

Chapter 15

Disqualification of auditors and actuaries

15.1 Introduction

15.1.1

Auditors and *actuaries* fulfil a vital role in the management and conduct of *firms*, *AUTs* and *ACs*. Provisions of the *Act*, *rules* made under the *Act* and the *OEIC Regulations 2000* impose various duties on auditors and *actuaries*. These duties and the *FCA's* power to disqualify auditors and *actuaries* if they breach them assist the *FCA* in pursuing its *statutory objectives*. The *FCA's* power to disqualify auditors in breach of duties imposed by *trust scheme rules* or *contractual scheme rules* also assists the *FCA* to achieve these *statutory objectives* by ensuring that auditors fulfil the duties imposed on them by these *rules*.

15.1.2

The *FCA* also has the power under section 345 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*, or a failure to comply with a duty imposed under the *Act* to communicate information to the *FCA*. The *FCA* has the power under section 249 to impose a financial penalty and a *public censure* on an auditor in respect of a failure to comply with a duty imposed on him by *trust scheme rules*. 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.



15.2 Disqualification of auditors and actuaries under its powers contained in section 345, section 249 and section 261K of the Act: the FCA's general approach

- 15.2.1** The *FCA* recognises that the use of its powers to disqualify auditors and *actuaries* will have serious consequences for the auditors or *actuaries* concerned and their clients; it will therefore exercise its power to impose a disqualification in a way that is proportionate to the particular breach of duty concerned. The *FCA* will consider the seriousness of the breach of duty when deciding whether to exercise its power to disqualify and the scope of any disqualification.
- 15.2.2** *Actuaries* appointed by *firms* under ■ rule 4.3.1 of the *FCA*'s Supervision Manual are *approved persons* and as such will be subject to *APER* or *COCON*, as applicable. When deciding whether to exercise its power to disqualify an *actuary* who is an *approved person*, the *FCA* will consider whether the particular breach of duty can be adequately addressed by the exercise of its disciplinary powers in relation to *approved persons*.
- 15.2.3** In cases where the nature of the breach of duties imposed on the auditors and *actuaries* under the *Act* (and/or in the case of *actuaries* imposed by *trust scheme rules* or *contractual scheme rules*) is such that the *FCA* has concerns about the fitness and propriety of an individual auditor or *actuary*, the *FCA* will consider whether it is appropriate to make a *prohibition order* instead of, or in addition to, disqualifying the individual.
- 15.2.4** A disqualification order will be made against the *person* appointed as auditor or *actuary* of the *firm*. In the case of *actuaries*, the disqualification order will be made against the individual appointed by the *firm*. In the case of auditors, the disqualification order will depend on the terms of the appointment. Where the *firm* has appointed a named individual as auditor the disqualification will be made against that individual and this will be the case where the individual concerned is a member of a *firm* of auditors. Where the *firm* has appointed a firm as auditor the disqualification order will be against that firm. Where the *person* appointed is a *limited liability partnership* the disqualification order will be against the *limited liability partnership* rather than its members.

15.3 Disqualification under section 345

15.3.1

When it decides whether to exercise its power to disqualify an auditor or *actuary* under section 345(1), and what the scope of any disqualification will be, the *FCA* will take into account all the circumstances of the case. These may include, but are not limited to, the following factors:

- (1) the nature and seriousness of any breach of *rules* and the effect of that breach: the *rules* are set out in ■ SUP 3 (Auditors) and ■ SUP 4 (Actuaries), and in the case of *firms* which are *ICVCs*, in ■ COLL 4 (Investor relations) and ■ COLL 7 (Suspension of dealings and termination of authorised funds). The *FCA* will regard as particularly serious any breach of *rules* which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (2) the nature and seriousness of any breach of the duties imposed under the *Act*: the *FCA* will regard as particularly serious any failure to disclose to it information which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (3) action taken by the auditor or *actuary* to remedy the *breach*: this may include whether the auditor or *actuary* brought the *breach* to the attention of the *FCA* promptly, the degree of cooperation with the *FCA* in relation to any subsequent investigation, and whether remedial steps have been taken to rectify the *breach* and whether reasonable steps have been taken to prevent a similar *breach* from occurring;
- (4) action taken by professional bodies: the *FCA* will consider whether any disciplinary action has been or will be taken against the auditor or *actuary* by a relevant professional body and whether that action adequately addresses the particular *breach* of duty;
- (5) The previous compliance record of the auditor or *actuary* concerned: whether the *FCA* (or a *previous regulator*) or professional body has imposed any previous disciplinary sanctions on the *firm* or individual concerned.



15.4 Disqualification under section 249 or section 261K

15.4.1

When deciding whether or not to disqualify an auditor under section 249(1) or section 261K(1) of the *Act* (concerning the power to disqualify an auditor for breach of *trust scheme rules* or *contractual scheme rules*), and in setting the disqualification, the *FCA* will take into account all the circumstances of the case. These may include, but are not limited to, the following circumstances:

- (1) the effect of the auditor's breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*: the *FCA* will regard as particularly serious a breach of a duty imposed by *trust scheme rules* or *contractual scheme rules* (set out in ■ COLL 4 (Investor relations) and ■ COLL 7 (Suspension of dealings and termination of authorised funds)) which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (2) action taken by the auditor to remedy its breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*: this may include any steps taken by the auditor to bring the breach to the attention of the *FCA* promptly, the degree of co-operation with the *FCA* in relation to any subsequent investigation, and whether any steps have been taken to rectify the breach or prevent a similar breach;
- (3) action taken by a relevant professional body: The *FCA* will consider whether any disciplinary action has or will be taken against the auditor by a relevant professional body and whether such action adequately addresses the particular breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*;
- (4) the previous compliance record of the auditor concerned: whether the *FCA* (or a *previous regulator*) or professional body has imposed any previous disciplinary sanctions on the *firm* or individual concerned.

15.5 Removal of a disqualification

15.5.1

An auditor or *actuary* may ask the *FCA* to remove the disqualification at any time after it has been imposed. The *FCA* will remove a disqualification if it is satisfied that the disqualified *person* will in future comply with the duty in question (and other duties under the *Act*). When it considers whether to grant or refuse a request that a disqualification be removed on these grounds, the *FCA* will take into account all the circumstances of a particular case. These circumstances may include, but are not limited to:

- (1) the seriousness of the breach of duty that resulted in the disqualification;
- (2) the amount of time since the original disqualification; and
- (3) any steps taken by the auditor or *actuary* after the disqualification to remedy the factors which led to the disqualification and any steps taken to prevent a similar breach of duty from happening again.