

Procedural Note

Primary Market Oversight and Listing Transactions – decision making and individual guidance processes

Introduction

This note summarises how FCA decision making powers in relation to our responsibilities under Part VI of the Financial Services and Markets Act 2000 (FSMA) are delegated to FCA staff and exercised by them. This note also briefly sets out the procedure for individual guidance, appeals and complaints.

The FCA's functions under Part VI of FSMA are carried out by the Primary Market Oversight (PMO) Department and the Listing Transactions Department, which are both part of the FCA's Market Oversight directorate.

Statutory and non-statutory notice decisions

Part VI FSMA grants us a number of powers which result in a decision being made. There are two categories of decision which result from the exercise of these powers:

- 1) Statutory notice decisions, which include decisions to:
 - refuse an application for admission of securities to the Official List,
 - discontinue the listing of securities on our own initiative,
 - suspend listing.
- 2) Non-statutory notice decisions, which include the decision to approve a prospectus (or refusal to approve a prospectus) and granting admission to the Official List.

We set out below a summary of the process relating to each category of decision.

Statutory notice decision making

The provisions in FSMA set out the decisions where we are required to serve a statutory notice. A statutory notice is a written notice that our formal powers are proposed to be, or will be, exercised. Statutory notices include warning notices, decision notices and supervisory notices. For example, if we decide to refuse an application to admit securities to the Official List, we issue a decision notice to the applicant that applied for admission.

The Decision Procedure and Penalties Manual (DEPP), which forms part of the FCA Handbook, sets out our decision making procedure for giving statutory notices. The Enforcement Guide (EG) (which does not form part of the FCA Handbook but is an FCA regulatory guide) sets out our policy in relation to publicity for statutory notices (EG 6).

DEPP 2 provides further information on the allocation of decision making within the FCA. In particular, the annexes to DEPP 2 set out who the appropriate decision maker will be in relation to decisions which we take under Part VI of FSMA. The decision maker will be either the Regulatory Decisions Committee (RDC) or 'FCA staff under executive procedures'.

RDC

Information on decision making by the RDC can be found in DEPP 3 and on our website. The RDC is an FCA Board Committee that is operationally separate from the rest of the FCA. The FCA Board appoints the RDC Chair and members, who are drawn from across a spectrum of business, consumer and industry backgrounds.

In the case of our role under Part VI of FSMA, decisions that will be taken by the RDC include a decision to discontinue the listing of securities on the FCA's own initiative (DEPP 2.5.10G).

'FCA staff under executive procedures'

Information on decision making by 'FCA staff under executive procedures' can be found in DEPP 4. However, in the case of our role under Part VI of FSMA, in certain instances the executive procedures decision maker for statutory notices will be the Markets Regulatory Committee, often called 'Markets RegCo'. For example, a decision to refuse an application for admission to the Official List is likely to be referred to Markets RegCo.

Further information on Markets RegCo is set out below.

Decisions not subject to statutory notice decision making

Decisions not subject to statutory notice decision making are usually taken by FCA staff and notified to the parties affected through means other than statutory notices. An example of such a decision includes granting admission to the Official List (although please note that refusing an application for admission is a statutory notice decision).

In all cases, staff taking these decisions do so through the Chief Executive Officer's Delegations and are accountable to the FCA Board through line management. In arriving at their decision, FCA staff will, in addition to considering the substantive facts of the case, generally consider whether they have sufficient authority to take the decision or whether the decision or aspects of it should be escalated within the FCA.

Where staff decide to escalate decisions this may be to individual senior staff members or to senior staff committees depending on the nature of the decision. Again, the senior staff committee to which FCA staff carrying out functions under Part VI of FSMA most commonly escalate issues is Markets RegCo. Prior to taking a decision to Markets RegCo, we will usually escalate the matter to a meeting of management within the Market Oversight division first.

Individual guidance

A person may ask the FCA for individual guidance on how any of the FCA's rules and general guidance (including LR, PRR and DTR) apply in their particular circumstances.

The procedure for requesting individual guidance is set out in SUP 9 of the FCA Handbook. However, we would like to highlight the following points.

- Any query should be specific and clearly set out what question the FCA is being asked to consider. We expect the person requesting guidance to be familiar with the context in which the guidance is being sought. All relevant facts should be presented to us in a clear and transparent manner.
- We do not expect to give guidance on a no names basis about the affairs of an individual issuer.
- We expect a person to have taken reasonable steps to research and analyse their query – we would expect this analysis to be set out in the request for individual guidance.
- We will provide you with a named contact person, typically on the business day following receipt of your request.
- We will respond fully to all reasonable requests for guidance and will normally do so in writing.
- Where we respond in writing, in most instances (depending on the facts of the particular case) the recipient is able to rely on the guidance in relation to the specific circumstance contemplated by the guidance and to the extent it remains effective and current (for example, if the circumstances change, the guidance may no longer be effective).

Further information specifically relating to the individual guidance procedure can be found on the "Request individual guidance" section of the FCA website.

As with non-statutory decision making, individual FCA staff are able to provide individual guidance through the Chief Executive Officer's Delegations. FCA staff providing individual guidance (in writing or orally) will ensure that they have sufficient authority to do so and that matters are escalated to senior staff members or senior staff committees (including Markets RegCo) as they deem appropriate.

Markets RegCo

Markets RegCo is a senior staff committee within the FCA. It is chaired by an FCA Director and includes directors and/or heads of department from the Policy and Market Oversight directorates and the Supervision and Authorisations divisions. Representatives from certain other parts of the FCA attend in an advisory capacity, including staff from the General Counsel and Risk and Compliance Oversight divisions.

Appeals

Where a person is not satisfied with the statutory decision made, they may refer the matter to the Upper Tribunal (Tax and Chancery Chamber). The Upper Tribunal is an independent judicial body established by the Tribunals Courts and Enforcement Act 2007. Further information on the Upper Tribunal can be found on the FCA website.

Complaints Scheme

Part VI of the Financial Services Act 2012 requires us to have arrangements for the investigation of complaints against us. These arrangements are known as the Complaints Scheme. Further information on the scheme is available on the FCA website.