

Chapter 3

The FCA's duties and powers

3.1 The FCA's duty to keep itself informed

- 3.1.1** G 325 of the *Act* (Authority's general duty) imposes on the *FCA* a duty to keep itself informed about:
- (1) the way in which *designated professional bodies* supervise and regulate the carrying on of *exempt regulated activities* by *exempt professional firms*; and
 - (2) the way in which *exempt professional firms* carry on *exempt regulated activities*.
- 3.1.2** G The *FCA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FCA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FCA* with the information it needs to maintain a public record of *persons* that are registered with the *FCA* to conduct *insurance distribution activity*. The *FCA* has made arrangements with each of the *designated professional bodies* about the information they provide to it, to include information about:
- (1) complaints and redress arrangements;
 - (2) complaints volumes and their analysis;
 - (3) disciplinary action;
 - (4) supervisory activity;
 - (5) the activities carried on by *exempt professional firms*, the risks arising from them and how they are mitigated, for example by monitoring activity or training and competence arrangements; and
 - (6) the names and addresses of each of their *exempt professional firms* that carry on, or are proposing to carry on, *insurance distribution activity*, together with the details of the individuals within the management of the *exempt professional firms* who are responsible for the *insurance distribution activity*.
- 3.1.3** G Information may also be obtained from *exempt professional firms*, government departments, trade bodies, consumer organisations and *clients* of *exempt professional firms*. The *FCA* may also commission or carry out

reviews of the supervisory and regulatory activities of a *designated professional body* and commission or carry out research about, or surveys of, *exempt professional firms* or their *clients*.

3.2 The FCA's power to make a direction

- 3.2.1** **G** Section 328 of the Act (Directions in relation to the general prohibition) gives the FCA power to make a direction that the exemption under section 327 of the Act (see **PROF 2.1.3 G**) does not apply to the extent specified in the direction. Section 328 allows the FCA to make a direction in relation to different classes of *person* or different descriptions of *regulated activity*. Section 325(3) of the Act requires the FCA to keep under review the desirability of exercising its powers under Part XX of the Act (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the Act.
- 3.2.2** **G** If the FCA gives a direction in relation to specified classes of *person*, then any *person* within those classes may be in contravention of the *general prohibition* unless:
- (1) it ceases to carry on *regulated activities*; or
 - (2) it is an *authorised person*; or
 - (3) it is an *exempt person*.
- 3.2.3** **G** A direction might also cover classes of *persons* who are *members* of different *designated professional bodies*.
- 3.2.4** **G** Were the FCA to give a direction in relation to a description of *regulated activity* (for example, *dealing in investments as agent*), then that activity could no longer be carried on within the terms of the exemption.
- 3.2.5** **G**
- (1) The FCA may exercise its direction powers under section 328(6) of the Act in two situations, as set out in (2) and (3).
 - (2) First, the FCA may exercise its direction power under section 328(6)(a) of the Act if it is satisfied that it is desirable in order to protect the interests of *clients*. In considering whether it is satisfied, the FCA is required by section 328(7) of the Act to have regard, among other things, to the effectiveness of any arrangements made by a *designated professional body*:
 - (a) for securing compliance with *rules* made under section 332(1) of the Act (see **PROF 4.1.1 G**);

- (b) for dealing with complaints against its *members* in relation to the carrying on by them of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d));
- (c) in order to offer redress to *clients* who suffer, or claim to have suffered, loss as a result of misconduct by its *members* in their carrying on of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d)); and
- (d) for cooperating with the *FCA* under section 325(4) of the *Act* (see ■ PROF 3.1.2 G).

- (3) Second, the *FCA* may exercise its direction power under section 328(6)(b) of the *Act* if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the *IDD*. For example, the *FCA* might wish to do so if it was not receiving from a *designated professional body* the information it needs to maintain the *Financial Services Register* (see PROF 7.1).

3.2.6

G Section 330 of the *Act* (Consultation) sets out procedures which the *FCA* must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

- (1) the *FCA* must consult publicly on its proposed direction;
- (2) the *FCA* must have regard to any representations made in response to the consultation; and
- (3) if the *FCA* then gives the proposed direction, it must publish an account of the representations made and its response to them.

3.2.7

G The directions the *FCA* has made under section 328 (6)(a) are set out in ■ PROF 3 Annex 1 G. Directions made by the *FCA* under section 328(6)(b) of the *Act* are listed in ■ PROF 3 Annex 2 G (The *FCA*'s duties and powers).

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Directions made by the FCA under section 328(6)(a) of the Act (see ■ PROF 3.2.7 G)

The FCA has made no directions under section 328(6)(a) of the Act.

The FCA's duties and powers

Directions made by the FCA under section 328(6)(b) of the Act (see ■ PROF 3.2.7 G)

The *FCA* has made no directions under section 328(6)(b) of the *Act*.

