

Chapter 6

Penalties

6.2 Deciding whether to take action

6.2.1

G The *FCA* will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or *public censure*. 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.

- (1) The nature, seriousness and impact of the suspected *breach*, including:
 - (a) whether the *breach* was deliberate or reckless;
 - (b) the duration and frequency of the *breach*;
 - (c) the amount of any benefit gained or loss avoided as a result of the *breach*;
 - (d) whether the *breach* reveals serious or systemic weaknesses of the management systems or *internal controls* relating to all or part of a *person's* business;
 - (e) the impact or potential impact of the *breach* on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;
 - (f) the loss or risk of loss caused to *consumers* or other market users;
 - (g) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*; and
 - (h) whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken collectively.
- (2) The conduct of the *person* after the *breach*, including the following:
 - (a) how quickly, effectively and completely the *person* brought the *breach* to the attention of the *FCA* or another relevant regulatory authority;
 - (b) the degree of co-operation the *person* showed during the investigation of the *breach*;
 - (c) any remedial steps the *person* has taken in respect of the *breach*;
 - (d) the likelihood that the same type of *breach* (whether on the part of the *person* under investigation or others) will recur if no action is taken;
 - (e) whether the *person* concerned has complied with any requirements or rulings of another regulatory authority relating

to his *behaviour* (for example, where relevant, those of the *Takeover Panel* or an *RIE*); and

- (f) the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the *FCA*.
- (3) The previous disciplinary record and compliance history of the *person* including:
 - (a) whether the *FCA* (or any *previous regulator*) has taken any previous disciplinary action resulting in adverse findings against the *person*;
 - (b) whether the *person* has previously undertaken not to do a particular act or engage in particular *behaviour*;
 - (c) whether the *FCA* (or any *previous regulator*) has previously taken protective action in respect of a *firm*, using its own initiative powers, by means of a variation of a *Part 4A permission* or otherwise, or has previously requested the *firm* to take remedial action, and the extent to which such action has been taken; and
 - (d) the general compliance history of the *person*, including whether the *FCA* (or any *previous regulator*) has previously issued the *person* with a private warning.
- (4) *FCA guidance* and other published materials:

The *FCA* will not take action against a person for *behaviour* that it considers to be in line with *guidance*, other materials published by the *FCA* in support of the *Handbook* or *FCA*-confirmed Industry Guidance which were current at the time of the *behaviour* in question. (The manner in which *guidance* and other published materials may otherwise be relevant to an enforcement case is described in ■ EG 2.)

(4A) *FCA-recognised industry codes*:

Behaviour that is in line with a *FCA-recognised industry code* will tend to indicate compliance, in carrying out *unregulated activities*, with applicable *FCA rules* that reference 'proper standards of market conduct'. In such cases, the *FCA* will usually not take action against a person for behaviour, in relation to *unregulated activities*, that it considers to be in line with the relevant *FCA-recognised industry code*.

- (5) Action taken by the *FSA* or *FCA* in previous similar cases.
- (6) Action taken by other domestic or international regulatory authorities:

Where other regulatory authorities propose to take action in respect of the *breach* which is under consideration by the *FCA*, or one similar to it, the *FCA* will consider whether the other authority's action would be adequate to address the *FCA*'s concerns, or whether it would be appropriate for the *FCA* to take its own action.

6.2.2

G When deciding whether to take action for *market abuse*, the *FCA* may consider the following additional factors:

- (1) The degree of sophistication of the users of the market in question, the size and liquidity of the market, and the susceptibility of the market to *market abuse*.
- (2) The impact, having regard to the nature of the *behaviour*, that any financial penalty or *public censure* may have on the financial markets or on the interests of *consumers*:
 - (a) a penalty may show that high standards of market conduct are being enforced in the financial markets, and may bolster market confidence;
 - (b) a penalty may protect the interests of *consumers* by deterring future *market abuse* and improving standards of conduct in a market;
 - (c) in the context of a *takeover bid*, the *FCA* may consider that the impact of the use of its powers is likely to have an adverse effect on the timing or outcome of that bid, and therefore it would not be in the interests of financial markets or *consumers* to take action for *market abuse* during the *takeover bid*. If the *FCA* considers that the proposed use of its powers may have that effect, it will consult the *Takeover Panel* and give due weight to its views.

6.2.2A G The factors to which the *FCA* will have regard when deciding whether to impose a penalty under regulation 34 of the *RCB Regulations* are set out in ■ RCB 4.2.3 G.

Discipline for breaches of FCA rules on systems and controls against money laundering

6.2.3 G The *FCA*'s rules on systems and controls against *money laundering* are set out in ■ SYSC 3.2 and ■ SYSC 6.3. The *FCA*, when considering whether to take action for a financial penalty or censure in respect of a breach of those rules, will have regard to whether a *firm* has followed relevant provisions in the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

Action against individuals under section 66 of the Act

6.2.4 G Disciplinary action against senior managers of *firms* and other individuals is one of the *FCA*'s key tools in deterring *firms* and individuals from committing breaches.

6.2.5 G In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an individual (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FCA* to take action against both the *firm* and the individual. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (■ SYSC 3.1.1 R or ■ SYSC 4.1.10R or article 21(5) of the *MiFID Org Regulation* (as applied in accordance with ■ SYSC 1 Annex 1 2.8AR, ■ SYSC 1 Annex 1 3.2-AR, ■ SYSC 1 Annex 1 3.2-BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R), and an individual may have

taken advantage of those deficiencies to front run orders or misappropriate assets.

- 6.2.6** G In addition to the general factors outlined in ■ DEPP 6.2.1 G, there are some additional considerations that may be relevant when deciding whether to take action against an individual under section 66 of the Act. This list of those considerations is non-exhaustive. Not all considerations below may be relevant in every case, and there may be other considerations, not listed, that are relevant.
- (1) The individual's position and responsibilities. The FCA may take into account the responsibility of those exercising *significant influence functions* or *designated senior management functions* in the firm for the conduct of the firm. The more senior the individual responsible for the misconduct, the more seriously the FCA is likely to view the misconduct, and therefore the more likely it is to take action against the individual.
 - (2) Whether the most appropriate regulatory response would be disciplinary action against the firm, the individual or both.
 - (3) Whether disciplinary action would be a proportionate response to the nature and seriousness of the misconduct by the individual.
- 6.2.6A** G ■ DEPP 6.2.6BG to ■ DEPP 6.2.9G apply to action taken by the FCA under section 66 of the Act, except for action taken by virtue of section 66A(5). ■ DEPP 6.2.9-AG to ■ DEPP 6.2.9-FG apply only to action taken by virtue of section 66A(5).
- 6.2.6B** G The FCA may take disciplinary action against an individual where there is evidence of personal culpability on the part of that individual. Personal culpability arises if the individual's behaviour was deliberate or below the standard which would be reasonable in all the circumstances at the time of the conduct concerned.
- 6.2.7** G The FCA will not discipline individuals on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see ■ APER 4.6.13G, ■ APER 4.6.14G, ■ COCON 4.1.8G and ■ COCON 4.2.17G to ■ COCON 4.2.24G). In particular, disciplinary action will not be taken against an *approved person* performing a *significant influence function* or a *senior conduct rules staff member* simply because a regulatory failure has occurred in an area of business for which they are responsible. The FCA will consider that an *approved person* performing a *significant influence function* may have breached *Statements of Principle* 5 to 7, or that a *senior conduct rules staff member* may have breached *rules* SC1 to SC4 in ■ COCON 2.2, only if their conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also ■ APER 3.1.8AG and ■ COCON 3.1.6G, as applicable).
- 6.2.8** G An individual will not be in breach if they have exercised due and reasonable care when assessing the information available to them, have reached a reasonable conclusion and have acted on it.

6.2.9	<div>G</div>	<p>Where disciplinary action is taken against an individual the onus will be on the <i>FCA</i> to show that the individual has been guilty of misconduct.</p> <p>Action against an SMF manager under section 66A(5) of the Act</p>
6.2.9-A	<div>G</div>	<p>The <i>FCA</i> is able to take action against an <i>SMF manager</i> under section 66A(5) of the <i>Act</i> where:</p> <div><div>(1)</div><div>there has been (or continues to be) a contravention of a relevant requirement by the <i>SMF manager's firm</i>;</div></div> <div><div>(2)</div><div>at the time of the contravention, the <i>SMF manager</i> was responsible for the management of any of the <i>firm's</i> activities in relation to which the contravention occurred; and</div></div> <div><div>(3)</div><div>the <i>SMF manager</i> did not take such steps as a person in their position could reasonably be expected to take to avoid the contravention by the <i>firm</i> occurring (or continuing).</div></div> <p>In such an action, an <i>SMF manager</i> is not bound by a finding of the <i>RDC</i>, a court or a tribunal, which he or she was not privy nor party to.</p>
6.2.9-B	<div>G</div>	<p>When deciding whether to take action further to section 66A(5) of the <i>Act</i>, the <i>FCA</i> will follow the approach in ■ DEPP 6.2.1G and ■ DEPP 6.2.6G.</p>
6.2.9-C	<div>G</div>	<p>When determining, for the purposes of section 66A(5) of the <i>Act</i>, whether an <i>SMF manager</i> was responsible for the management of any of the <i>firm's</i> activities in relation to which a contravention of a relevant requirement by the <i>firm</i> occurred, the <i>FCA</i> will consider the full circumstances of each case. A list of considerations that may be relevant for this purpose is set out below. This list is not exhaustive.</p> <div><div>(1)</div><div>The <i>SMF manager's statement of responsibilities</i>, including whether the <i>SMF manager</i> was performing an executive or non-executive role.</div></div> <div><div>(2)</div><div>The <i>firm's management responsibilities map</i>.</div></div> <div><div>(3)</div><div>How the <i>firm</i> operated, and how responsibilities were allocated in the <i>firm</i> in practice.</div></div> <div><div>(4)</div><div>The <i>SMF manager's</i> actual role and responsibilities in the <i>firm</i>, to be determined by reference to, among other things, minutes of meetings, emails, regulatory interviews, telephone recordings and organisational charts.</div></div> <div><div>(5)</div><div>The relationship between the <i>SMF manager's</i> responsibilities and the responsibilities of other <i>SMF managers</i> in the <i>firm</i> (including any joint responsibilities or matrix management structures).</div></div>
6.2.9-D	<div>G</div>	<p>Under section 66A(5)(d) of the <i>Act</i>, such steps as a person in the position of the <i>SMF manager</i> could reasonably be expected to take to avoid the <i>firm's</i> contravention of a relevant requirement occurring (or continuing) are:</p>

- (1) such steps as a competent *SMF manager* would have taken:
 - (a) at that time;
 - (b) in that specific individual's position;
 - (c) with that individual's role and responsibilities; and
 - (d) in all the circumstances.

6.2.9-E

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When determining under section 66A(5)(d) of the *Act* whether or not an *SMF manager* has taken such steps as a person in their position could reasonably be expected to take to avoid the contravention of a relevant requirement by the *firm* occurring (or continuing), additional considerations to which the *FCA* would expect to have regard include, but are not limited to:

- (1) the role and responsibilities of the *SMF manager* (for example, such steps as an *SMF manager* in a non-executive role could reasonably be expected to take may differ, depending on the circumstances, from those reasonably expected of an *SMF manager* in an executive role: see, for example, the *guidance* on the role and responsibilities of *non-executive directors* for *SMCR firms* in ■ [COCON 1 Annex 1G](#));
- (2) whether the *SMF manager* exercised reasonable care when considering the information available to them;
- (3) whether the *SMF manager* reached a reasonable conclusion on which to act;
- (4) the nature, scale and complexity of the *firm's* business;
- (5) the knowledge the *SMF manager* had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities;
- (6) whether the *SMF manager* (where they were aware of, or should have been aware of, actual or suspected issues that involved possible breaches by their *firm* of relevant requirements relating to their role and responsibilities) took reasonable steps to ensure that the issues were dealt with in a timely and appropriate manner;
- (7) whether the *SMF manager* acted in accordance with their statutory, common law and other legal obligations, including, but not limited to, those set out in the Companies Act 2006, the *Handbook* (including *COCON*), and, if the *firm* had a *premium listing*, the *UK Corporate Governance Code* and related guidance;
- (8) whether the *SMF manager* took reasonable steps to ensure that any delegation of their responsibilities, where this was itself reasonable, was to an appropriate person with the necessary capacity, competence, knowledge, seniority and skill, and whether the *SMF manager* took reasonable steps to oversee the discharge of the delegated responsibility effectively;
- (9) whether the *SMF manager* took reasonable steps to ensure that the reporting lines, whether in the *UK* or overseas, in relation to the *firm's* activities for which they were responsible, were clear to staff and operated effectively;

- (10) whether the *SMF manager* took reasonable steps to satisfy themselves, on reasonable grounds, that, for the activities for which they were responsible, the *firm* had appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff to assess their suitability to fulfil their duties;
- (11) whether the *SMF manager* took reasonable steps (including in relation to ■ SYSC 4.9) to assess, on taking up each of their responsibilities, and monitor, where reasonable, the governance, operational and risk management arrangements in place for the *firm's* activities for which they were responsible (including, where appropriate, corroborating, challenging and considering the wider implications of the information available to them), and whether they took reasonable steps to deal with any actual or suspected issues identified as a result in a timely and appropriate manner;
- (12) whether the *SMF manager* took reasonable steps to ensure an orderly transition when another *SMF manager* under their oversight or responsibility was replaced in the performance of that function by someone else;
- (13) whether the *SMF manager* took reasonable steps to ensure an orderly transition when they were replaced in the performance of their function by someone else;
- (14) whether the *SMF manager* failed to take reasonable steps to understand and inform themselves about the *firm's* activities for which they were responsible, including, but not limited to, whether they:
 - (a) failed to ensure adequate reporting or seek an adequate explanation of issues within a business area, whether from people within that business area, or elsewhere within or outside the *firm*, if they were not an expert in that area; or
 - (b) failed to maintain an appropriate level of understanding about an issue or a responsibility that they delegated to an individual or individuals; or
 - (c) failed to obtain independent, expert opinion where appropriate from within or outside the *firm* as appropriate; or
 - (d) permitted the expansion or restructuring of the business without reasonably assessing the potential risks; or
 - (e) inadequately monitored highly profitable *transactions*, business practices, unusual *transactions*, or individuals who contributed significantly to the profitability of a business area or who had significant influence over the operation of a business area;
- (15) whether the *SMF manager* took reasonable steps to ensure that, where they were involved in a collective decision affecting the *firm's* activities for which they were responsible, and it was reasonable for the decision to be taken collectively, they informed themselves of the relevant matters before taking part in the decision, and exercised reasonable care, skill and diligence in contributing to it;
- (16) whether the *SMF manager* took reasonable steps to follow the *firm's* procedures, where this was itself appropriate;

- (17) how long the *SMF manager* had been in role with their responsibilities and whether there was an orderly transition and handover when they took up the role and responsibilities;
- (18) whether the *SMF manager* took reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems and controls to comply with the relevant requirements and standards of the regulatory system for the activities of the *firm*.

6.2.9-F

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Where action is taken against an *SMF manager* under section 66A(5) of the *Act* the onus will be on the *FCA* to show that the *SMF manager* has been guilty of misconduct.

Action under section 63A of the *Act* against persons that perform a controlled function without approval

6.2.9A

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In addition to the general factors outlined in ■ DEPP 6.2.1 G, there are some additional considerations that the *FCA* will have regard to when deciding whether to take action against a *person* that performs a *controlled function* without approval contrary to section 63A of the *Act*.

- (1) The conduct of the *person*. The *FCA* will take into consideration whether, while performing *controlled functions* without approval, the *person* committed misconduct in respect of which, if he had been approved, the *FCA* could have taken action pursuant to section 66 of the *Act* and, if so, the seriousness of that misconduct.
- (2) The extent to which the *person* could reasonably be expected to have known that they were performing a *controlled function* without approval. The circumstances in which the *FCA* would expect to be satisfied that a *person* could reasonably be expected to have known that they were performing a *controlled function* without approval include:
 - (a) the *person* had previously performed a similar role at the same or another *firm* for which he had been approved;
 - (b) the *person's firm* or another *firm* had previously applied for approval for the *person* to perform the same or a similar *controlled function*;
 - (c) the *person's* seniority or experience was such that he could reasonably be expected to have known that he was performing a *controlled function* without approval; and
 - (d) the *person's firm* had clearly apportioned responsibilities so that the *person's* role, and the responsibilities associated with it, were clear;
 - (e) the *person's* approval was subject to a condition or was granted for a limited period, and they failed to act in accordance with that condition or time limitation.
- (3) The length of the period during which the *person* performed a *controlled function* without approval.
- (4) Whether the *person* is an individual.

- (5) The appropriateness of taking action against the *person* instead of, or in addition to, taking action against an *authorised person*. In assessing this, the *FCA* will take into consideration the extent of the culpability of an *authorised person* for the *person* performing a *controlled function* without approval. For example, a relevant factor may be that an *authorised person* decided that the *person* did not need to obtain approval and it was reasonable for the *person* to rely on the *authorised person's* judgment.
- (6) The *person's* position and responsibilities. The more senior the *person* that performs a *controlled function* without approval, the more seriously the *FCA* is likely to view his behaviour, and therefore the more likely it is to take action against the *person*.

Action against directors, former directors and persons discharging managerial responsibilities for breaches under Part VI of the Act

6.2.10 **G** The primary responsibility for ensuring compliance with Part VI of the *Act*, the *Part 6 rules*, the *prospectus rules* or a provision of the *Prospectus Regulation* or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) (Penalties for breach of Part 6 rules) of the *Act* respectively. Normally therefore, any disciplinary action taken by the *FCA* for contraventions of these obligations will in the first instance be against those persons.

6.2.11 **G** However, in the case of a contravention by a *person* referred to in section 91(1)(a) or section 91(1)(b) or section 91(1A) of the *Act* ("P"), where the *FCA* considers that another *person* who was at the material time a *director* of P was knowingly concerned in the contravention, the *FCA* may take disciplinary action against that *person*. In circumstances where the *FCA* does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such person), the *FCA* may nonetheless seek a disciplinary sanction against any other person who was at the material time a *director* of P and was knowingly concerned in the contravention.

6.2.12 **G** [deleted]

6.2.13 **G** In deciding whether to take action, the *FCA* will consider the full circumstances of each case. Factors that may be relevant for this purpose include, but are not limited to, the factors at ■ DEPP 6.2.1 G.

Discipline for breaches of the Principles for Businesses

6.2.14 **G** The *Principles* are set out in ■ PRIN 2.1.1 R. The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. The *Principles* derive their authority from the *FCA's* rule-making powers set out in section 137A(General rule-making power) of the *Act*. A breach of a *Principle* will make a *firm* liable to disciplinary action. Where the *FCA* considers this is appropriate, it will discipline a *firm* on the basis of the *Principles* alone.

- 6.2.15** **G** In determining whether a *Principle* has been breached, it is necessary to look to the standard of conduct required by the *Principle* in question at the time. Under each of the *Principles*, the onus will be on the *FCA* to show that a *firm* has been at fault in some way.

Discipline for breaches of the Listing Principles and Premium Listing Principles

- 6.2.16** **G** The Listing Principles and Premium Listing Principles are set out in **■ LR 7**. The Listing Principles set out in **■ LR 7.2.1 R** are a general statement of the fundamental obligations of all *listed companies*. In addition to the Listing Principles, the Premium Listing Principles set out in **■ LR 7.2.1A R** are a general statement of the fundamental obligations of all *listed companies* with a *premium listing*. The Listing Principles and Premium Listing Principles derive their authority from the *FCA*'s rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle or, if applicable, a Premium Listing Principle, will make a *listed company* liable to disciplinary action by the *FCA*.

- 6.2.17** **G** In determining whether a Listing Principle or Premium Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle or Premium Listing Principle in question. Under each of the Listing Principles and Premium Listing Principles, the onus will be on the *FCA* to show that a *listed company* has been at fault in some way. This requirement will differ depending upon the relevant Listing Principle or Premium Listing Principle.

- 6.2.18** **G** In certain cases, it may be appropriate to discipline a *listed company* on the basis of the a Listing Principle or, if applicable, a Premium Listing Principle, alone. Examples include the following:
- (1) where there is no detailed *listing rule* which prohibits the *behaviour* in question, but the *behaviour* clearly contravenes a Listing Principle or, if applicable, a Premium Listing Principle;
 - (2) where a *listed company* has committed a number of breaches of detailed *rules* which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a Listing Principle or, if applicable, a Premium Listing Principle.

Action involving other regulatory authorities or enforcement agencies

- 6.2.19** **G** Some types of *breach* may potentially result not only in action by the *FCA*, but also action by other domestic or overseas regulatory authorities or enforcement agencies.
- 6.2.20** **G** When deciding how to proceed in such cases, the *FCA* will examine the circumstances of the case, and consider, in the light of the relevant investigation, disciplinary and enforcement powers, whether it is appropriate for the *FCA* or another authority to take action to address the *breach*. The *FCA* will have regard to all the circumstances of the case including whether the other authority has adequate powers to address the *breach* in question.

- 6.2.21** **G** In some cases, it may be appropriate for both the *FCA* and another authority to be involved, and for both to take action in a particular case arising from the same facts. For example, a breach of *RIE* rules may be so serious as to justify the *FCA* varying or cancelling the *firm's Part IV permission*, or withdrawing approval from *approved persons*, as well as action taken by the *RIE*. In such cases, the *FCA* will work with the relevant authority to ensure that cases are dealt with efficiently and fairly, under operating arrangements in place (if any) between the *FCA* and the relevant authority.
- 6.2.22** **G** In relation to behaviour which may have happened or be happening in the context of a *takeover bid*, the *FCA* will refer to the *Takeover Panel* and give due weight to its views. Where the *Takeover Code* has procedures for complaint about any behaviour, the *FCA* expects parties to exhaust those procedures. The *FCA* will not, save in exceptional circumstances, take action under any of section 123 (*FCA's* power to impose penalties), section 123A (Power to prohibit individuals from managing or dealing), section 123B (Suspending permission to carry on regulated activities etc.), section 129 (Power of court to impose penalties), section 381 (Injunctions), sections 383 or 384 (Restitution) in respect of behaviour to which the *Takeover Code* is relevant before the conclusion of the procedures available under the *Takeover Code*.
- 6.2.23** **G** The *FCA* will not take action against a *person* over behaviour which does not amount to *market abuse*. Behaviour is less likely to amount to *market abuse* where it (a) conforms with the *Takeover Code* or rules of an *RIE* and (b) falls within the terms of **MAR 1.10.4G** to **1.10.6G** which state that behaviour so conforming is unlikely to, of itself, amount to *market abuse*. The *FCA* will seek the *Takeover Panel's* or relevant *RIE's* views on whether behaviour complies with the *Takeover Code* or *RIE* rules and will attach considerable weight to its views.
- 6.2.24** **G** If any of the circumstances in **DEPP 6.2.26 G** apply, and the *FCA* considers that the use of its disciplinary powers under section 123 or section 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the *Takeover Code* applies except in the circumstances set out in **DEPP 6.2.27 G**.
- 6.2.25** **G** In any case where the *FCA* considers that the use of its powers under any of sections 123, 123A, 123B, 129, 381, 383 or 384 of the Act may be appropriate, if that use may affect the timetable or outcome of a *takeover bid* or where it is appropriate in the context of any exercise by the *Takeover Panel* of its powers and authority, the *FCA* will consult the *Takeover Panel* before using any of those powers.
- 6.2.26** **G** Where the behaviour of a *person* which amounts to *market abuse* is behaviour to which the *Takeover Code* is relevant, the use of the *Takeover Panel's* powers will often be sufficient to address the relevant concerns. In cases where this is not so, the *FCA* will need to consider whether it is appropriate to use any of its own powers under the *market abuse regime*. The principal circumstances in which the *FCA* is likely to consider such exercise are:

- (1) where the behaviour falls within the prohibition in article 14 of the *Market Abuse Regulation*;
- (2) where the *FCA's* approach in previous similar cases (which may have happened otherwise than in the context of a *takeover bid*) suggests that a sanction should be imposed;
- (3) where the behaviour extends to *securities* or a class of *securities* which may be outside the *Takeover Panel's* jurisdiction;
- (4) where the behaviour threatens or has threatened the stability of the *financial system*; and
- (5) where for any other reason the *Takeover Panel* asks the *FCA* to consider the use of any of its powers referred to in ■ DEPP 6.2.22 G.

[**Note:** In this section, 'securities' has the same meaning given in subsection (1) of the definition of 'security' in the Handbook *Glossary*]

6.2.27 G The exceptional circumstances in which the *FCA* will consider the use of powers during a *takeover bid* are listed in ■ DEPP 6.2.26G (1), ■ DEPP 6.2.26G (3) and ■ DEPP 6.2.26G (4), and, depending on the circumstances, ■ DEPP 6.2.26G (5).

6.2.28 G [deleted]