

Chapter 4

Enforcement powers

4.1 Application and purpose

Application

- 4.1.1 **G** This chapter contains guidance for *issuers*, and *owners* and other persons subject to the *RCB Regulations*.

Purpose

- 4.1.2 **G** The purpose of this chapter is to give guidance on the *FCA's* approach to the use of its enforcement powers under the *RCB Regulations* and to set out the *FCA's* policy on the imposition and amount of financial penalties.

4.2 Enforcement powers and penalties

The FSA's enforcement powers

- 4.2.1 **G** The *FCA's* approach to the exercise of its enforcement powers will be consistent with its approach in *DEPP* and *EG* so far as appropriate.
- 4.2.2 **G** The *FCA's* exercise of its powers under the *RCB Regulations* is without prejudice to the use of its powers under the *Act* or under other legislation.
- 4.2.3 **G**
- (1) When deciding whether to take enforcement action under Part 7 of the *RCB Regulations*, and what form that enforcement action should take, the *FCA* will consider all relevant factors, including:
 - (a) the relevant factors on decisions to take action set out in **■ DEPP 6.2.1 G**;
 - (b) whether any contractual or other arrangements agreed between the parties can be used effectively to address any perceived failure under the *RCB Regulations*; and
 - (c) the interests of investors in the relevant *regulated covered bond*.
 - (2) The *FCA* does not normally expect to use its enforcement powers where the *issuer* or the *owner* are in the process of rectifying non-compliance and where they have taken account of the views and interests of investors in the *regulated covered bond*. This is without prejudice to the *FCA's* use of its enforcement powers as a result of its consideration of all relevant factors, as set out in **■ RCB 4.2.3 G (1)**.

Financial penalties

- 4.2.4 **G** The *FCA's* policy on imposing financial penalties (including the amount of any such penalties) under the *RCB Regulations* will be consistent with the policy as set out in *DEPP* and *EG* with appropriate modifications.
- 4.2.5 **G** When considering whether to impose a financial penalty, the amount of penalty, and whether to impose the penalty on the *issuer* or the *owner*, the *FCA* will have regard, where relevant, to:
- (1) the statement on determining the appropriate level of a financial penalty set out in **■ DEPP 6.5** to **■ DEPP 6.5D**;
 - (2) the particular arrangements between the *issuer* and the *owner*;

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- (3) the likely impact of the penalty on the interests of investors in a *regulated covered bond*; and
 - (4) the conduct of the *issuer* or the *owner*.