

Appendix 3

Appendix 3 - Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies

3.1 The FCA

App3.1.1 The *FCA* is the single statutory regulator for all financial business in the UK. Its *strategic objective* under the Financial Services and Markets Act 2000 (the 2000 Act) is to ensure that the relevant markets function well. The *FCA's* operational objectives are:

securing an appropriate degree of protection for *consumers*;
protecting and enhancing the integrity of the *UK financial system*; and
promoting effective competition in the interests of *consumers* in the markets.

(Note: The 2000 Act repealed and replaced various enactments which conferred powers and functions on the *FCA* and other regulators whose functions are now carried out by the *FCA*. Most notable in this context are the Financial Services Act 1986 and the Banking Act 1987. Transitional provisions under the 2000 Act permit the *FCA* to continue to investigate and bring proceedings for offences under the old legislation. Details of these transitional provisions are not set out in these guidelines)

App3.1.2 The *FCA's regulatory objectives* as the competent authority under Part VI of the Act are:

the protection of investors;
access to capital; and
investor confidence.

App3.1.3

Under the 2000 Act the FCA has powers to investigate concerns including:

- regulatory concerns about authorised *firms* and individuals employed by them;
- suspected contraventions of the *Market Abuse Regulation* or any supplementary market abuse legislation (as defined in Part 8 of the *Act*);
- suspected misleading statements and practices under s.397 of the 2000 Act and Part 7 of the Financial Services Act 2012;
- suspected *insider dealing* under of Part V of the Criminal Justice Act 1993;
- suspected contraventions of the general prohibition under s.19 of the 2000 Act and related offences;
- suspected offences under various other provisions of the 2000 Act (see below);
- suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules* or a provision that was otherwise made in accordance with the *Prospectus Directive*.
- suspected contraventions of the *Prospectus Regulation*, the *PR Regulation*, the *Prospectus RTS Regulation* and suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules*.

The FCA's powers of information gathering and investigation are set out in Part XI of the 2000 Act and in s.97 in relation to its Part VI functions.

App3.1.4

The FCA has the power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons and other individuals under s.66 of the 2000 Act;
- impose penalties on persons that perform *controlled functions* without approval under s.63A of the 2000 Act;
- impose civil penalties under s.123 of the 2000 Act;
- temporarily prohibit an individual from exercising management functions in *MiFID investment firms* or from dealing in *financial instruments* on their own account or on the account of a third party, under s.123A(2) of the 2000 Act;
- temporarily prohibit an individual from making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a *recognised auction platform* under s.123A(2) of the 2000 Act;
- permanently prohibit an individual from exercising management functions in *MiFID investment firms* under s.123A(3) of the 2000 Act;
- suspend the permission of an *authorised person* or impose limitations or other restrictions in relation to the carrying on of a *regulated activity* by an *authorised person* under s.123B of the 2000 Act;
- prohibit an individual from being employed in connection with a *regulated activity*, under s.56 of the 2000 Act;
- apply to Court for *injunctions* (or interdicts) and other orders against persons contravening relevant requirements (under s.380 of the 2000 Act) or engaging in *market abuse* (under s.381 of the 2000 Act);
- petition the court for the winding up or administration of companies, and the bankruptcy of individuals, carrying on *regulated activities*;
- apply to the court under ss.382 and 383 of the 2000 Act for restitution orders against persons contravening relevant requirements or persons engaged in *market abuse*;
- require restitution under s.384 of the 2000 Act of profits which have accrued to authorised persons contravening relevant requirements or persons engaged in *market abuse*, or of losses which have been suffered by others as a result of those *breaches*;
- (except in Scotland) prosecute certain offences, including under the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer)

Regulations 2007, Part V Criminal Justice Act 1993 (insider dealing), Part 7 of the Financial Services Act 2012 and various offences under the 2000 Act including (Note: The *FCA* may also prosecute any other offences where to do so would be consistent with meeting any of its statutory objectives):

carrying on *regulated activity* without authorisation or exemption, under s.23;

- making false claims to be authorised or exempt, under s.24;
- promoting investment activity without authorisation, under s.25;
- breaching a prohibition order, under s.56;
- failing to co-operate with or giving false information to *FCA* appointed investigators, under s.177;
- failing to comply with provisions about influence over authorised persons, under s.191;
- making misleading statements and engaging in misleading practices, under s.397;
- misleading the *FCA*, under s.398;
- various offences in relation to the *FCA*'s Part VI function;
- Fine, issue public censures, suspend or cancel listing for breaches of the Listing Rules by an issuer; and
- Issue public censures or cancel a sponsor's approval.