

Chapter 1

Application and Purpose

1.1 Application and Purpose

Application

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This manual (*DEPP*) is relevant to *firms, approved persons* and other persons, whether or not they are regulated by the *FCA*. It sets out:

- (1) the *FCA's* decision-making procedure for giving *statutory notices*. These are *warning notices, decision notices* and *supervisory notices* (■ DEPP 1.2 to ■ DEPP 5);
- (1A) the *FCA's* decision-making procedure in cases where the *PRA* is required to seek the *FCA's* consent before approving an application (a) for *Part 4A permission*; (b) for the variation of a *Part 4A permission*; or (c) to perform a *controlled function* (see ■ DEPP 2.5.7A G);
- (1B) the *FCA's* decision-making procedure where it is deciding under section 391(1)(c) of the *Act* to publish information about the matter to which a *warning notice* relates (see ■ DEPP 3.2.14A G to ■ DEPP 3.2.14H G and ■ DEPP 5.1.8KG to ■ DEPP 5.1.8QG);
- (2) the *FCA's* policy with respect to the imposition and amount of penalties under the *Act* (see ■ DEPP 6);
- (2A) the *FCA's* policy with respect to the imposition of suspensions, restrictions and disciplinary prohibitions, and the period for which those sanctions are to have effect, under the *Act* (see ■ DEPP 6A);
- (3) the *FCA's* policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator (■ DEPP 7);
- (4) the *FCA's* policy regarding the variation of an *SMF manager's* approval on the *FCA's* initiative under section 63ZB of the *Act* (see ■ DEPP 8).

Purpose

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The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 63ZD(1), 69(1), 88C(1), 895(1), 93(1), 124(1), 131FA, 131J(1), 169(9), 192N(1), 210(1), 312J(1), 345D(1) and 395 of the *Act* that the *FCA* publish the statements of procedure or policy referred to in ■ DEPP 1.1.1 G.



1.2 Introduction to statutory notices

Statutory and related notices

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

1.2.2 **G** Table: Summary of statutory and related notices

| Notice | Description | Act reference | Further information |
|---------------------------------|---|---------------|--------------------------------|
| <i>Warning notice</i> | Gives the recipient details about action that the <i>FCA</i> proposes to take and about the right to make representations. | Section 387 | DEPP 2.2 |
| <i>Decision notice</i> | Gives the recipient details about action that the <i>FCA</i> has decided to take. The <i>FCA</i> may also give a further <i>decision notice</i> if the recipient of the original <i>decision notice</i> consents. | Section 388 | DEPP 2.3 |
| <i>Notice of discontinuance</i> | Identifies proceedings set out in a <i>warning notice</i> or <i>decision notice</i> and which are not being taken or are being discontinued. | Section 389 | DEPP 1.2.4 G and DEPP 3.2.26 G |
| <i>Final notice</i> | Sets out the terms of the ac- | Section 390 | DEPP 1.2.4 G |

| Notice | Description | Act reference | Further information |
|---------------------------|--|-----------------|-----------------------|
| <i>Supervisory notice</i> | tion that the <i>FCA</i> is taking. Gives the recipient details about action that the <i>FCA</i> has taken or proposes to take, for example to vary a <i>Part 4A permission</i> . | Section 395(13) | DEPP 2.2 and DEPP 2.3 |

1.2.3 G In *DEPP* the *supervisory notice* about a matter first given to the recipient is referred to as the "first *supervisory notice*" and the *supervisory notice* given after consideration of any representations is referred to as the "second *supervisory notice*".

1.2.4 G The requirement in section 395 of the *Act* to publish a procedure for the giving of notices does not extend to the giving of a *notice of discontinuance* or a *final notice*. Neither of these notices is a *statutory notice* for the purposes of *DEPP*; nor is the decision to give such a notice a *statutory notice associated decision*.

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

1.2.4A G Section 395 of the *Act* also requires the *FCA* to publish a statement of its procedure for decisions which give rise to an obligation for the *PRA* to include a statement under section 387(1A) in a *warning notice* or a statement under section 388(1A) in a *decision notice* as follows:

- (1) Section 387(1A) provides that where the *FCA* proposes to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the *warning notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s proposal.
- (2) Section 388(1A) provides that where the *FCA* has decided to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the *decision notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s decision.

1.2.4B G Where an application for *Part 4A permission* is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (section 55F of the *Act*). *FCA* consent can be conditional on the *PRA* imposing limitations or specifying the permission is for certain regulated activities only.

1.2.4C G Where an application to vary a *Part 4A permission* is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give

permission with the consent of the *FCA* (section 55I of the *Act*). The *FCA* may withhold its consent to a proposed variation if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives. *FCA* consent can be conditional on the *PRA* imposing limitations, or the *PRA* specifying the permission is for certain regulated activities only.

1.2.4D **G** Where an application to perform a *controlled function* is made to the *PRA* as the appropriate regulator, the *PRA* can only approve a person to perform a *controlled function* with the consent of the *FCA* (section 59(4)(b) of the *Act*). Where the application is a *relevant senior management application*, the *FCA*'s consent can be conditional on the *PRA* imposing conditions, or the *PRA* giving approval only for a limited period.

1.2.4E **G** The procedure must be designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based, or by two or more persons who include a person not directly involved in establishing that evidence.

The decision makers

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

- (1) *FCA* staff under *executive procedures*; or
- (2) the *Regulatory Decisions Committee* (RDC); or
- (3) *FCA* staff under the *settlement decision procedure*.

1.2.6 **G** The decision maker will also take decisions associated with a *statutory notice* (a '*statutory notice associated decision*'). *Statutory notice associated decisions* include decisions:

- (1) to set or extend the period for making representations;
- (2) on whether the *FCA* is required to give a copy of the *statutory notice* to any third party and, if so, the period for the third party to make representations; and
- (3) on whether to refuse access to *FCA* material, relevant to the relevant *statutory notice*, under section 394 of the *Act*.

1.2.6A **G** *Statutory notice associated decisions* do not include decisions relating to the publication of a *statutory notice*.

1.2.7 **G** In each case, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law, and *FCA* priorities and policies (including on matters of legal interpretation).

1.2.8 **G** The *FCA* will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision makers.

1.2.9 **G** ■ DEPP 2 to ■ DEPP 5 set out:

- (1) which decisions require the giving of statutory notices and who takes them (■ DEPP 2);
- (2) the nature and procedures of the *RDC* (■ DEPP 3);
- (3) the procedure for decision making by *FCA* staff under *executive procedures* (■ DEPP 4);
- (4) the procedure for decision making by *FCA* staff under the *settlement decision procedure* (■ DEPP 5).