

Chapter 19

Non-FSMA powers



19.17 Regulated Covered Bonds Regulations 2008

- 19.17.1** The *RCB Regulations* provide a framework for issuing covered bonds in the UK. Covered bonds issued under the *RCB Regulations* are subject to strict quality controls and both bonds and issuers must be registered with the *FCA*. The *RCB Regulations* give the *FCA* powers to enforce these Regulations. Where a person has failed, or is likely to fail, to comply with any obligation under the *RCB Regulations*, the *FCA* may make a direction that the person take steps to ensure compliance with the Regulations or it may make a direction for the winding up of the owner of the asset pool. The *FCA* may also remove an *issuer* from the register if it fails to comply with the Regulations. In addition, the *FCA* may apply to court for an order restraining a person from committing a breach of the Regulations or requiring the person to take steps to remedy the breach. The *RCB Regulations* also give the *FCA* the power to impose a financial penalty on a person for a breach of the Regulations.
- 19.17.2** The *FCA* may use the information gathering powers set out in section 165 of the *Act* when monitoring and enforcing compliance with the *RCB Regulations*, and may appoint skilled persons as provided in section 166 of the *Act*.
- 19.17.3** The *FCA*'s approach to the use of its enforcement powers, and its statement of policy in relation to imposing and determining financial penalties under the *RCB Regulations*, are set out in ■ RCB 4.2. The *FCA*'s penalty policy includes having regard, where relevant, ■ DEPP 6.5 to ■ DEPP 6.5D and such other specific matters as the likely impact of the penalty on the interests of investors in the relevant bonds. The *FCA*'s statement of procedure in relation to giving *warning notices* or *decision notices* under the *RCB Regulations* is set out in ■ RCB 6. It confirms that the *RDC* will be the decision maker in relation to the imposition of financial penalties under the *RCB Regulations*, following the procedure outlined in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3 and that decision notices given under the Regulations may be referred to the *Tribunal*.
- 19.17.4** The *FCA* may agree to settle cases in which it proposes to impose a financial penalty under the *RCB Regulations* if the right regulatory outcome can be achieved. The settlement discount scheme set out in ■ DEPP 6.7 applies to penalties imposed under the *RCB Regulations*. See ■ DEPP 5 and ■ EG 5 for further information about the settlement process.