

Chapter 6A

The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

6A.1 Introduction

6A.1.1 **G** ■ DEPP 6A sets out the FCA's statement of policy with respect to:

- (1) the imposition of suspensions or restrictions under sections 88A, 89Q and 206A of the Act, and the period for which those suspensions or restrictions are to have effect, as required by sections 88C(1), 89S(1) and 210(1) of the Act;
- (2) the imposition of suspensions, conditions or limitations under section 66 of the Act, the period for which suspensions or conditions are to have effect, and the period for which approvals under section 59 have effect as a result of a limitation, as required by section 69(1); and
- (3) the imposition of disciplinary prohibitions, suspensions or restrictions under sections 123A and 123B of the Act, as required by section 124(1).

6A.1.2 **G** (1) For the purposes of ■ DEPP 6A, "suspension" refers to the suspension of:

- (a) any *permission* which an *authorised person* has to carry on a *regulated activity* (under sections 123B or 206A of the Act),
- (b) any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the Act),
- (c) a *sponsor's approval* (under section 88A(2)(b) of the Act),
- (d) and a *primary information provider's approval* (under section 89Q(2)(b) of the Act);

(2) "restriction" refers to limitations or other restrictions in relation to:

- (a) the carrying on of a *regulated activity* by an *authorised person* (under sections 123B or 206A of the Act),
- (b) [deleted]
- (c) the performance of services to which a *sponsor's approval* relates (under section 88A(2)(c) of the Act), and
- (d) the dissemination of *regulated information* by a *primary information provider* (under section 89Q(2)(c) of the Act);.

(3) "condition" refers to a condition imposed in relation to any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the Act);

- (4) "limitation" refers, apart from in ■ DEPP 6A.1.2G(2), to a limitation of the period for which any approval of the performance by an *approved person* of any function to which the approval relates is to have effect (under section 66 of the Act); and
- (5) "disciplinary prohibition" refers to a temporary or permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of a *MiFID investment firm* (under section 123A(2)(a) and (3) of the Act) or a temporary prohibition on an individual directly or indirectly acquiring or disposing of *financial instruments* (or *emission auction products*) on his or her own account or the account of a third party, (under section 123A(2)(b) of the Act) or a temporary prohibition on an individual directly or indirectly making a bid at an auction conducted by a *recognised auction platform*, on his or her own account or the account of a third party (under section 123A(2)(c) of the Act).
[Note: see Regulation 6 and Schedule 1 to the RAP Regulations for application of the powers to contraventions of the *auction regulation*]

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The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition is a disciplinary measure which the FCA may use in addition to, or instead of, imposing a financial penalty or issuing a *public censure*. The principal purpose of imposing such a measure is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. These measures are tools that the FCA may employ to help it to achieve its *statutory objectives*. Examples of measures that we may impose include:

- (1) we may restrict an *authorised person's* carrying on of a *regulated activity* so that they can only sell certain products or provide certain services;
- (2) we may place a condition on an *approved person's* performance of their *controlled functions* so that they can only give advice to *consumers* or deal in certain products if they are appropriately supervised.

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The powers to impose a suspension, restriction, condition or limitation in relation to *authorised persons* and *approved persons*, and to impose a disciplinary prohibition in relation to individuals, are disciplinary measures; where the FCA considers it necessary to take action, for example, to protect *consumers* from an *authorised person*, the FCA will seek to cancel or vary the *authorised person's permissions*. If the FCA has concerns with a *person's* fitness to be approved, and considers it necessary to take action, the FCA will seek to prohibit the *approved person* or withdraw their approval. For an *SMF manager*, the FCA may instead vary their approval by imposing one or more conditions, if the FCA is satisfied that they would be a fit and proper person to perform functions in relation to *regulated activities* if the conditions are imposed, and that it is appropriate to do so. While the powers to impose a suspension or a restriction in relation to *sponsors* and *primary information providers* under sections 88A(2)(b)/(c) and 89Q(2)(b)/(c) of the Act are disciplinary measures, the FCA can impose suspensions, limitations or other

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restrictions in relation to *sponsors* and *primary information providers* in other circumstances.

The *FCA* expects to impose a limitation in two situations. The *FCA* may impose a limitation where it considers it appropriate for an approval to cease to have effect:

- (1) after a certain period, unless the *approved person* demonstrates during the period of limitation that it is appropriate for them to be reapproved without the limitation;
- (2) after a short period, without giving the *approved person* the opportunity to demonstrate that they should be re-approved.

The imposition of a limitation in (2) is equivalent to a withdrawal of approval, apart from that it is carried out for disciplinary reasons and the *FCA* will have made no finding of lack of fitness or propriety. The *FCA* recognises that the use of this power will have serious consequences for the *approved person* concerned; therefore, it will exercise its power in a proportionate manner. The *FCA's* policy on determining the length of the limitation is set out in ■ DEPP 6A.3AG.

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