

Chapter 2

The FCA's approach to enforcement

2.8 Enforcement and the FCA's Principles for Business ('the Principles')

- 2.8.1** The *FCA's* approach to regulation involves a combination of high-level principles and detailed *rules* and *guidance*.
- 2.8.2** The *FCA* will, in appropriate cases, take enforcement action on the basis of the *Principles* alone (see also ■ DEPP 6.2.14 G). This will have the benefit of providing further clear examples of how the *Principles* work in practice.
- 2.8.3** The *FCA* wishes to encourage firms to exercise judgement about, and take responsibility for, what the *Principles* mean for them in terms of how they conduct their business. But we also recognise the importance of an environment in which *firms* understand what is expected of them. So we have indicated that *firms* must be able reasonably to predict, at the time of the action concerned, whether the conduct would breach the *Principles*. This has sometimes been described as the "reasonable predictability test" or "condition of predictability", but it would be wrong to think of this as a legal test to be met in deciding whether there has been a breach of *FCA rules*. Rather, our intention has been to acknowledge that firms may comply with the *Principles* in different ways; and to indicate that the *FCA* will not take enforcement action unless it was possible to determine at the time that the relevant conduct fell short of our requirements.
- 2.8.4** To determine whether there has been a failure to comply with a *Principle*, the standards we will apply are those required by the *Principles* at the time the conduct took place. The *FCA* will not apply later, higher standards to behaviour when deciding whether to take enforcement action for a breach of the *Principles*. Importantly, however, where conduct falls below expected standards the *FCA* considers that it is legitimate for consequences to follow, even if the conduct is widespread within the industry or the *Principle* is expressed in general terms.