

**DECISION PROCEDURE AND PENALTIES MANUAL AND ENFORCEMENT
GUIDE (AMENDMENT NO 2) INSTRUMENT 2011**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 69(1) (Statement of policy) as applied by paragraph 1 of the Schedule to the Cross-Border Payment in Euro Regulations 2010 (SI 2010/89) (“the Regulations”);
 - (b) section 138 (General rule-making power);
 - (c) section 157(1) (Guidance);
 - (d) section 210(1) (Statements of policy) as applied by paragraph 3 of the Schedule to the Regulations; and
 - (e) section 395(5) (The Authority’s procedures) as applied by paragraph 5 of the Schedule to the Regulations, and by paragraph 7 of Schedule 5 to the Payment Services Regulations 2009 (SI 2009/209); and
- (2) regulation 14 (Guidance) of the Regulations.
- B. The rule-making power listed above is specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2011.

Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C

Amendments to the Enforcement Guide

- E. The Enforcement Guide (EG) is amended in accordance with Annex D to this instrument.

Citation

- F. This instrument may be cited as the Decision Procedure and Penalties Manual and Enforcement Guide (Amendment No 2) Instrument 2011.

By order of the Board
24 February 2011

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

Cross-Border Payments in Euro Regulations the Cross-Border Payments in Euro Regulations 2010 (SI 2010/89).

EU Cross-Border Regulation Regulation (EC) No. 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community.

Amend the following as shown.

employee ...

(2) (for the purposes of:

...

(aa) *GEN 4* (Statutory status disclosure);

(ab) *GEN 6.1* (Payment of financial penalties);

...

restriction notice a notice served under ~~section~~ sections 191B or 301J of the *Act*.

settlement decision makers (in *DEPP* and *EG*) two members of the *FSA*'s executive of at least director of division level (which may include an acting director) with responsibility for deciding whether to give *statutory notices* in the circumstances described in *DEPP 5*.

settlement discount scheme (in *DEPP* and *EG*) the scheme described in *DEPP 6.7* by which the financial penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *person*'s misconduct or contravention may be reduced to reflect the timing of any settlement agreement.

Tribunal the ~~*Financial Services and Markets Tribunal*~~ Upper Tribunal, namely the Tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007, and to which the functions of the Financial Services and Markets Tribunal were transferred on 6 April 2010 by the Transfer of Tribunal Functions Order 2010.

Delete the following definition. The deleted text is not shown.

Financial Services and Markets Tribunal

Annex B

Amendments to the General Provisions sourcebook (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.1 ~~Insurance against~~ Payment of financial penalties

...

- 6.1.4 R In this chapter ‘financial penalty’ means a financial penalty that the *FSA* has imposed, or may impose, under the *Act*. It does not include a financial penalty imposed by any other body.

Payment of a penalty imposed on an employee

- 6.1.4A R No firm, except a sole trader, may pay a financial penalty imposed by the FSA on a present or former employee, director or partner of the firm or of an affiliated company.

...

- 6.1.7 G GEN 6.1.4AR, GEN 6.1.5R and GEN 6.1.6R do not prevent a *firm* or *member* from entering into, arranging, claiming on or making any payment under a *contract of insurance* which indemnifies any *person* against all or part of the costs of defending *FSA* enforcement action or any costs they may be ordered to pay to the *FSA*.

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 69(1), 93(1), 124(1), 131J(1), 169~~(7)~~ (9), 210(1) and 395 of the *Act* that the *FSA* publish the statements of procedure or policy referred to in *DEPP* 1.1.1G.

1.2 Introduction to statutory notices

Statutory and related notices

...

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

...

2.5.7 G The *RDC* will take the decision to give a *supervisory notice* exercising the *FSA*'s own initiative power (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental change (see *DEPP* 2.5.8G) to the nature of a *permission*. Otherwise, the decision to give the *decision notice* will be taken by *FSA* staff under *executive procedures*.

2.5.7A G Notwithstanding *DEPP* 2.5.7G, *FSA* staff under *executive procedures* will be the decision maker whenever a *firm* agrees not to contest the *FSA*'s exercise of its own initiative power, including where the *FSA*'s action involves a fundamental change to the nature of a *permission*.

...

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
...			

<u>89K(2)/(3)</u>	<u>when the FSA is proposing or deciding to publish a statement that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation</u>		<u>RDC</u>
...			
<u>256(4)/(5)</u>	<u>when the FSA is proposing or deciding to refuse a request for the revocation of the authorisation order of an AUT</u>		<u>RDC</u>
...			
313B(9)	<u>when the FSA has required an institution to suspend a financial instrument from trading and it is proposing or deciding to refuse an application by the institution or the issuer for the cancellation of the suspension. [deleted]</u>	REC 4.2D	<i>Executive procedures</i>
313B(10)/ (11)	<u>when the FSA has required an institution to suspend a financial instrument from trading and it is proposing or deciding to refuse an application by the institution or the issuer for the cancellation of the suspension [deleted]</u>	REC 4.2D	<i>Executive procedures</i>
<u>313BB(5)/ 313BC(5)</u>	<u>when, upon the application of an institution, the FSA is proposing or deciding not to revoke a requirement imposed on an institution under section 313A or is proposing or deciding that a requirement imposed on a class of institutions under section 313A will continue to apply to the applicant</u>	<u>REC 4.2D</u>	<u>Executive procedures</u>
<u>313BD(5)/ 313BE(4)</u>	<u>when, upon the application of an issuer, the FSA is proposing or deciding not to revoke a requirement imposed on an institution or a class of institutions under section 313A or to revoke a</u>	<u>REC 4.2D</u>	<u>Executive procedures</u>

	<u>requirement imposed on a class of institutions under section 313A in relation to the class apart from one or more specified members of it, or one or more specified members of the class only</u>		
...			

Payment Services Regulations	Description	Handbook reference	Decision maker
Regulations 9(7) and 14	when the <i>FSA</i> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , or <u>to impose a requirement, or to refuse an application to vary an authorisation</u>		<i>Executive procedures</i>
Regulations 9(8)(a) and 14	when the <i>FSA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , or <u>to impose a requirement, or to refuse an application to vary an authorisation</u>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
...			

Regulated Covered Bonds Regulations 2008	Description	Handbook reference	Decision maker
...			
Regulation 35(1)/(3)	when the <i>FSA</i> is proposing or deciding to impose a penalty on a person under regulation 34*	RCB 6	<i>RDC</i>

<u>Cross-Border Payments in Euro Regulations 2010</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 7(1) and 7(3)</u>	<u>when the FSA is proposing or deciding to impose a financial penalty*</u>		<u>RDC</u>
<u>Regulations 7(1) and 7(3)</u>	<u>when the FSA is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> *</u>		<u>RDC</u>
<u>Regulations 10(1) and 10(3)</u>	<u>when the FSA is proposing or deciding to exercise its powers to require restitution *</u>		<u>RDC</u>
<u>Schedule paragraph 1</u>	<u>when the FSA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1)</u>		<u>RDC</u>
<u>Schedule paragraph 1</u>	<u>when the FSA is proposing or deciding to impose a financial penalty against a relevant person (Note 1)</u>		<u>RDC</u>
<p><u>Note:</u> <u>(1) The <i>Cross-Border Payments in Euro Regulations</i> do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.</u></p>			

2 Annex 2G Supervisory notices

...

Section of the Act	Description	Handbook reference	Decision maker
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...			
<u>78A(2)/(8)(b)</u>	when the <i>FSA</i> discontinues or suspends the <i>listing</i> of a <i>security</i> on the application of the <i>issuer</i> of the <i>security</i>	<u>LR 5</u>	<u>Executive procedures</u>
...			
<u>191B(1)</u>	when the <i>FSA</i> gives a <i>restriction notice</i> under section 191B		<u>Executive procedures</u>
197(3)/(6)/(7)(b)	when the <i>FSA</i> is exercising its power of intervention in respect of an <i>incoming firm</i>	SUP 14	RDC or executive procedures See DEPP 2.5.7G and 2.5.7AG
...			
<u>301J(1)</u>	when the <i>FSA</i> gives a <i>restriction notice</i> under section 301J		<u>Executive procedures</u>
...			

...

- 4.2.1 G If *FSA* staff recommend that action be taken and they consider that the decision falls within the responsibility of a *senior staff committee*:

...

the decision may be taken by a member of the *FSA* 's executive of at least director of division level (which may include an acting director) or, in the case of a *senior staff committee* which reports directly to the *FSA* 's senior executive committee, by a member of that committee.

...

- 5.1.1 G ...

- (3) The decision will be taken jointly by two members of the *FSA* 's executive of at least director of division level (which may include an acting director) (the "*settlement decision makers*").

...

Withdrawal of authorisation

- 6.5D.4A G The FSA may withdraw a firm's *authorisation* under section 33 of the *Act*, as well as impose a financial penalty. Such action by the FSA does not affect the FSA's assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the FSA has withdrawn a firm's *authorisation*, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.

...

- 6.7.1 G *Persons* subject to enforcement action may be prepared to agree the amount of any financial penalty, or the length of any period of suspension or restriction, and other conditions which the FSA seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The FSA recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the FSA itself in contesting the financial penalty, suspension or restriction. The penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *breach* by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.

The settlement discount scheme applied to financial penalties

- 6.7.2 G In appropriate cases the FSA's approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the FSA's statement of policy as set out in DEPP 6.5 to DEPP 6.5D and DEPP 6.6. (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the *breach*. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

...

The settlement discount scheme applied to suspensions and restrictions

- 6.7.6 G The *settlement discount scheme* which applies to the amount of a financial penalty, described in DEPP 6.7.2G to DEPP 6.7.5G, also applies to the length of the period of a suspension or restriction, having regard to the FSA's statement of policy as set out in DEPP 6A.3.

...

6A.3.4 G The FSA and the person on whom a suspension or restriction is to be imposed may seek to agree the length of the period of suspension or restriction and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the length of a period of suspension or restriction which might otherwise have been imposed will be reduced to reflect the stage at which the FSA and the person concerned reached an agreement.

Schedule 3 Fees and other required payments

...

Sch 3.2	G	The FSA’s power to impose financial penalties is contained in:
		...
		the <i>Payment Services Regulations</i>
		<u>the <i>Cross-Border Payments in Euro Regulations</i></u>

Schedule 4 Powers Exercised

Sch 4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the statements of policy in <i>DEPP</i> :
		...
		Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and by <u>paragraph 1 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u>)
		...
		Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> and by <u>paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u>)
		Section 395 (The Authority’s procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> and by <u>paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u>)
		...

Sch 4.2 G

The following additional powers and related provisions have been exercised by the <i>FSA</i> to make the statements of policy in <i>DEPP</i> :	
...	
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro Regulations</i></u>

Annex D

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 2.1 The FSA's effective and proportionate use of its enforcement powers plays an important role in the pursuit of its *regulatory objectives* of protecting *consumers*, maintaining confidence in the *financial system*, financial stability ~~promoting public awareness~~ and reducing *financial crime*. For example, using enforcement helps to contribute to the protection of *consumers* and to deter future contraventions of FSA and other applicable requirements and *financial crime*. It can also be a particularly effective way, through publication of enforcement outcomes, of raising awareness of regulatory standards.
- ...
- 5.14 The *settlement discount scheme* allows a reduction in a financial penalty, period of suspension or period of restriction that would otherwise be imposed on a *person* according to the stage at which the agreement is reached. Full details of the scheme are set out in *DEPP* 6.7.
- ...
- 5.19A The procedure for the *settlement discount scheme* where the outcome is potentially a financial penalty, described in paragraphs 5.14 to 5.19, will also apply where the outcome is potentially a suspension or restriction.
- ...
- 6.7 For ~~both~~ *supervisory notices* (as defined in section 395(13)) which have taken effect, *decision notices* and *final notices*, section 391 of the *Act* requires the FSA to publish, in such manner as it considers appropriate, such information about the matter to which the notice relates as it considers appropriate. However, section 391 provides that the FSA cannot publish information if publication of it would, in its opinion, be unfair to the *person* with respect to whom the action was taken or prejudicial to *consumers*.
- Decision notices and ~~Final~~ *final* notices
- 6.8 The FSA will consider the circumstances of each case, but will ordinarily publicise enforcement action where this has led to the issue of a *final notice*. The FSA may also publicise enforcement action where this has led to the issue of a *decision notice*. The FSA will decide on a case-by-case basis whether to publish information about the matter to which a *decision notice* relates, but expects normally to publish a *decision notice* if the subject of enforcement action decides to refer the matter to the *Tribunal*. The FSA may also publish a *decision notice* before a person has decided whether to refer the matter to the *Tribunal* if the FSA considers there is a compelling reason to do so. For example, the FSA may consider that early publication of the detail of its reasons for taking action is necessary for market

confidence reasons or to allow *consumers* to avoid any potential harm arising from a *firm's* actions. If a *person* decides not to refer a matter to the *Tribunal*, the FSA will generally only publish a *final notice*. Publication will generally include placing the notice on the FSA web site and this will often be accompanied by a press release. The FSA will also consider what information about the matter should be included on the *FSA Register*. Additional guidance on the FSA's approach to the publication of information on the *FSA Register* in certain specific types of cases is set out at the end of this chapter.

6.8A If the FSA intends to publish a *decision notice*, it will give advance notice of its intention to the *person* to whom the *decision notice* is given and to any third party to whom a copy of the notice is given. The FSA will consider any representations made, but will normally not decide against publication solely because it is claimed that publication could have a negative impact on a *person's* reputation. The FSA will also not decide against publication solely because a *person* asks for confidentiality when they refer a matter to the *Tribunal*.

6.8B Publication will generally include placing the *decision notice* or *final notice* on the FSA website and this will often be accompanied by a press release. The FSA will also consider what information about the matter should be included on the *FSA Register*. Additional guidance on the FSA's approach to the publication of information on the *FSA Register* in certain specific types of cases is set out at the end of this chapter.

6.9 However, as required by the *Act* (see paragraph 6.7 above), the FSA will not publish information if publication of it would, in its opinion, be unfair to the *person* in respect of whom the action is taken or prejudicial to the interests of *consumers*. It may make that decision where, for example, publication could damage market confidence or undermine market integrity in a way that could be damaging to the interests of *consumers*.

6.10 Publishing ~~*final notices*~~ notices is important to ensure the transparency of FSA decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. The FSA will upon request review *decision notices*, *final notices* and related press releases that are published on the FSA's website ~~after a period of six years~~. The FSA will determine at that time whether continued publication is appropriate, or whether notices and publicity should be removed or amended.

6.10A In carrying out its review the FSA will consider all relevant factors. In particular, the FSA will take into account:

- the seriousness of the *person's* misconduct;
- the nature of the action taken by the FSA and the level of any sanction imposed on the *person*;
- whether the FSA has continuing concerns in respect of the *person* and any risk they might pose to the FSA's objectives;
- whether the *person* is a *firm* or an individual;

- whether the publication sets out the FSA's expectations regarding behaviour in a particular area, and if so, whether that message still has educational value;
- public interest in the case (both at the time and subsequently);
- whether continued publication is necessary for deterrence, consumer protection or market confidence reasons;
- how much time has passed since publication; and
- any representations made by the person on the continuing impact on them of the publication.

6.10B The FSA expects usually to conclude that notices and related press releases that have been published for less than six years should not be removed from the website, and that notices and related press releases relating to prohibition orders which are still applicable should not be removed from the website regardless of the length of time they have been published.

6.10C In cases where the FSA publishes a *decision notice* and the subject of enforcement action successfully refers the matter to the *Tribunal*, the FSA will make it clear on its website that the *decision notice* no longer applies. The FSA will normally do this by publishing a discontinuation notice.

...

6.12 Publishing the reasons for variations of *Part IV permission* (and interventions), and maintaining an accurate public record, are important elements of the FSA's approach to its *consumer* protection objective. The FSA will always aim to balance both the interests of *consumers* and the possibility of unfairness to the *person* subject to the FSA's action. The FSA will publish relevant details of both fundamental and non-fundamental variations of *Part IV permission* and interventions which it imposes on *firms*. But it will use its discretion not to do so if it considers this to be unfair to the person on whom the variation is imposed or prejudicial to the interests of consumers. Publication will generally include placing the notice on the FSA web site and this may be accompanied by a press release. As with *decision notices* and *final notices*, *supervisory notices* and related press releases that are published on the FSA's ~~web site~~ website will be reviewed upon request ~~after a period of six years~~. The FSA will determine at that time whether continued publication is appropriate, or whether notices and related press releases should be removed or amended. The FSA will determine this on the same basis as it will decide whether a *decision notice* or *final notice* should be removed (see paragraphs 6.10, 6.10A and 6.10B above). The FSA expects usually to conclude that *supervisory notices* and related press releases that have been published for less than six years should not be removed from the website.

...

6.18 Where the behaviour to which a *decision notice*, *final notice*, civil action, or criminal action relates has occurred in the context of a *takeover bid*, the FSA will

consult the *Takeover Panel* over the timing of publication if the FSA believes that publication may affect the timetable or outcome of that bid, and will give due weight to the *Takeover Panel's* views.

...

6.20 To help it fulfil its *regulatory objectives* of protecting *consumers* and ~~promoting public awareness~~, the FSA will keep on the *FSA Register* a record of *firms* or individual auditors or actuaries who have been the subject of disqualification orders.

...

7.1 Financial penalties and *public censures* are important regulatory tools. However, they are not the only tools available to the FSA, and there will be many instances of non-compliance which the FSA considers it appropriate to address without the use of financial penalties or *public censures*. Having said that, the effective and proportionate use of the FSA's powers to enforce the requirements of the *Act*, the *rules* and the Statements of Principle for Approved Persons will play an important role in the FSA's pursuit of its *regulatory objectives*. Imposing financial penalties and *public censures* shows that the FSA is upholding regulatory standards and helps to maintain market confidence, ~~promote public awareness of regulatory standards~~ and deter *financial crime*. An increased public awareness of regulatory standards also contributes to the protection of *consumers*.

...

7.4 The FSA's statement of policy in relation to the imposition of financial penalties is set out in *DEPP* 6.2 (Deciding whether to take action), *DEPP* 6.3 (Penalties for market abuse) and *DEPP* 6.4 (Financial penalty or public censure). The FSA's statement of policy in relation to the amount of a financial penalty is set out in *DEPP* 6.5 to *DEPP* 6.5D. The FSA's statement of policy in relation to financial penalties for late submission of reports is set out in *DEPP* 6.6.

Apportionment of financial penalties

7.5 In a case where the FSA is proposing to impose a financial penalty on a *person* for two or more separate and distinct areas of misconduct, the FSA will consider whether it is appropriate to identify in the *decision notice* and *final notice* how the penalty is apportioned between those separate and distinct areas. Apportionment will not however generally be appropriate in other cases.

...

7.8A Chapter 6 of the General Provisions of the FSA Handbook also contains a rule prohibiting a *firm*, except a *sole trader*, from paying a financial penalty imposed by the FSA on a present or former *employee*, *director* or *partner* of the *firm* or of an *affiliated company*.

...

8.1 The FSA has powers under section 45 of the *Act* to vary or cancel an *authorised*

person's Part IV permission. The FSA may use these powers where:

- (1) the person is failing or is likely to fail to satisfy the threshold conditions;
- (2) the person has not carried on any *regulated activity* for a period of at least 12 months; or
- (3) it is desirable to exercise the power ~~vary or cancel the person's *Part IV permission*~~ in order to meet any of its regulatory objectives ~~protect the interests of consumers or potential consumers~~.

...

8.17 However, where the FSA has cancelled a *firm's Part IV permission*, it is required by section 33 of the *Act* to go on to give a direction withdrawing the *firm's authorisation*. Accordingly, the FSA may decide to keep a *firm's Part IV permission* in force to maintain the *firm's* status as an *authorised person* and enable it (the FSA) to monitor the *firm's* activities. An example is where the FSA needs to supervise an orderly winding down of the *firm's* regulated business (see SUP 6.4.22 (When will the FSA grant an application for cancellation of *permission*)). Alternatively, the FSA may decide to keep a *firm's Part IV permission* in force to maintain the *firm's* status as an *authorised person* to use administrative enforcement powers against the *firm*. ~~This may be, for example, where the FSA proposes to impose a financial penalty on the *firm* under section 206 of the *Act*.~~

...

9.6 Where the FSA issues a *prohibition order*, it may indicate in the *decision notice* or *final notice* that it would be minded to revoke the order on the application of the individual in the future, in the absence of new evidence that the individual is not fit and proper. If the FSA gives such an indication, it will specify the number of years after which it would be minded to revoke or vary the prohibition on an application. However, the FSA will only adopt this approach in cases where it considers it appropriate in all the circumstances. In deciding whether to adopt this approach, the factors the FSA may take into account include, but are not limited to, where appropriate, the factors at paragraphs 9.9 and at 9.17. The FSA would not be obliged to revoke an order after the specified period even where it gave such an indication. Further, if an individual's *prohibition order* is revoked, he would still have to satisfy the FSA as to his fitness for a particular role in relation to any future application for approval to perform a *controlled function*.

...

9.10 The FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a *controlled function* or other function in relation to *regulated activities*. It may also take account of the particular *controlled function* which an *approved person* is performing for a *firm*, the nature and activities of the *firm* concerned and the markets within which it operates.

...

11.3 ...

- (10) The behaviour of the persons suffering loss

The FSA will consider the conduct of the persons who have suffered loss. As part of its *regulatory objectives objective* of ~~increasing consumer awareness of the financial system~~ and protecting *consumers*, the FSA is required to publicise information about the *authorised* status of *persons* and is empowered to give information and guidance about the regulation of financial services. This information should help *consumers* avoid suffering losses. When the FSA considers whether to obtain restitution on behalf of *persons*, it will consider the extent to which those *persons* may have contributed to their own loss or failed to take reasonable steps to protect their own interests.

...

...

- 12.1 The FSA has powers under sections 401 and 402 of the *Act* to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FSA may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives ~~for which it is not the statutory prosecutor, but where the offences form part of the same criminality as the offences it is prosecuting under the *Act*.~~

...

- 12.5 In some cases, the FSA may decide to issue a formal caution rather than to prosecute an offender. In these cases the FSA will follow the Home Office Guidance on the cautioning of offenders, currently contained in the Home Office Circular ~~18/1994~~ 16/2008.

...

- 12.11 The FSA has agreed guidelines that establish a framework for liaison and cooperation in cases where one or more other authority (such as the Crown Prosecution Service or Serious Fraud Office) has an interest in prosecuting any aspect of a matter that the FSA is considering for investigation, investigating or considering prosecuting. These guidelines are set out in annex 2 to this guide. The FSA is also a signatory to the Prosecutors' Convention and the Investigators' Convention.

...

- 19.73 The *Money Laundering Regulations* add to the range of options available to the FSA for dealing with anti-money laundering failures. These options are:

...

- to take regulatory action against authorised firms for failures which breach the

FSA's rules and requirements (for example, under Principle 3 or SYSC 3.2.6R or SYSC 6.1.1R); and

...

...

- 19.84 The FSA will apply the approach to publicity that it has outlined in EG 6. However, as the *Money Laundering Regulations* do not require the FSA to issue final notices, the FSA will publish such information about the matter to which the decision notice relates as it considers appropriate. This will generally involve publishing the decision notice on the FSA's website, with or without an accompanying press release, and updating the Public Register. ~~The timing of publicity will be consistent with the FSA's approach in comparable cases under the Act.~~

...

Counter Terrorism Act 2008

- 19.89A The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Counter Terrorism Act 2008 ("the Counter Terrorism Act"). The Counter Terrorism Act allows the Treasury to issue directions imposing requirements on relevant persons in relation to transactions or business relationships with designated persons of a particular country. Relevant persons may be required to take the following action:

- apply enhanced customer due diligence measures;
- apply enhanced ongoing monitoring of any business relationship with a designated person;
- systematically report details of transactions and business relationships with designated persons; or
- limit or cease business with a designated person.

- 19.89B The FSA is responsible for monitoring and enforcing compliance with requirements imposed by the Treasury under the Counter Terrorism Act by 'credit institutions' that are authorised persons and by 'financial institutions' (except money service businesses that are not authorised persons and consumer credit financial institutions). 'Credit institutions' and 'financial institutions' are defined in Part 2 of Schedule 7 to the Counter Terrorism Act.

- 19.89C The investigation and sanctioning powers given to the FSA by the Counter Terrorism Act are similar to those given to the FSA by the *Money Laundering Regulations*. The FSA's approach to using its powers under the Counter Terrorism Act will be consistent with its approach to using its powers under the *Money Laundering Regulations*, described in paragraphs 19.78 to 19.84 above.

Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008

19.89D The Lloyd's Accounting Regulations implement the Audit and Accounts Directives in relation to the Lloyd's insurance market. They aim to increase the transparency of the accounts published by Lloyd's syndicates by imposing requirements in relation to the preparation and disclosure of the accounts. The Regulations give the FSA the power to institute criminal proceedings for an offence committed under the Regulations.

19.89E Our policy in relation to the prosecution of criminal offences and the circumstances in which we would expect to commence criminal proceedings is set out in EG 12.

...

Imposition of penalties under the Payment Services Regulations

19.101 When imposing a financial penalty the FSA's policy includes having regard to the relevant factors in *DEPP* 6.2, ~~*DEPP* 6.3~~ and *DEPP* 6.4. The FSA's policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5 to *DEPP* 6.5D.

...

19.103 The *Payment Services Regulations* apply section 169 of the *Act* which requires the FSA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Payment Services Regulations* the FSA will follow the procedures described in *DEPP* 7.

...

Cross-Border Payments in Euro Regulations 2010

19.118 The *Cross-Border Payments in Euro Regulations* lay down rules on cross-border payments in euros, to ensure that compliance with the *EU Cross-Border Regulation* is guaranteed by effective, proportionate and dissuasive sanctions. The main aim of the *EU Cross-Border Regulation* is to ensure that the charges for cross-border payments in euro are equal to the charges for identical national payments in euro within a Member State. The *Cross-Border Payments in Euro Regulations* give the FSA investigation and sanctioning powers in relation to *breaches* of the *EU Cross-Border Regulation*, including:

- the power to require information
- the power of public censure; and
- the power to impose financial penalties.

19.119 The FSA's policy for using the powers given to it by the *Cross-Border Payments in Euro Regulations* is the same as its policy for using the equivalent powers given to it by the *Payment Services Regulations*, set out in *EG* 19.90 to 19.103, as, for the most part, these powers are very similar. As the *Payment Services Regulations*, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*, the FSA will therefore adopt enforcement procedures akin to those

used under the Act.

Annex 2 – Guidelines on investigation of cases of interest or concern to the Financial Services Authority and other prosecuting and investigating agencies

...

1. These guidelines have been agreed by the following bodies (the agencies):

...

- the Department for Business, ~~Enterprise and Regulatory Reform (BERR)~~ Innovation and Skills (BIS);

...

9. The following are indicators of whether action by the FSA or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

...

(a) Tending towards action by the FSA

...

- Where the suspected conduct in question would be best dealt with by:
 - ...
 - regulatory action which can be referred to the ~~Financial Services and Markets Tribunal~~ Tribunal (including proceedings for market abuse); and

...

(b) Tending towards action by one of the other agencies

...

- Where the suspected conduct in question would be best dealt with by:
 - criminal proceedings for which the *FSA* is not the statutory prosecutor;
 - proceedings for disqualification of directors under the Company Directors Disqualification Act 1986 (normally appropriate for ~~BERR~~ BIS action);

- winding up proceedings which the FSA does not have statutory powers to bring (normally appropriate for ~~BERR~~ BIS action); or
- criminal proceedings in Scotland.

...

APPENDIX TO THE GUIDELINES ON INVESTIGATION OF CASES OF INTEREST OR CONCERN TO THE FINANCIAL SERVICES AUTHORITY AND OTHER PROSECUTING AND INVESTIGATING AGENCIES

1. The FSA

1.1 The FSA is the single statutory regulator for all financial business in the UK. Its regulatory objectives under the Financial Services and Markets Act 2000 (the 2000 Act) are:

- market confidence;
- financial stability;
- ~~public awareness~~;
- the protection of consumers; and
- the reduction of financial crime.

...

1.4 The FSA has the power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons under s66 of the 2000 Act;
- impose penalties on persons that perform controlled functions without approval under s.63A of the 2000 Act;

...

(except in Scotland) prosecute certain offences, including under the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer) Regulations 2007, Part V Criminal Justice Act 1993 (insider dealing) and various offences under the 2000 Act including (**Note:** The FSA may also prosecute any other offences where to do so would be consistent with meeting any of its statutory objectives ~~which are incidental to those which it has express statutory power to prosecute~~):

...

2. BERR BIS

2.1 The Secretary of State for Business, ~~Enterprise and Regulatory Reform~~ Innovation and Skills exercises concurrently with the FSA those powers and functions marked with an asterisk in paragraphs 1.3 above. The investigation functions are undertaken by Companies Investigation Branch (CIB) and the prosecution functions by the Legal Services Directorate.

...

2.3 The Solicitors Office advises on investigation work carried out by CIB and undertakes criminal investigations and prosecutions in respect of matters referred to it by CIB, the Insolvency Service or other directorates of ~~BERR~~ BIS or its agencies.

...