

Chapter 6A

The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition



6A.3 Determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition

6A.3.1 **G** The *FCA* will consider all the relevant circumstances of a case when it determines the length of the period of suspension, restriction, condition or disciplinary prohibition (if any) that is appropriate for the *breach* concerned, and is also a sufficient deterrent. 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.

6A.3.2 **G** The following factors may be relevant to determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition to be imposed on a *person* under the *Act*:

(1) Deterrence

When determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition the *FCA* will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches* and helping to deter other *persons* from committing similar *breaches*, as well as demonstrating generally the benefits of compliant business.

(2) The seriousness of the breach

The *FCA* will have regard to the seriousness of the *breach*. In assessing this, it will consider the impact and nature of the *breach*, and whether it was committed deliberately or recklessly. Where the *breach* was committed by an *authorised person*, relevant factors may include those listed in ■ DEPP 6.5A.2 G (6) to ■ (9). Where the *breach* was committed by an individual in a non-*market abuse* case, relevant factors may include those listed in ■ DEPP 6.5B.2 G (8) to ■ (11). Where the *breach* was committed by an individual in a *market abuse* case, relevant factors may include those listed in ■ DEPP 6.5C.2G(11) to (14). There may also be other factors, not listed in these sections, that are relevant.

(3) Aggravating and mitigating factors

The *FCA* will have regard to factors that may aggravate or mitigate a *breach*. Where the *breach* was committed by an *authorised person*,

sponsor or primary information provider, relevant factors may include those listed in ■ DEPP 6.5A.3 G (2). Where the *breach* was committed by an individual in a *non-market abuse* case, relevant factors may include those listed in ■ DEPP 6.5B.3 G (2). Where the *breach* was committed by an individual in a *market abuse* case, relevant factors may include those listed in ■ DEPP 6.5C.3G(2). There may also be other factors, not listed in these sections, that are relevant.

(4) The impact of suspension, restriction, condition or disciplinary prohibition on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person, sponsor or primary information provider or non-authorised parent undertaking*:

- (a) the *authorised person's, sponsor's, primary information provider's, or non-authorised parent undertaking's* expected lost revenue and profits from not being able to carry out the suspended or restricted activity;
- (b) the cost of any measures the *authorised person, sponsor or primary information provider or non-authorised parent undertaking* must undertake to comply with the suspension or restriction;
- (c) potential economic costs, for example, the payment of salaries to employees who will not work during the period of suspension or restriction or the payment of compensation to *consumers* who will suffer loss as a result of the suspension or restriction;
- (d) the effect on other areas of the *authorised person's, sponsor's or primary information provider's or non-authorised parent undertaking's* business; and
- (e) whether the suspension or restriction would cause the *authorised person, sponsor, primary information provider or non-authorised parent undertaking* serious financial hardship.

The following considerations may be relevant to the assessment of the impact of suspension or condition on an *approved person* or the impact of a disciplinary prohibition or restriction on an individual:

- (f) the *person's* expected lost earnings from not being able to carry out the suspended, restricted or prohibited activity; and
- (g) whether the suspension, restriction or disciplinary prohibition would cause the *person* serious financial hardship.

(5) The impact of suspension, restriction or disciplinary prohibition on persons other than the person in breach

The following considerations may be relevant to the assessment of the impact of suspension, restriction or disciplinary prohibition on *persons* other than the *person* in breach:

- (a) the extent to which *consumers* may suffer loss or inconvenience as a result of the suspension or restriction. For example, if it is difficult for *consumers* to switch to a competitor, a longer period of suspension or restriction is likely to have more impact; and

(b) the impact of the suspension, restriction or disciplinary prohibition on markets.

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The *FCA* may delay the commencement of the period of suspension, restriction or disciplinary prohibition. In deciding whether this is appropriate, the *FCA* will take into account all the circumstances of a case. Considerations that may be relevant in respect of an *authorised person, sponsor, primary information provider or non-authorised parent undertaking* include:

- (1) the impact of the suspension or restriction on consumers;
- (2) any practical measures the *authorised person, sponsor primary information provider* needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;
- (3) the impact of the suspension or restriction on other costs incurred by the *authorised person, sponsor primary information provider or non-authorised parent undertaking*, for example, cancelling suppliers or suspending employees.

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The *FCA* and the *person* on whom a suspension, restriction or disciplinary prohibition is to be imposed may seek to agree the length of the period of suspension, restriction or disciplinary prohibition and other terms. In recognition of the benefits of such agreements, ■ DEPP 6.7 provides that the length of a period of suspension, restriction or disciplinary prohibition (other than a permanent disciplinary prohibition) which might otherwise have been imposed will be reduced to reflect the stage at which the *FCA* and the *person* concerned reached an agreement.