

Enforcement Guide

Chapter 5

Settlement

5.4 Multiple parties and third party rights in enforcement action involving warning and decision notices

- 5.4.1** Enforcement cases often involve multiple parties, for example a *firm* and individuals in the *firm*. Enforcement action may be appropriate against just the *firm*, just the individuals or both. In some cases, it will not be possible to reach an acceptable settlement unless all parties are able to reach agreement.
- 5.4.2** Even where action is not taken against connected parties, these parties may have what the *Act* calls ‘third party rights’. Broadly, if any of the reasons contained in a *warning notice* or *decision notice* identifies a *person* (the third party) other than the *person* to whom the notice is given, and in the opinion of the *FCA* is prejudicial to the third party, a copy of the notice must be given to the third party unless that *person* receives a separate *warning notice* or *decision notice* at the same time. The third party has the right to make representations and ultimately can refer the matter to the *Tribunal*. Any representations made by the third party in response to a *warning notice* or *decision notice* will be considered by the *settlement decision makers*, who will also decide whether to give the *decision notice* or *final notice*.
- 5.4.3** In practice, third party rights do not frequently cause undue difficulty for settlement, either because they do not arise at all or because the third party agrees not to exercise such rights.