – for example, failing without reasonable excuse to:
 - (a) comply with the material terms of a formal agreement made with the *FCA* to conclude or avoid disciplinary or other enforcement action; or
 - (b) provide material information or take remedial action reasonably required by the *FCA*.

Sections [55J\(6\)](#) and [55K](#) of the *Act* set out further grounds on which the *FCA* may cancel the permission of *authorised persons* which are *investment firms* and section [55J\(6A\)](#) of the *Act* sets out further grounds on which the *FCA* may cancel the permission of *authorised persons* who are *full-scope UK AIFMs*.

- 6B.5.3 G The *FCA* may also vary or cancel, under Schedule 6A to the *Act*, the *Part 4A permission* of a *firm* that is an *FCA-authorised person* if:
- (1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and
 - (2) that *person* has failed to respond as directed to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Schedule 6A specifies that the *FCA* may form the view that a *firm* is carrying on no such *regulated activity* on the basis of its failure to pay a periodic fee or levy or provide information to the *FCA*, in each case as required by the *Handbook*. Further *guidance* on this power is given in *SUP* 7.

- 6B.5.4 G Depending on the circumstances, the *FCA* may need to consider whether it should first use its *own-initiative powers* to impose requirements on a *firm* or to vary a *firm's Part 4A permission* before going on to cancel it. Among other circumstances, the *FCA* may use this power where it considers it needs to take immediate action against a *firm* because of the urgency and seriousness of the situation.

- 6B.5.5 G Where the situation appears so urgent and serious that the *firm* should immediately cease to carry on all *regulated activities*, the *FCA* may first vary the *firm's Part 4A permission* so that there is no longer any *regulated activity* for which the *firm* has a *Part 4A permission*. If it does this, the *FCA* will then have a duty to cancel the *firm's Part 4A permission* once it is satisfied that it is no longer necessary to keep the *Part 4A permission* in force.

- 6B.5.6 G However, where the *FCA* has cancelled a *firm's Part 4A permission*, it is required by [section 33](#) of the *Act* to go on to give a direction withdrawing the *firm's authorisation*. Accordingly, the *FCA* may decide to keep a *firm's Part 4A permission* in force to maintain the *firm's* status as an *authorised person* and enable it (the *FCA*) to monitor the *firm's* activities. An example is where the *FCA* needs to supervise an orderly winding down of the *firm's* regulated business (see *SUP* 6.4.22G (When will the relevant regulator grant an application for cancellation of permission?)). Alternatively, the *FCA* may decide to keep a *firm's Part 4A permission* in force to maintain the *firm's* status as an *authorised person* to use administrative enforcement powers against the *firm*.

6B.6 Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA's policy

- 6B.6.1 G The *FCA* has a power under section 55Q to vary, or alternatively cancel, a *firm's Part 4A permission*, or to impose requirements on a *firm*, in support of an *overseas regulator*. Section 55Q, (5) and (6) sets out matters the *FCA* may, or must, take into account when it considers whether to exercise these powers.
- 6B.6.2 G The *FCA* will actively consider requests for assistance from *overseas regulators*. Section 55Q, which sets out matters the *FCA* may take into account when it decides whether to vary or cancel a *firm's Part 4A permission* or to impose *requirements* on a *firm* in support of the *overseas regulator*, applies in these circumstances.
- 6B.6.3 G Where section 55Q(5) applies and the *FCA* is considering whether to vary a *firm's Part 4A permission* or to impose requirements on a *firm*, it may take account of all the factors described in *SUP* 6B.6.1G to 6B.6.6G but may give particular weight to:
- (1) the matters set out in paragraphs (c) and (d) of section 55Q(5) (seriousness, importance to persons in the United Kingdom, and the public interest); and
 - (2) any specific request made to it by the *overseas regulator* to impose requirements or to vary, rather than cancel, the *firm's Part 4A permission*.
- 6B.6.4 G The *FCA* will give careful consideration to whether the relevant authority's concerns would provide grounds for the *FCA* to exercise its *own-initiative powers* to vary, impose *requirements* or cancel if they related to a *UK firm*. It is not necessary for the *FCA* to be satisfied that the overseas provisions being enforced mirror precisely those which apply to *UK firms*. However, the *FCA* will not assist in the enforcement of regulatory *requirements* or other provisions that appear to extend significantly beyond the purposes of *UK regulatory provisions*.
- 6B.6.5 G Similarly, the *FCA* will not need to be satisfied that precisely the same assistance would be provided to the *United Kingdom* in precisely the same situation. However, it will wish to be confident that the relevant authorities in the jurisdiction concerned would have powers available to them to provide broadly similar assistance in aid of *UK authorities*, and would be willing properly to consider exercising those powers. The *FCA* may decide, under section 55Q(6), not to exercise its *own-initiative powers* to vary or cancel in response to a request unless the regulator concerned undertakes to make whatever contribution towards the cost of its exercise the *FCA* considers appropriate.

- 6B.6.6 G *SUP* 6B.4.2G and 6B.4.4G set out some examples of limitations and requirements the *FCA* may impose when exercising its section 55Q powers.

6B.7 Other relevant powers

- 6B.7.1 G The [Bank Recovery and Resolution Order 2016](#) amended the *Act* by adding sections 71B to 71I. The *FCA* has powers to remove directors and senior executives and to appoint temporary managers of relevant firms or parent undertakings, as defined by [section 71I](#) of the *Act*. Where a temporary manager has been appointed, the *FCA* also has powers to require the directors not to exercise specified functions during the period of appointment and to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action. The *FCA* will exercise these powers in accordance with the conditions and procedures set out in the relevant sections of the *Act*.

6B.8 Supervisory notices varying a firm's Part 4A permission, imposing a requirement or varying an approval on the FCA's own initiative (see DEPP 8) and supervisory notices imposing a direction under regulation 74C of the Money Laundering Regulations on the FCA's own initiative (see ENFG App 2.2)

- 6B.8.1 G It is important that the *FCA* maintains an accurate public record. One of the ways the *FCA* does this is by publishing the reasons for variations of *Part 4A permission*, the imposition of requirements, variations of the approval of *SMF managers* and the imposition and variation of directions under regulation 74C(5) of the *Money Laundering Regulations*. The *FCA* will always aim to balance the interests of *consumers* and the possibility of unfairness to the *person* subject to the *FCA*'s action. The *FCA* will publish relevant details of fundamental and non-fundamental variations of *Part 4A permission* and requirements which it imposes on *firms*, variations of approval of *SMF managers* and directions under regulation 74C(5) of the *Money Laundering Regulations*. But it will use its discretion not to do so if it considers this to be unfair to the *person* on whom the variation or direction is imposed, prejudicial to the interests of *consumers*, or detrimental to the stability of the *UK financial system*. Publication will generally include placing the notice on the *FCA* website and this may be accompanied by a press release. As with warning notice statements, *decision notices* and *final notices*, *supervisory notices* and related press releases that are published on the *FCA*'s website will be reviewed upon request. The *FCA* will determine at that time whether continued publication is appropriate, or whether notices and related press releases should be removed or amended. The *FCA* expects usually to conclude that *supervisory notices* and related press releases that have been published for less than 6 years should not be removed from the website.
- 6B.8.2 G The *FCA* will amend the *Financial Services Register* to reflect a *firm's* actual *Part 4A permission*, the terms of an *SMF manager's* actual approval under section 59 of the *Act* following any variation or the terms of

a direction imposed under regulation 74C of the *Money Laundering Regulations*.

- 6B.8.3 G Where the *FCA* publishes a *supervisory notice* issued under regulation 74C of the *Money Laundering Regulations* and the *FCA* subsequently decides to rescind the direction to which a notice relates or the subject of a direction is successful in overturning the direction, the *FCA* will make it clear on its website that the *supervisory notice* no longer applies.
- 6B.8.4 G Where the *FCA* publishes a *supervisory notice* issued under regulation 74C of the *Money Laundering Regulations* and the subject of the direction refers the matter to the *Tribunal*, the *FCA* will make it clear on its website that the supervisory notice has been referred to the *Tribunal*.

Amend the following as shown.

7 Individual requirements

...

7.2 The FCA's powers to set individual requirements and limitations and cancel Part 4A permissions on its own initiative

...

- 7.2.3 G The *FCA* may also use its *own-initiative powers* for enforcement purposes. ~~EG 8 SUP 6B~~ sets out in detail the *FCA*'s powers under [sections 55J](#) and [55L](#) of the *Act* and the circumstances under which the *FCA* may use its *own-initiative powers* in this way, whether for enforcement purposes or as part of its day to day supervision of *firms*. This chapter provides additional guidance on when the *FCA* will use these powers for supervision purposes.

...

15 Notifications to the FCA

...

15.3 General notification requirements

...

Lloyd's of London

- 15.3.22 D *SUP* 15.3.23D to *SUP* 15.3.25D are given in relation to the exercise of the powers of the *Society* and of the *Council* generally, with a view to achieving the objective of enabling the *FCA* to:

...

- (3) enforce the provisions of the *Act*, or requirements made under the *Act*, by enabling the *FCA* to consider, where appropriate, whether it should use its powers, for example, to:

...

- (b) withdraw approval from an *approved person* acting for or on behalf of an *underwriting agent*, under [section 63](#) of the *Act* (Withdrawal of approval) (see ~~EG 9~~ [ENFG 5](#));
- (c) prohibit an individual acting for or on behalf of an *underwriting agent* from involvement in *regulated activities*, under [section 56](#) of the *Act* (Prohibition orders) (see ~~EG 9~~ [ENFG 5](#));
- (d) require an *underwriting agent* to make restitution, under [section 384](#) of the *Act* (Power of FCA or PRA to require restitution) (see ~~EG 11~~ [ENFG App 1.8](#));
- (e) discipline an *underwriting agent*, or an *approved person* acting for it or on its behalf, for a breach of a requirement made under the *Act*, including the *Principles*, *Statements of Principle* and *rules* (see [DEPP 6](#) and ~~EG 7~~);
- (f) apply to court for an *injunction*, restitution order or *insolvency* order (see ~~EG 10~~, ~~EG 11~~ and ~~EG 13~~ [ENFG App 1.1](#), [ENFG App 1.8](#) and [ENFG App 1.2](#)); and
- (g) prosecute any criminal offence that the *FCA* has power to prosecute under the *Act* (see ~~EG 12~~ [ENFG 6](#)).

...

Annex F

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

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

...

Section of the Act	Description	Handbook reference	Decision maker
...			
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 EG <u>ENFG App 1.3.</u>	<i>Executive procedures</i>
...			
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 EG <u>ENFG App 1.3.</u>	<i>Executive procedures</i>
...			

...

3 The nature and procedure of the RDC

...

3.2 The operation of the RDC

...

Procedure: warning notices

...

- 3.2.14B G The *RDC* will then consider whether it is appropriate in all the circumstances to publish information about the matter to which the *warning notice* falling within section [391\(1ZB\)](#) of the *Act* relates. The *FCA*’s policy on publishing such information is set out in ~~EG-6~~ ENFG 4.

...

5 Settlement decision procedure

5.1 Settlement decision makers

Introduction

- 5.1.1 G ...

- (4) At least one of the *settlement decision makers* will not be from the Enforcement and ~~Financial Crime~~ Market Oversight Division. The other *settlement decision maker* will usually be, but need not be, from the Enforcement and ~~Financial Crime~~ Market Oversight Division. A *settlement decision maker* will not have been directly involved in establishing the evidence on which the decision is based.

...

...

Procedure: warning notice statements

...

- 5.1.8L G The *settlement decision makers* will then consider whether it is appropriate in all the circumstances to publish information about the matter to which the *warning notice* falling within [section 391\(1ZB\)](#) of the *Act* relates. The *FCA*’s policy on publishing such information is set out in ~~EG-6~~ ENFG 4.

...

6 Penalties

...

6.2 Deciding whether to take action

- 6.2.1 G The *FCA* will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or *public censure*. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

...

- (4) *FCA guidance* and other published materials: The *FCA* will not take action against a person for *behaviour* that it considers to be in line with *guidance*, other materials published by the *FCA* in support of the *Handbook* or *FCA*-confirmed Industry Guidance which were current at the time of the *behaviour* in question. (The manner in which *guidance* and other published materials may otherwise be relevant to an enforcement case is described in ~~EG-2~~ ENFG 3.4.)

...

6.5 Determining the appropriate level of financial penalty

...

6.5.3 G ...

Apportionment of financial penalties

- 6.5.4 G In a case where the *FCA* is proposing to impose a financial penalty on a person for 2 or more separate and distinct areas of misconduct, the *FCA* will consider whether it is appropriate to identify in the *decision notice* and *final notice* how the penalty is apportioned between those separate and distinct areas. Apportionment will not, however, generally be appropriate in other cases.

...

7 Statement of policy on interviews conducted on behalf of overseas ~~and EEA~~ regulators

...

7.2 Interviews

...

Policy on use of investigative powers

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

...

Annex G

Amendments to the Consumer Redress Schemes sourcebook (CONRED)

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

1 **General**

...

1.8 **Imposing a consumer redress scheme on a firm under section 404F(7) of the Act**

Triggers that must be met before the FCA can impose a consumer redress scheme under section 404F(7)

...

- 1.8.6 G Further information about varying a firm's *permission* or varying or imposing *requirements* on the *FCA's* own initiative under section 55J or section 55L of the *Act* is set out in ~~EG 8~~ SUP 6B.

...

Annex H

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

7 Suspension of dealings, termination of authorised funds and side pockets

7.1 Purpose

...

Purpose

7.1.3 G ...

- (2) This chapter also helps with the *statutory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs*, *AUTs* and *co-ownership schemes*. ~~EG 14~~ ENFG App 1.3 (Collective investment schemes) deals with the *FCA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.

...

Annex I

Amendments to the Credit Unions sourcebook (CREDS)

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

10 **Application of other parts of the Handbook to credit unions**

10.1 **Application and purpose**

...

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3 G

Module	Relevance to Credit Unions
...	
The Enforcement Guide (EG) <u>(ENFG)</u>	The Enforcement Guide (EG) <u>(ENFG)</u> describes the <i>FCA</i> 's approach to exercising the main enforcement powers given to it by the <i>Act</i> and by other legislation.
...	

Annex J

Amendments to the Professional Firms sourcebook (PROF)

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

2 Status of exempt professional firm

2.1 Designated professional bodies and exempt regulated activities

...

Exempt regulated activities

2.1.3 G Section 327 of the *Act* (Exemption from the general prohibition) sets out the conditions which must be met for a *person* to be treated as an *exempt professional firm*, and for the *person's regulated activities* to be treated as *exempt regulated activities*. If the exemption in section 327 does not apply to a *person* and the *person* carries on a *regulated activity*, the *person* may contravene the *general prohibition* and be committing a criminal offence. The *FCA's* approach to the use of its powers in respect of alleged contraventions of the *general prohibition* is explained in ~~EG 12~~ ENFG 6.

2.1.4 G If the *FCA* has made a direction under section 328 of the *Act* (Directions in relation to the general prohibition) (see *PROF* 3.2) in relation to classes of *person* (or *regulated activity*), then a *person* within the class (or carrying on the *regulated activity*) specified will not be an *exempt professional firm*. In addition, section 329 of the *Act* (Orders in relation to the general prohibition) gives the *FCA* power to make an order disapplying the Part XX exemption from a *person* named in the Order. The *FCA's* general approach to the use of this power is explained in ~~EG 16~~ ENFG App 1.5.

...

Annex K

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

4 **Enforcement powers**

...

4.2 **Enforcement powers and penalties**

The FCA's enforcement powers

- 4.2.1 G The *FCA*'s approach to the exercise of its enforcement powers will be consistent with its approach in *DEPP* and ~~*EG*~~ *ENFG* so far as appropriate.

...

Financial penalties

- 4.2.4 G The *FCA*'s policy on imposing financial penalties (including the amount of any such penalties) under the *RCB Regulations* will be consistent with the policy as set out in *DEPP* and ~~*EG*~~ with appropriate modifications.

...

Annex L

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

2A Recognised Auction Platforms

...

2A.4 Power and procedure for RAP penalties and censures

...

- 2A.4.12 G The *FCA* will apply the approach to publicity that it has outlined in ~~EG 6~~ ENFG 4.

...

4 Supervision

...

4.2C Control over a UK RIE

...

- 4.2C.7 G If the *FCA* refuses to approve an acquisition or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (~~see EG 2.39~~).

...

4.2D Suspension and removal of financial instruments from trading by the FCA

...

- 4.2D.2 G The procedure the *FCA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading is set out in sections 313B to 313BE of the *Act*. The *FCA* 's internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FCA* exercises this power, the *UK RIE* concerned and the issuer (if any) of the relevant *financial instrument* may refer the matter to the *Tribunal* (~~see EG 2.39~~).

...

Annex M

Amendments to the UK Listing Rules sourcebook (UKLR)

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

1 Preliminary: all securities

1.1 Introduction

...

1.1.1 R ...

[**Note:** Other parts of the *Handbook* that may also be relevant to *issuers* or *sponsors* include the Disclosure Guidance and Transparency Rules sourcebook (*DTR*), the Prospectus Regulation Rules sourcebook (*PRR*), the Conduct of Business sourcebook (*COBS*), the Decision Procedure and Penalties manual (*DEPP*), Chapter 9 of the Supervision manual (*SUP*) and General Provisions (*GEN*).

The Enforcement Guide (~~*EG*~~) (*ENFG*) may also be relevant to *issuers* or *sponsors*.]

...

2 Listing Principles

2.1 Application and purpose

...

Purpose

...

2.1.5 G *DEPP* 6 (Penalties) and ~~*EG* 7~~ set sets out *guidance* on the consequences of breaching a Listing Principle.

Annex N

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

1 Introduction

1.1 Application and purpose (Disclosure guidance)

...

FCA performing functions as competent authority

1.1.3 G Other relevant parts of Handbook

...

The following Regulatory Guides are also relevant:

1. The Enforcement Guide ~~(EG)~~ (ENFG)

...

...

1A Introduction (Transparency rules)

1A.1 Application and purpose (Transparency rules)

...

FCA performing functions as competent authority

1A.1.4 G Other relevant parts of Handbook

...

The following Regulatory Guides are also relevant:

1. The Enforcement Guide ~~(EG)~~ (ENFG)

...

...

1C Introduction (Primary information providers)

1C.1 Application and purpose (Primary information providers)

...

- 1C.1.2 G The purpose of the requirements in *DTR 8* is to make the *Part 6 rules* permitted under section 89P of the *Act* in relation to *primary information providers* and *persons* applying for approval as *primary information providers*.

[**Note:** Other parts of the *Handbook* that may also be relevant to *primary information providers* include *DEPP* (Decision Procedure and Penalties manual) and Chapter 9 of *SUP* (Supervision manual). ~~EG~~ ENFG (Enforcement Guide) is also relevant.]

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