

Chapter 11

Restitution and redress

11.3 The FCA's choice of powers

11.3.1 In cases where it is appropriate to exercise its powers to obtain restitution from *firms*, the *FCA* will first consider using its own administrative powers under section 384 of the *Act* before considering taking court action.

11.3.2 However, there may be circumstances in which the *FCA* will choose to use the powers under section 382 or section 383 of the *Act* to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the *FCA* wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement¹¹; the *FCA's* powers to apply for *injunctions* restraining *firms* from breaching one of those relevant requirements are discussed in ■ chapter 10 of this guide;
- (2) the *FCA* wishes to bring related court proceedings against an *unauthorised person* where the factual basis of those proceedings is likely to be the same as the claim for restitution against the *firm*;
- (3) there is a danger that the assets of the *firm* may be dissipated; in those cases, the *FCA* may wish to combine an application to the court for an order for restitution with an application for an asset-freezing *injunction* to prevent assets from being dissipated; or
- (4) the *FCA* suspects that the *firm* may not comply with an administrative requirement to give restitution; in those cases the *FCA* may consider that the sanction for breach of a court order may be needed to ensure compliance; a *person* who fails to comply with a court order may be in contempt of court and is liable to imprisonment, to a fine and/or to have his assets seized.

¹¹ Under section 380(6)(a) and (7)(a), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of section 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of "appropriate regulator" is set out in section 380(8) to (12) of the *Act*.