

## Chapter 2

# Statutory notices and the allocation of decision making

**2.5 Provision for certain categories of decision**

**Purpose**

2.5.1 **G** Some of the decisions referred to in ■ DEPP 2 Annex 1 and ■ DEPP 2 Annex 2 share similar characteristics. For convenience, ■ DEPP 2.5 sets out some of these and the particular features they have.

**Different decision makers**

2.5.2 **G** In some circumstances, the decision to give a *warning notice* and a *decision notice* in a particular matter will not be taken by the same decision maker. For example, in enforcement cases the *RDC* might take the decision to give a *warning notice*, but the decision to give a *decision notice* could be taken by the *settlement decision makers* on the basis that the *person* concerned does not contest the action proposed (see ■ DEPP 5).

**Decisions relating to applications for FCA authorisation or approval**

2.5.3 **G** *FCA* staff under *executive procedures* will take the decision to give a *warning notice* if the *FCA* proposes to:

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

- (4A) grant a *relevant senior manager application*, subject to any conditions or only for a limited period;
- (4B) refuse an application to vary an approval under section 59 of the Act that was granted subject to conditions;
- (5) refuse an application for a *small e-money issuer certificate* (see ■ ELM 8 (Small e-money issuers));
- (6) [deleted]

2.5.4 G If no representations are made in response to a *warning notice* proposing the action set out at ■ DEPP 2.5.3 G within the period specified, a *decision notice* will be given accordingly: see ■ DEPP 2.3.2 G (Default procedures).

2.5.5 G If representations are made in response to a *warning notice* proposing any of the actions set out at ■ DEPP 2.5.3G, then FCA staff under *executive procedures* will take the decision to give a *decision notice*.

2.5.5A G [deleted]

2.5.6 G [deleted]

**Decisions relating to applications for PRA authorisation or approval**

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

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

**FCA's own-initiative powers**

2.5.7 G FCA staff under *executive procedures* will take the decision to give a *supervisory notice* exercising the FCA's *own-initiative powers* (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity), including where the action involves a fundamental variation or requirement (see ■ DEPP 2.5.8 G).

2.5.7A G FCA staff under *executive procedures* will be the decision maker when a *firm* agrees not to contest the FCA's exercise of its *own-initiative powers* and when the exercise of the FCA's *own-initiative powers* is contested by a *firm*.

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

**2.5.8** **G** A fundamental variation or requirement means:

- (1) removing a type of activity or *investment* from the *firm's permission*; or
- (2) refusing an application to include a type of activity or *investment*; or
- (3) [deleted]
- (4) imposing or varying an assets requirement (as defined in section 55P of the *Act* (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.

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

**2.5.8A** **G** *FCA* staff under *executive procedures* will take the decision under section 63ZB of the *Act* to vary an approval given to an *SMF manager* (by imposing a condition, varying a condition, removing a condition or limiting the period for which the approval is to have effect).

**2.5.8B** **G** *FCA* staff under *executive procedures* will be the decision maker when all of the interested parties (as defined by section 63ZC(6) of the *Act*) agree not to contest the *FCA's* exercise of its power under section 63ZB of the *Act* and when the exercise of such powers is contested by any of the interested parties (as so defined).

**2.5.8C** **G** The *FCA's* statement of policy on the use of the power to vary an *SMF manager's* approval on its own initiative is set out in ■ DEPP 8.

**Decisions relating to listing of securities**

**2.5.9** **G** *FCA* staff under *executive procedures* will take the following *statutory notice* decisions:

- (1) the refusal of an application for listing of securities;
- (2) the suspension of *listing* on the *FCA's* own initiative or at the request of the issuer;
- (3) [deleted]
- (4) the discontinuance of *listing* of securities at the issuer's request;
- (5) the exercise of any of the powers in sections 87K or 87L of the *Act* in respect of a breach of any applicable provision; and

(6) [deleted]

(7) the refusal of an application by an issuer for cancellation of a suspension of *listing* made under section 77 of the *Act*.

2.5.10 **G** FCA staff under *executive procedures* will take *statutory notice decisions* relating to the discontinuance of listing of securities on the FCA's own initiative.

2.5.11 **G** If securities have matured or otherwise ceased to exist the FCA will remove any reference to them from the official list. This is a purely administrative process, and not a discontinuance of listing in the sense used in Part 6 of the *Act*.

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

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2.5.11A **G** Under section 88(4)(aa) of the *Act*, if the FCA proposes to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the FCA decides to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *decision notice*. FCA staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice* where the *sponsor* has requested or otherwise agrees to the limitation or other restriction and where the *sponsor* contests the imposition of the limitation or other restriction.

2.5.11B **G** If the FCA is proposing or deciding to refuse a *sponsor's* application for the withdrawal or variation of a limitation or other restriction on the services to which a *sponsor's* approval relates under section 88(8)(d) of the *Act*, the decision maker will be FCA staff under *executive procedures*.

2.5.11C **G** Under section 89P(5)(b) of the *Act*, if the FCA proposes to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the FCA decides to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *decision notice*. FCA staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice* where the *primary information provider* has requested or otherwise agrees to the limitation or other restriction and where the *primary information provider* contests the imposition of the limitation or other restriction.

2.5.11D **G** Under section 89P(9)(d) of the *Act*, if the FCA is proposing or deciding to refuse a *primary information provider's* application for the withdrawal or variation of a limitation or other restriction on the dissemination of

regulated information to which a *primary information provider's* approval relates, the decision maker will be *FCA staff* under *executive procedures*.

**Modified procedures in collective investment scheme and certain other cases**

**2.5.12** G *FCA staff* will usually inform or discuss with the *person* concerned any action they contemplate before they recommend to *FCA staff* under *executive procedures* that the *FCA* takes formal action. The *FCA* may also be invited to exercise certain powers by the *persons* who would be affected by the exercise of those powers. In these circumstances such decisions, including those referred to in ■ DEPP 2.5.13G, will be taken by *FCA staff* under *executive procedures* if the *person* concerned has agreed to or accepted the action proposed and if the proposed action is not agreed.

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

- (1) the decision to give a *supervisory notice* pursuant to section 259(3), (8) or 9(b) (directions on authorised unit trust schemes); section 268(3), 7(a) or 9(a) (directions in respect of recognised overseas schemes); or section 282(3), (6) or (7)(b) (directions in respect of relevant recognised schemes) of the *Act*;
- (1A) the decision to give a *supervisory notice* pursuant to section 261Z1(3), (8) or (9)(b) (Procedure on giving directions under section 261X or 261Z and varying them on *FCA's* own initiative) of the *Act*;
- (2) the decision to give a *warning notice* or *decision notice* pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) or section 282B (public censure) of the *Act*;
- (3) the decision to give a *supervisory notice* in accordance with regulation 27(3), (8) or 9(b) of the *OEIC Regulations*; and
- (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC Regulations*.
- (4A) the decision to give a *warning notice* or *decision notice* pursuant to section 255 or 260 of the *Act*;
- (4B) the decision to give a *warning notice* or *decision notice* pursuant to section 261V or 261Z2 of the *Act*;
- (5) [deleted]
- (6) [deleted]

**2.5.14** G In determining whether there is agreement to or acceptance of the action proposed, an indication by the following *persons* will be regarded as conclusive:

- (1) in relation to an *authorised unit trust scheme*, the *manager* and *trustee*;

- (1A) in relation to an *authorised contractual scheme*, the *authorised contractual scheme manager* and *depository*;
- (2) in relation to an *ICVC*, the *directors* and the *depository*;
- (3) in relation to a *recognised scheme*, the *operator* and, if any, the *trustee or depository*.

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

2.5.16 G [deleted]

**Notices under other enactments**

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

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

- (1) [deleted]
- (2) [deleted]
- (3) Friendly Societies Act 1992, section 58A: The *warning notice* and *decision notice* must set out the terms of the direction which the *FCA* proposes or has decided to give and any specification of when the friendly society is to comply with it. A *decision notice* given under section 58A(3) must give an indication of the society's right, given by section 58A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 58A(3) may only relate to action under the same section of the Friendly Societies Act 1992 as the action proposed in the *warning notice*. A *final notice* under section 390 of the *Act* must set out the terms of the direction and state the date from which it takes effect. Section 392 of the *Act* is to be read as if it included references to a *warning notice* given under section 58A(1) and a *decision notice* given under section 58A(3).
- (4) The *FCA* is only required to give a single *supervisory notice* under Regulations 28 and 36 of the *MiFI Regulations*. No representations can be made to the *FCA* after the issuing of this notice, but the matter can be referred to the *Tribunal*.
- (5) The decision to give a written notice under section 55XA(1) of the *Act* will be taken by *FCA* staff under *executive procedures*. If the applicant decides to seek a review, by the *FCA*, of that decision, they

can make representations to *FCA* staff under *executive procedures*. If *FCA* staff under *executive procedures* then decide under section 55XA(5) of the *Act* to confirm the first decision, or take a different decision of the type described by section 55XA(1) of the *Act*, it must give the applicant a written notice.

(5A) The decision to impose or vary a direction under regulation 74C of the *Money Laundering Regulations* will be taken by *FCA* staff under *executive procedures*, including if the direction involves a fundamental imposition or variation. *FCA* staff under *executive procedures* will be the decision maker when a *cryptoasset business* does not contest the direction and when the direction is contested by a *cryptoasset business*. A fundamental imposition or variation of a direction means:

- (a) preventing a *cryptoasset business* from undertaking *cryptoasset business*; or
- (b) imposing or varying a direction in relation to the *cryptoasset business*' assets, or refusing an application to vary or cancel such a direction.

(6) *CRA Regulation*: Where the *FCA* is exercising its powers to refuse an application for registration under articles 16 or 17, or to refuse an application made by a *credit rating agency* to withdraw its registration under article 20(3), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by *FCA* staff under *executive procedures*.

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

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

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

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

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



In these circumstances the decision to give a written notice under article 71a(6) will be taken by *FCA* staff under *executive procedures*.

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

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

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

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

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

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

Where the *FCA* is exercising its powers to withdraw the registration of a *trade repository* on the *FCA's* own initiative under article 10(1) or 10(2), it must give a written notice in accordance with article 10a(6)(b). In these circumstances, the decision to give a written notice under article 10a(6)(b) will be taken by *FCA* staff under *executive procedures*.

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

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