

Chapter 2

Statutory notices and the allocation of decision making

2.3 Decision notices and second supervisory notices

Approach of decision maker

- 2.3.1 **G** If a decision maker is asked to decide whether to give a *decision notice* or second *supervisory notice*, it will:
- (1) review the material before it;
 - (2) consider any representations made (whether written, oral or both) and any comments by *FCA* staff or others in respect of those representations;
 - (3) decide whether to give the notice and the terms of any notice given.

Default procedures

- 2.3.2 **G** If the *FCA* receives no response or representations within the period specified in a *warning notice*, the decision maker may regard as undisputed the allegations or matters in that notice and a *decision notice* will be given accordingly. A *person* who has received a *decision notice* and has not previously made any response or representations to the *FCA*, may nevertheless refer the *FCA's* decision to the *Tribunal*.
- 2.3.3 **G** If the *FCA* receives no response or representations within the period specified in a first *supervisory notice*, the *FCA* will not give a second *supervisory notice*. The outcome depends on when the relevant action took or takes effect (as stated in the notice). If the action:
- (1) took effect immediately, or on a specified date which has already passed, it continues to have effect (subject to any decision on a referral to the *Tribunal*); or
 - (2) was to take effect on a specified date which is still in the future, it takes effect on that date (subject to any decision on a referral to the *Tribunal*); or
 - (3) was to take effect when the matter was no longer *open for review*, it takes effect when the period to make representations (or the period for referral to the *Tribunal*, if longer) expires, unless the matter has been referred to the *Tribunal*.
- 2.3.4 **G** In exceptional cases, the decision maker may permit representations from a *person* who has received a *decision notice* (or a second *supervisory notice*) or

against whom action, detailed in a first *supervisory notice*, has taken effect, and shows on reasonable grounds that he did not receive the *warning notice* (or first *supervisory notice*), or that he had reasonable grounds for not responding within the specified period. In these circumstances, the decision maker may decide to give a further *decision notice* (or a written notice or a *supervisory notice*).

Further decision notice

2.3.5

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Under section 388(3) of the *Act*, following the giving of a *decision notice* but before the *FCA* takes action to which the *decision notice* relates, the *FCA* may give the *person* concerned a further *decision notice* relating to different action concerning the same matter. Under section 388(4) of the *Act*, the *FCA* can only do this if the *person* receiving the further *decision notice* gives its consent. In these circumstances the following procedure will apply:

- (1) *FCA* staff will recommend to the decision maker that a further *decision notice* be given, either before or after obtaining the *person's* consent;
- (2) the decision maker will consider whether the action proposed in the further *decision notice* is appropriate in the circumstances;
- (3) if the decision maker decides that the action proposed is inappropriate, he will decide not to give the further *decision notice*. In this case, the original *decision notice* will stand and the *person's* rights in relation to that notice will be unaffected. If the *person's* consent has already been obtained, the *FCA* will notify the *person* of the decision not to give the further *decision notice*;
- (4) if the decision maker decides that the action proposed is appropriate then, subject to the *person's* consent being (or having been) obtained, a further *decision notice* will be given;
- (5) a *person* who had the right to refer the matter to the *Tribunal* under the original *decision notice* will have that right under the further *decision notice*. The time period in which the reference to the *Tribunal* may be made will begin from the date on which the further *decision notice* is given.

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For the purpose of establishing whether the *person* receiving the further *decision notice* gives its consent, the *FCA* will normally require consent in writing.