

Chapter 19

Non-FSMA powers



19.15 The conduct of investigations under the Money Laundering Regulations

19.15.1 The *FCA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in civil investigations is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

19.15.1A Where the *FCA* considers it appropriate to do so, it will exercise its powers under regulation 74C of the *Money Laundering Regulations*, to impose a direction on a *cryptoasset business* or Annex 1 financial institution to ensure requirements of the *Money Laundering Regulations* are met. The *FCA* will exercise this power where:

- (1) it has serious concerns about the *cryptoasset business* or Annex 1 financial institution's compliance with the *Money Laundering Regulations*;
- (2) it is concerned that a failure of the *cryptoasset business* or Annex 1 financial institution to take the desired steps may result in a breach of the *Money Laundering Regulations*;
- (3) the imposition of a direction reflects the importance the *FCA* attaches to the need for the *cryptoasset business* or Annex 1 financial institution to address its concerns;
- (4) the imposition of a direction may assist the *cryptoasset business* or Annex 1 financial institution to take steps which would otherwise be difficult because of legal obligations owed to third parties.

19.15.1B The *FCA* will also exercise its powers to:

- (1) vary a direction; or
- (2) cancel a direction,

where it considers it appropriate to do so.

- 19.15.1C** Examples of circumstances in which the *FCA* will consider imposing a direction on a *cryptoasset business* and Annex 1 financial institution because it has serious concerns about a *cryptoasset business* or Annex 1 financial institution, or about the way its business is being or has been conducted include where the *cryptoasset business* or Annex 1 financial institution appears to be failing, or appears likely to fail, to comply with requirements under the *Money Laundering Regulations*, because:
- (1) it appears to have consistently failed to comply with requirements of the *Money Laundering Regulations* and in doing so, it may have put itself at risk of being used for the purposes of *money laundering*, terrorist financing or proliferation financing;
 - (2) its personnel do not appear to have adequate skills and experience to carry on *cryptoasset business* or an Annex 1 financial institution's business; or
 - (3) it appears to have breached requirements imposed on it by or under the *Money Laundering Regulations*, for example in respect of disclosure requirements about the applicability of the jurisdiction of the *Financial Ombudsman Service* to its *cryptoasset business*, or Annex 1 financial institution, and whether it is subject to *FSCS* protection.
- 19.15.1D** The *FCA* may impose a direction so that it takes effect immediately or on a specified date if it reasonably considers it necessary to do so, having regard to the ground on which it is exercising this power.
- 19.15.1E** The *FCA* will consider imposing a direction as a matter of urgency where:
- the information available to it indicates serious concerns about the *cryptoasset business* or Annex 1 financial institution that need to be addressed immediately; and
- circumstances indicate that it is appropriate to impose a direction immediately to require and/or prohibit certain actions by the *cryptoasset business* or Annex 1 financial institution to ensure the *cryptoasset business* or Annex 1 financial institution addresses these concerns.
- 19.15.1F** The *FCA* will consider the full circumstances of each case when it decides whether an urgent imposition of a direction is appropriate. The following is a non-exhaustive list of factors the *FCA* may consider:
- (1) The extent of any loss, or risk of loss, or other adverse effect on consumers caused by the failure to adhere to the *Money Laundering Regulations*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the urgent imposition of a direction will be appropriate, to protect the *consumers'* interests.
 - (2) The extent to which *customer* assets appear to be at risk due to the failure to comply with the *Money Laundering Regulations*. Urgent imposition of a direction may be appropriate where the information available to the *FCA* suggests that *customer* assets held by, or to the order of, the *cryptoasset business* or Annex 1 financial institution may be at risk.

- (13) The nature and extent of any false or inaccurate information provided by the *cryptoasset business* or Annex 1 financial institution. Whether false or inaccurate information warrants the urgent imposition of a direction will depend on matters such as:
 - (a) the impact of the information on the *FCA's* view of the *cryptoasset business* or Annex 1 financial institution's compliance with the requirements of the *Money Laundering Regulations*, or the likelihood that the *cryptoasset business* or Annex 1 financial institution may be being used in connection with *financial crime*;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the *FCA*, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *cryptoasset business* or Annex 1 financial institution's actual or potential *customers*.
- (4) The seriousness of any suspected breach of the requirements of the *Money Laundering Regulations* and the steps that need to be taken to correct that breach.
- (5) The financial resources of the *cryptoasset business* or Annex 1 financial institution. Serious concerns may arise where there is a likelihood of the *cryptoasset business* or Annex 1 financial institution's assets being dissipated without the *FCA's* intervention.
- (6) The risk that the *cryptoasset business* or Annex 1 financial institution may be used or has been used to facilitate *financial crime*, especially *money laundering*, terrorist financing or proliferation financing. The information available to the *FCA*, including information supplied by other law enforcement agencies may suggest the *cryptoasset business* or Annex 1 financial institution is being used for, or is itself involved in *financial crime*. Where this appears to be the case, and the *cryptoasset business* or Annex 1 financial institution appears to be failing to comply with requirements of the *Money Laundering Regulations* or has put its *customers'* interests at risk, the *FCA's* urgent imposition of a direction may be appropriate.
- (7) The risk that the *cryptoasset business* or Annex 1 financial institution's conduct or business presents to the *UK financial system* and to confidence in the *UK financial system*.
- (8) The *cryptoasset business* or Annex 1 financial institution's conduct. The *FCA* will take into account:
 - (a) whether the *cryptoasset business* or Annex 1 financial institution identified the issue (and if so whether this was by chance or as a result of the *cryptoasset business* or Annex 1 financial institution's normal *controls* and monitoring);
 - (b) whether the *cryptoasset business* or Annex 1 financial institution brought this issue promptly to the *FCA's* attention;
 - (c) the *cryptoasset business* or Annex 1 financial institution's past history, management ethos and compliance culture;
 - (d) steps that the *cryptoasset business* or Annex 1 financial institution has taken or is taking to address the issue.

(9) The impact that the imposition of a direction will have on the *cryptoasset business* or Annex 1 financial institution's business and on its *customers*. The *FCA* will need to be satisfied that the impact of any use of the direction power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its *statutory objectives*.

19.15.1G

Examples of directions that the *FCA* may consider imposing in support of its enforcement function are: a direction not to take on new business; a direction that prohibits the disposal of, or other dealing with, any of the *cryptoasset business* or Annex 1 financial institution's assets (whether in the *United Kingdom* or elsewhere) or restricts those disposals or dealings; and a direction that all or any of the *cryptoasset business* or Annex 1 financial institution's assets, or all or any assets belonging to *consumers* but held by the *cryptoasset business* or Annex 1 financial institution to its order, must be transferred to a *trustee* approved by the *FCA*.

19.15.2

When the *FCA* proposes or decides to censure a person, impose a penalty on a person, suspend, cancel or restrict an authorisation or registration or impose a prohibition on a person under the *Money Laundering Regulations*, it must give the person a *warning notice* or a *decision notice*.

19.15.3

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19.15.4

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19.15.5

When imposing or determining the level of a financial penalty under regulation 76 of the *Money Laundering Regulations*, the *FCA's* policy includes having regard, where relevant, to relevant factors in ■ DEPP 6.2.1G and ■ DEPP 6.5 to ■ DEPP 6.5D. The *FCA* may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the *Money Laundering Regulations* would be met. In deciding whether a person has failed to comply with a requirement of the *Money Laundering Regulations*, the *FCA* must consider whether he or she followed any relevant guidance which was issued by a European Supervisory Authority in accordance with articles 17, 18.4 or 48.10 of the Fourth Money Laundering Directive, with article 25 of the Funds Transfer Regulation, or with any relevant guidance which was issued at the time by a supervisory authority or other appropriate body, including the Joint Money Laundering Steering Group.

19.15.5A

When cancelling, suspending or restricting an authorisation or limitation under regulation 77 of the *Money Laundering Regulations* or determining the duration of any such suspension or restriction, and when imposing or determining the duration of a prohibition under regulation 78 of the *Money Laundering Regulations*, the *FCA's* policy includes having regard, where relevant, to relevant factors in ■ DEPP 6A.

19.15.6

As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Money Laundering Regulations* or the Funds

Transfer Regulation to assist it to exercise its functions under the *Money Laundering Regulations* in the most efficient and economic way. The settlement discount scheme set out in ■ DEPP 6.7 applies to penalties, suspensions, restrictions and temporary prohibitions imposed under regulations 76, 77 and 78 of the *Money Laundering Regulations*.

19.15.7

The FCA will apply the approach to publicity that it has outlined in ■ EG 6, read in the light of applicable publicity provisions in regulation 84 of the *Money Laundering Regulations*.