Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the Financial Services and Markets Act 2000:

(1) section 69(1) (Statement of policy);
(2) section 93(1) (Statement of policy);
(3) section 124(1) (Statement of policy);
(4) section 157(1) (Guidance);
(5) section 169(9) (Investigations etc. in support of overseas regulator);
(6) section 210(1) (Statements of policy); and
(7) section 395(5) (The Authority's procedures).

Commencement


Revocation of manuals

E. The provisions of the Enforcement manual (ENF) are revoked by Annex M to this instrument.

F. The provisions of the Decision making manual (DEC) are revoked by Annex N to this instrument.

Amendments to the Handbook

G. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

<table>
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</thead>
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Citation

H. This instrument may be cited as the Decision Procedure and Penalties Manual (Consequential Amendments) Instrument 2007.

By order of the Board
26 July 2007
Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1 (comes into force on 28 August 2007)

Amend the following as they appear in the Glossary of definitions:

**breach**

in **DEPP:**

(1) misconduct in respect of which the FSA is empowered to take action pursuant to section 66 (Disciplinary powers) of the Act; or

(2) a contravention in respect of which the FSA is empowered to impose a penalty pursuant to section 91 (Penalties for breach of listing rules) of the Act; or

(3) a contravention for the purposes of Part XIV (Disciplinary Measures); or

(4) behaviour amounting to market abuse, or to requiring or encouraging market abuse, in respect of which the FSA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the Act.

**connected person**

(1) ...

(5) (in **DTR**, **LR** and **ENF** 21 in relation to a person discharging managerial responsibilities within an issuer) (as defined in section 96B(2) of the Act):

(a) ...

**consumer**

(1) ...

(4) (in **ECO** and **ENF** 19 **EG** 17) an individual who is acting for purposes other than those of his trade, business or profession.

(5) (in **ENF** **UNFCOG** and **EG** 10.12 to 10.19) any natural person who, in contracts covered by the Unfair Terms Regulations, is acting for purposes which are outside his trade, business or profession.

**DEC**

the Decision Making manual

**DEPP**

the Decision Procedure and Penalties manual.
director

(1) (except in COLL, DTR, LR, PR, ENF 21 and CIS) (in relation to any of the following (whether constituted in the United Kingdom or under the law of a country or territory outside it)):

...

(2) ...

(3) (in DTR, LR, and PR and ENF 21) (in accordance with section 417(1)(a) of the Act) a person occupying in relation to it the position of a director (by whatever name called) and, in relation to an issuer which is not a body corporate, a person with corresponding powers and duties.

EG

the Enforcement Guide.

executive procedures

the procedures relating to the giving of warning notices, decision notices and supervisory notices that the FSA proposes to follow in the circumstances specified in DEC 4.1.6 G (Decisions to be taken by executive procedures), and that are described in DEC 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions) DEPP 4 (Decisions by FSA staff under executive procedures).

issue

(in relation to units):

(1) (except in ENFEG 14) the issue of new units by the trustee of an AUT or by an ICVC;

(2) (in ENFEG 14):

(a) an issue in accordance with (1); and

(b) the sale of units.

listed

(1) (except in LR, ENF 21 and INSPRU) included in an official list.

(2) (in INSPRU):

(a) included in an official list; or

(b) in respect of which facilities for dealing on a regulated market have been granted.

(3) (in LR and ENF 21) admitted to the official list maintained by the FSA in accordance with section 74 of the Act.
listed company (in LR and DEPP) a company that has any class of its securities listed.

member (1) (except in PROF, LR, ENF 18 EG 16 and REC) a person admitted to membership of the Society or any person by law entitled or bound to administer his affairs.

(2) (in PROF, LR and ENF 18 EG 16) (as defined in section 325(2) of the Act (Authority’s general duty)) (in relation to a profession) a person who is entitled to practise that profession and, in practising it, is subject to the rules of the relevant designated professional body, whether or not he is a member of that body.

(3) (in REC) (in relation to a recognised body) a person who is entitled, under an arrangement or agreement between him and that body, to use that body's facilities.

offer (1) (in MAR 1 (Code of market conduct)) an offer as defined in the Takeover Code.

(2) (in MAR 2 (Buy-backs and Stabilisation)) an offer or invitation to make an offer.

(3) (in LR, PR and ENF 21) an offer of transferable securities to the public.

offeror (1) (in MAR 1 (The Code of Market Conduct) and LR 5.2.10R) an offeror as defined in the Takeover Code

(2) (in MAR 2 (Buy-backs and Stabilisation)) (as defined in Article 2 of the Buy-back and Stabilisation Regulation) the prior holders of, or the entity issuing, the relevant securities).

(3) (in LR, PR, and FEES provisions in relation to PR, and ENF 24) a person who makes an offer of transferable securities to the public.

official list (1) (in LR and ENF 21) the list maintained by the FSA in accordance with section 74(1) of the Act for the purposes of Part VI of the Act.

(2) (except in LR and ENF 21):

(a) the list maintained by the FSA in accordance with section 74(1) of the Act (The official list) for the purposes of Part VI of the Act (Official Listing);
(b) any corresponding list maintained by a competent authority for listing in another EEA State.

operator

(1) (except in ENFEG):

(a) . . .

(2) (in ENFEG) (in accordance with section 237(2) of the Act (Other definitions)):

(a) . . .

public censure

(1) a statement published under section 205 (Public censure) of the Act;

(2) a statement of misconduct published under section 66 (Disciplinary powers) of the Act;

(3) a statement published under section 123 (Power to impose penalties in cases of market abuse) of the Act;

(4) a statement published under section 87M (Public censure of issuer) of the Act, under section 89 (Public censure of sponsor) of the Act or under section 91 (Penalties for breach of listing rules) of the Act.

redemption

(1) (except in ENF17EG14 (Collective investment schemes)) (in relation to units in an authorised fund) the purchase of them from their holder by the authorised fund manager acting as a principal.

(2) (in ENF17EG14 (Collective investment schemes)) redemption as in (1) but including their cancellation by the trustee of an AUT or by an ICVC.

Regulatory Decisions Committee

a committee of the Board of the FSA, described in DEC 4.2 (The Regulatory Decisions Committee) DEPP 3.1 (The nature and procedure of the RDC).

security

(1) (except in LR and ENF21 (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any of the following investments specified in that Order:

(a) …

…

(2) (in LR and ENF21) (in accordance with section 102A of the Act) anything which has been, or may be admitted to the
official list.

**senior staff committee** (in DEC DEPP and EG) a committee consisting of senior FSA staff members that is empowered to make statutory notice decisions and statutory notice associated decisions by executive procedures.

**settlement decision makers** (in DEC DEPP and EG) two members of the FSA's executive of at least director of division level with responsibility for deciding whether to give statutory notices in the circumstances described in DEC Appendix 1.2.2A GDEPP 5.

**settlement decision procedure** (in DEC DEPP) the procedure for the making of statutory notice decisions in the circumstances described in DEC App 1.2.2A GDEPP 5.

**settlement discount scheme** (in ENF DEPP and EG) the scheme described in ENF 13.7 DEPP 6.7 by which the financial penalty that might otherwise be payable in respect of a person's misconduct or contravention may be reduced to reflect the timing of any settlement agreement.

**UNFCOG** the Unfair Contract Terms Regulatory Guide.

**Part 2 (comes into force on 1 November 2007)**

**breach** in DEPP

(1) …

(2) …

(3) …

(4) behaviour amounting to market abuse, or to requiring or encouraging market abuse, in respect of which the FSA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the Act; or

(5) a contravention of any directly applicable Community regulation made under MiFID.
Annex B

Amendments to the Senior Management Arrangements, Systems and Controls (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

SYSC App 1.1.1G

1.1.1 G The application of SYSC 2.1.3R, SYSC 2.2.3G and SYSC 3 to an incoming EEA firm or incoming Treaty firm depends on whether responsibility for the matter in question is reserved to the firm's Home State regulator. This appendix contains guidance designed to assist such firms in understanding the application of those provisions. This appendix is not concerned with the FSA's rights to take enforcement action against an incoming EEA firm or an incoming Treaty firm, which are covered in the Enforcement manual (ENF) Enforcement Guide (EG), or with the position of a firm with a top-up permission.
Annex C

Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Exercise of the FSA's own-initiative power

1.2.3 G (1) If, among other things, a firm is failing to satisfy any of the threshold conditions, or is likely to fail to do so, section 45 of the Act (Variation etc. on the FSA's own initiative) states that the FSA may exercise its own-initiative power. Use of the FSA's own-initiative power is explained in SUP 7 (Individual requirements), ENF 3 (Variation of Part IV permission on the FSA's own initiative) and ENF 5 (Cancellation of Part IV permission on the FSA's own initiative and withdrawal of authorisation) and EG 8 (Variation and cancellation of permission on the FSA’s own initiative and intervention against incoming firms).

...
Annex D

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.1.4 G (1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances (see ENF 11.5.2 G (Action against approved persons)) DEPP 6.2.4G (Action against approved persons under section 66 of the Act)).
1.3.5 G GEN 1.3.2R operates on the FSA's rules. It does not affect the FSA's powers to take action against a firm in an emergency, based on contravention of other requirements and standards under the regulatory system. For example, the FSA may exercise its own-initiative power in appropriate cases to vary a firm's Part IV permission based on a failure or potential failure to satisfy the threshold conditions (see SUP 7 (Applying the FSA's requirements to individual firms) and ENF 4 (Variation of Part IV permission on the FSA's own initiative)) EG 8 (Variation and cancellation of permission on the FSA’s own initiative and intervention against incoming firms)).
Annex F

Amendments to the Fees Manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Time of payment

4.3.6 R …

(4) If the FSA has exercised its own-initiative powers to cancel a firm’s Part IV permission in the way set out in ENF 5 (Cancellation of Part IV permission on the FSA’s own initiative) and EG 8 (Variation and cancellation of permission on the FSA’s own initiative and intervention against incoming firms), then (1) and (2) do not apply but the firm must pay the total amount due immediately before the cancellation becomes effective.

5.4.2 G Failure to submit a statement in accordance with the rules in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5 DEPP 6.6.1 to DEPP 6.6.5G).
Annex G

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text.

Appendix 1 (Interpretation) Glossary of terms for Chapter 5 (former IMRO firms)

*investigation* means an investigation authorised pursuant to the Enforcement Manual Guide.
Annex H

Amendments to the Conduct of Business sourcebook (COB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.12.12 G Other parts of the Handbook are also relevant to the fair treatment of with-profits policy holders, including:

... (5) COB 6.5 (Content of key features and important information: life policies, schemes, ISA and CTF cash deposit components and stakeholder pension schemes) and COB 8 (Reporting to customers); and

(6) DISP 1 (Complaint handling procedures for firms) and DISP 3.8 (Determination by the Ombudsman); and

(7) ENF 20 (Unfair terms in consumer contracts). [deleted]

The following Regulatory Guides are also relevant:

(8) UNFCOG (Unfair Contract Terms Regulatory Guide).

(9) [intentionally blank]
Annex I

Amendments to the Insurance: Conduct of Business sourcebook (ICOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

ICOB 1 Annex 2 G

<table>
<thead>
<tr>
<th>Module</th>
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<tr>
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<tr>
<td>Regulatory Processes</td>
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<table>
<thead>
<tr>
<th>Enforcement manual, ENF</th>
<th>Applies to an insurance intermediary when doing (1) or (2).</th>
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<tbody>
<tr>
<td>Decision making manual, DEC</td>
<td>Applies to an insurance intermediary when doing (1) or (2).</td>
</tr>
<tr>
<td>Decision, Procedure and Penalties Manual, DEPP</td>
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</tbody>
</table>

5.3.28 G Insurers and insurance intermediaries will need to consider whether mid-term changes are compatible with the original non-investment insurance contract, in particular whether that non-investment insurance contract included terms reserving the right to vary premiums, charges or contract terms and conditions. Insurers and insurance intermediaries also need to ensure that any contract terms which reserve the right to make variations are not themselves unfair under the Unfair Terms Regulations. The FSA may, as a qualifying body under the Unfair Terms Regulations, issue from time to time case summaries or guidance of potential relevance to such variation terms (see UNFCOG ENF 20).
Annex J

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.6.5 G ... (3) MCOB 1.6.3 R and MCOB 1.6.4 R do not override the application of MCOB to any regulated mortgage contract. MCOB applies notwithstanding a firm's genuine belief that a mortgage is unregulated. In deciding whether to take disciplinary action as a result of a breach of MCOB, the FSA will take into account whether the action by the firm was reckless or deliberate (see ENF 11.4 G(1)(a) DEPP 6.2.1(1)(a)).
Annex K

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.1.3 G The FSA’s statement of policy about the imposition and amount of penalties in cases of market abuse (required by section 124 of the Act) is in ENF 14 DEPP 6.

5.5.3 G Handbook provisions applicable to ATSs

<table>
<thead>
<tr>
<th>Part of Handbook</th>
<th>Applicability to ATSs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision manual (SUP)</td>
<td>This applies.</td>
</tr>
<tr>
<td>Enforcement manual (ENF)</td>
<td>This applies.</td>
</tr>
<tr>
<td>Decision making manual (DEC)</td>
<td>This applies.</td>
</tr>
<tr>
<td>Decision, Procedure and Penalties Manual (DEPP)</td>
<td>This applies.</td>
</tr>
<tr>
<td>Service companies (SERV)</td>
<td>This applies to a service company that operates an ATS.</td>
</tr>
<tr>
<td>Energy market participants (EMPS)</td>
<td>This applies to an energy market participant that operates an ATS.</td>
</tr>
<tr>
<td>Oil market participants (OMPS)</td>
<td>This applies to an oil market participant that operates an ATS.</td>
</tr>
</tbody>
</table>

In addition to Handbook modules the following Regulatory Guides are also relevant:

(1) The Enforcement Guide (EG)
(2) [intentionally blank]
Annex L

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire provision is deleted this is not struck through.

Part 1 (comes into force on 28 August 2007)

1.2.1 G (1) The Authorisation manual (AUTH), the Supervision manual (SUP), the Enforcement manual (ENF) and the Decision making manual (DEC) Decision, Procedure and Penalties manual (DEPP) form the regulatory processes part of the Handbook.

(2) …

(3) SUP sets out the relationship between the FSA and authorised persons (referred to in the Handbook as firms). As a general rule, material that is of continuing relevance after authorisation is in SUP.

(4) ENF describes the FSA's enforcement powers under the Act and sets out its policies for using those powers. [deleted]

(5) DEC is principally concerned with, and sets out, the FSA's decision making procedures for decisions that involve the giving of statutory notices. DEPP is principally concerned with and sets out the FSA's decision making procedures that involve the giving of statutory notices, the FSA's policy in respect to the imposition and amount of penalties, and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FSA is considering giving.

2.1 Application and purpose

2.1.4 G The FSA receives the information in SUP 2.1.3G through a variety of means, including notifications by firms (see SUP 15) and regular reporting by firms (see SUP 16). This chapter is concerned with the methods of information gathering that the FSA may use on its own initiative in the discharge of its functions under the Act. This chapter does not deal with the information gathering powers that the FSA has under the Unfair Terms Regulations. These are dealt with in ENF 20.3.5G UNFCO.

2.1.5 G Part XI of the Act (Information Gathering and Investigations) gives the FSA statutory powers, including:

(1) to require the provision of information (see section 165 and
2.3.12 G In complying with Principle 11, the FSA considers that a firm should cooperate with it in providing information for other regulators. Section 169 of the Act (Investigations etc. in support of overseas regulator) gives the FSA certain statutory powers to obtain information and appoint investigators for overseas regulators if required (see ENF-2DEPP 7 and EG 3).

3.4.6 G If it appears to the FSA that an auditor of a firm has failed to comply with a duty imposed on him under the Act, it may disqualify him under section 345 of the Act. For more detail about what happens when the disqualification of an auditor is being considered or put into effect, see ENF-17EG 15. A list of persons who are disqualified by the FSA under section 345 of the Act may be found on the FSA website (www.fsa.gov.uk).

4.3.12 G If it appears to the FSA that an actuary has failed to comply with a duty imposed on him under the Act, it may disqualify him under section 345 of the Act. For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see ENF-17EG 15 (Disqualification of auditors and actuaries). A list of actuaries who are disqualified by the FSA may be found on the FSA website (www.fsa.gov.uk).

4.4.5 G If it appears to the FSA that an appropriate actuary has failed to comply with a duty imposed on him under the Act, it may disqualify him under section 345 of the Act. For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see ENF-17EG 15 (Disqualification of auditors and actuaries). A list of actuaries who have been disqualified by the FSA may be found on the FSA website (www.fsa.gov.uk).

4.6.6 G If it appears to the FSA that an actuary has failed to comply with a duty imposed on him under the Act, it may disqualify him under section 345 of the Act. For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see ENF-17EG 15. A list of actuaries who are disqualified by the FSA may be found on the FSA website.
4.6.14 G If it appears to the FSA that an actuary has failed to comply with a duty imposed on him under the Act, it may disqualify him under section 345 of the Act. For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see ENF 17EG 15. A list of actuaries who are disqualified by the FSA may be found on the FSA website.

Alternative tools available, including other statutory powers

5.3.5 G The FSA will have regard to alternative tools that may be available, including for example:

(1) …

(2) …

(3) appointing investigators to carry out general investigations under section 167 of the Act (Appointment of persons to carry out general investigations) (see ENF-2.5EG 3 for the FSA's policy on the use of this power); and

(4) appointing investigators to carry out investigations in particular cases under section 168 of the Act (Appointment of persons to carry out investigations in particular cases) (see ENF-2.5EG 3 for the FSA's policy on the use of this power).

6.1.5 G This chapter also outlines the FSA's powers to withdraw authorisation from a firm whose Part IV permission has been cancelled at the firm's request. It does not, however, cover the FSA's use of its own-initiative powers to vary or cancel a firm's Part IV permission (see SUP 7 (Individual requirements) and ENF 5 (Cancellation of Part IV permission on the FSA's own initiative and withdrawal of authorisation)) EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)).

6.2.10 G A firm which is winding down (running off) its activities should contact its usual supervisory contact at the FSA to discuss its circumstances. The FSA will discuss the firm's winding down plans and the need for the firm to vary or cancel its Part IV permission. Following these discussions, an application for variation or cancellation of Part IV permission, as appropriate, should usually be made by the firm, although, in certain circumstances, the FSA may use its own-initiative powers under section 45 of the Act (Variation etc. on the FSA's own initiative) (see SUP 7 and ENF-2 (Variation of Part IV permission on the FSA's own initiative)) EG 8 (Variation and cancellation of permission on the FSA's own
initiative and intervention against incoming firms).

6.3.40 **G** *DECDEPP* gives guidance on the *FSA's* decision making procedures including the procedures it will follow if it proposes to refuse an application for variation of *Part IV permission* either in whole or in part (for example, an application granted by the *FSA* but subject to *limitations* or *requirements* not applied for).

6.3.42 **G** (1) *Firms* should be aware that the *FSA* may exercise its *own-initiative power* to vary or cancel their *Part IV permission* if they do not (see *EG 8* (Variation and cancellation of permission on the *FSA's* own initiative and intervention against incoming firms)):

(a) …

6.4.23 **G** If the *FSA* has granted an application for cancellation of *Part IV permission* and withdrawn a *firm's* status as an *authorised person* (see *SUP 6.5*) it will retain certain investigative and enforcement powers in relation to the *firm* as a former *authorised person*.

These include:

(1) information gathering and investigation powers in Part XI of the *Act* (Investigation gathering and investigations) (see *ENF 2* (Information gathering and investigation powers)) *EG 3* (Use of information gathering and investigation powers);

(2) powers to apply to court for injunctions and restitution orders in Part XXV of the *Act* (Injunctions and restitution) (see *ENF 6-EG 10* (Injunctions) and *ENF 9EG 11* (Restitution and redress));

(3) powers in Part XXIV of the *Act* (Insolvency) to petition for administration orders or winding up orders against companies or insolvent partnerships, or bankruptcy orders (or in Scotland sequestration awards) against individuals (see *ENF 10* (Insolvency proceedings and orders against debt avoidance) *EG 13* (Insolvency));

(4) powers in Part XXVII of the *Act* (Offences) to prosecute offences under the *Act* and other specified provisions (see *ENF 15EG 12* (Prosecution of criminal offences)).

6.4.26 **G** The *FSA's* use of those powers is outlined in *ENF 11* (Discipline of authorised firms and approved persons: The *FSA's* general approach) *DEPP 6* (Penalties).

6.4.29 **G** See *DECDEPP* for guidance on the *FSA's* decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of *Part IV permission*. 

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5. If, for example, the FSA has consumer protection concerns, it may, however, use its own-initiative power under section 45 of the Act (Variation etc. on the Authority's own initiative) (see SUP 7 (Individual requirements) and ENF 3 (Variation of Part IV permission on the FSA's own initiative) and EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms), to vary the Part IV permission of a firm which is winding down or transferring its regulated activities.

Processing an application

10.12.5 G The Act allows the FSA three months from the time it receives a properly completed application to consider it and come to a decision. The FSA must either grant the application or, if it proposes not to grant an application, issue a warning notice (see DEC 2 DEPP 2).

10.12.12 G If the FSA proposes to refuse an application in relation to one or more controlled functions, it must follow the procedures for issuing warning and decision notices to all interested parties. The requirements relating to warning and decision notices and the process for referrals to the Financial Services and Markets Tribunal are in DEPP 2 DEC 2 and DEC 5 respectively.

10 Ann 1G

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
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<tbody>
<tr>
<td>11</td>
<td>The FSA expects firms to perform due and diligent enquiries into their candidates. Note also the requirements of ENF 8.12.2G–EG 6 and TC 2.2.1R</td>
</tr>
<tr>
<td>11a</td>
<td>It is for senior management to decide what checks should be made. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the FSA and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about candidates for approved person status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons...</td>
</tr>
</tbody>
</table>
23 How are non-routine cases handled? Refer to DEC 2 Annex 2 – DEPP 2

SUP 10 Annex 3 – deleted in its entirety

Warning notices and decision notices

11.7.9 G The procedure followed by the FSA in relation to the giving of warning notices and decision notices and the process for referrals to the Financial Services and Markets Tribunal are set out in DEC 2–DEPP 2.

12.4.10 G …

(2) If the FSA proposes to use the power in (1), it must give the appointed representative a warning notice. If the FSA decides to proceed with its proposal, it must give the appointed representative a decision notice. The procedures followed by the FSA in relation to the giving of warning notices and decision notices are set out in DEC 2–DEPP 2.

13.3.7 G …

(3) For details of the FSA’s procedures for the giving of warning notices or decision notices and references to the Tribunal see DEC 2 (Statutory notice procedure: Warning notice and decision notice procedure) and DEC 5 (References to the Tribunal, publication and service of notices), see DEPP 2 (Statutory notices and the allocation of decision making).

Issuing a consent notice or notifying the Host State regulator

13.4.4 G …

(2) (a) …

(b) The issue or refusal of a consent notice under paragraph 20 (3A) of Part III of Schedule 3 to the Act is the consequence of a regulatory decision, and this consent notice (unlike the consent notice for the establishment of a branch) is not a statutory notice as set out in section 395 of the Act. As such, the FSA will follow the decision making procedures set out in DEC 1 (Application, Purpose and Introduction). A UK firm
that receives notice that the FSA refuses to give a consent notice may refer the matter to the Tribunal under paragraph 20 (4A) of Part III of Schedule 3 to the Act. For procedures relating to references to the Tribunal see DEC 5 (References to the Tribunal, publication and service of notices).

13.6.15 G If the FSA refuses to consent to a change, then under Regulations 11(6) and 13 (6):

(1) …;

(2) the UK firm may refer the matter to the Tribunal; for details of procedures for a reference to the Tribunal see DEC 5 (References to the Tribunal, publication and service of notices).

13.7.9 G If the FSA refuses to consent to a change it will follow the decision making process set out in DEC 1 (Application, Purpose and Introduction). The FSA is required by regulation 16(7) to give notice of the refusal to the UK firm, stating its reasons and giving an indication of the UK firm’s right to refer the matter to the Tribunal and the procedures that apply to such a reference. For details of procedures relating to references to the Tribunal see DEC 5 (References to the Tribunal, publication and service of notices).

13A.3.2 G …

(2) …

(c) For details of the FSA’s procedures for the giving of warning notices and references to the Tribunal, see DEC 2.2 (Statutory notice procedure: Warning notice and decision notice procedure) and DEC 5 (References to the Tribunal, publication and service of notices); see DEPP 2 (Statutory notices and allocation of decision making).

Application of the Handbook to Incoming EEA firms

13A Annex 1 G

| ENF | ENF applies and contains guidance on the use of the FSA’s enforcement powers (ENF1) |
| DEC | DEC applies and contains | DEC applies and |
| DEPP | guidance on the FSA's decision making procedures (DEC1). **DEPP** applies and contains a description of the FSA's procedures for taking statutory notice decisions, the FSA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FSA is considering giving. |
| DTR | **DTR** (Disclosure Rules and Transparency Rules) May apply if the *firm* is an *issuer*, any class of whose *financial instruments* have been *admitted to trading* on a *regulated market*, or are the subject of an application for *admission to trading* on a *regulated market*, other than *issuers* who have not requested or approved admission of their *financial instruments* to trading on a *regulated market*. |
| DTR | **DTR** (Disclosure Rules and Transparency Rules) As column (2). |

**EG** describes the FSA's approach to exercising the main enforcement powers given to it by FSMA and by regulation 12 of the *Unfair Terms Regulations*. **EG** is a Regulatory Guide and as such does not form part of the Handbook.

15.3.22

D …

(3) …

(b) withdraw approval from an *approved person* acting for or on behalf of an *underwriting agent*, under section 63 of the Act (Withdrawal of approval) (see **EG 9 ENF 7**);

(c) prohibit an individual acting for or on behalf of an *underwriting agent* from involvement in regulated
activities, under section 56 of the Act (Prohibition orders) (see EG 9-ENF 8);

(d) require an underwriting agent to make restitution, under section 384 of the Act (Power of Authority to require restitution) (see EG 11-ENF 9);

(e) discipline an underwriting agent, or an approved person acting for it or on its behalf, for a breach of a requirement made under the Act, including the Principles, Statements of Principle and rules (see DEPP 6 and EG 7-ENF 11, ENF 12 and ENF 13);

(f) apply to court for an injunction, restitution order or insolvency order (see EG 10, EG 11 and EG 13-ENF 6, ENF 9 and ENF 10); and

(g) prosecute any criminal offence that the FSA has power to prosecute under the Act (see EG 12-ENF 15).

16.3.14A G Failure to submit a report in accordance with the rules in, or referred to in, this chapter or the provisions of relevant legislation may also lead to the imposition of a financial penalty and other disciplinary sanctions (see DEPP 6.6.1-6.6.5 ENF 13.5) …

Part 2 (comes into force on 1 November 2007)

SUP 6.3.42 G …

(1A) The FSA may exercise its own-initiative power to cancel an investment firm's Part IV permission if the investment firm has provided or performed no investment services and activities at any time during the period of six months ending with the day on which the warning notice under section 54(1) of the Act is given (see ENF 5.3.2G EG 8).
Annex M

Amendments to the Enforcement manual (ENF)

ENF is deleted in its entirety.
Annex N

Amendments to the Decision making manual (DEC)

DEC is deleted in its entirety.
Annex O

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7.1.3 G …

(2) This chapter also helps with the regulatory objective of protecting consumers, by providing a cost effective and fair means of winding up authorised funds and terminating sub-funds of ICVCs and AUTs. ENF 16EG 14 (Collective investment schemes) deals with the FSA’s powers to revoke the authorisation of authorised funds otherwise than by consent.
Annex P

Amendments to the Credit Unions sourcebook (CRED)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Where an entire chapter, rule or sub-paragraph is deleted, it is not shown struck-through.

Part 1 (comes into force on 28 August 2007)

Rules: R

2.4.2 G …. If a firm contravenes such a rule, it may be subject to enforcement action (see ENF).

... 

2.4.10 G G is also used for the FSA's statement of the procedure for giving statutory notices under section 395 of the Act, the FSA's policy with respect to the imposition and amount of penalties under the Act (see DEPP), for the various statements of policy regarding use of the FSA's enforcement powers (see ENF), and to indicate the arrangements made by the FSA under paragraph 7 of Schedule 1 to the Act for the investigation of complaints arising in connection with its exercise of its non-legislative functions (see COAF).

3.3.2 G … The full provisions of how the FSA will use its powers in support of its enforcement functions under the Act are set out in ENF 2 EG. The FSA will be proportionate in the use of its powers.

5.1.5 G The threshold conditions must be met on a continuing basis by credit unions. Failure to meet one of the conditions is sufficient grounds for the exercise by the FSA of its powers (see EG). ENF 1 provides an overview of the range and purpose of these powers, the FSA's approach to enforcement and the structure of the Enforcement manual.

5.2.3 G Where a credit union may no longer meet the threshold conditions (see ENF EG) the FSA will make further enquiries. ...

5.2.4 G The FSA has the power to vary a credit union's Part IV permission on its own initiative (see ENF 3.2), if it appears to the FSA that the credit union is failing, or is likely to fail, to satisfy the threshold conditions (see ENF 3.2 EG).

6.1.3 G The full provisions are to be found in the following sourcebooks or manuals of the Handbook:

...
Enforcement procedures

6.2.9 G Details of the disciplinary measures which may be taken against approved persons are located in ENF 11–ENF 13 DEPP. …

13.6.8 G … If the FSA consider it appropriate to vary or cancel a credit union's Part IV permission (see ENF 3 and ENF SEG), it will discuss the proposed action with the credit union and ascertain its reasons for not commencing or carrying out the regulated activity, or activities, concerned as described in its application.

Common bond

CRED 13 1A.2 G …

Handbook material 4 DEC 1.2.8–DEC 1.2.10 G provide guidance on who within the FSA makes decisions under section 1 of the Credit Unions Act 1979. It is possible for such decisions to be taken to judicial review. CRED 13 (Registration and authorisation) is concerned with provides guidance on the registration and authorisation of credit unions.

…

14.10.4 G General provisions on reporting

14.10.4D G … Failure to submit a report in accordance with the rules in SUP 16.7 may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5 and CRED 15.5 DEPP).

Decision procedure, penalties and Enforcement

…

15.1.1 G This chapter contains guidance on the investigation and enforcement powers available to the FSA, and its approach to the use of those powers, in respect of applies to credit unions and is intended to draw their attention to:

(1) [Deleted] the investigation and enforcement powers available to the FSA under Industrial and Provident Societies legislation;

(2) credit unions, with respect to their activities of accepting deposits the
Decision Procedure and Penalties manual (DEPP); and

(3) approved persons of credit unions, as set out in CRED 6—the Enforcement Guide (EG).

CRED 15.2 Investigation and enforcement powers Industrial and Provident Societies legislation

...  

15.2.2 G For ease of reference:

(1) Annex 1 to this chapter (CRED 15 Annex 1) contains a table of the FSA’s investigation and enforcement powers under the Industrial and Provident Societies Act 1965, the Friendly and Industrial and Provident Societies Act 1968 and the Credit Unions Act 1979; and

(2) [deleted]

15.2.3 G [deleted]

15.2.4 G [deleted]

15.2.5 G [deleted]

15.3 The FSA's approach to the use of its investigation and enforcement powers Decision Procedure and Penalties manual

15.3.1 G There are a number of principles underlying the FSA’s approach to the exercise of its investigation and enforcement powers in relation to credit unions. The Decision Procedure and Penalties manual (DEPP) is relevant to credit unions because it sets out:

(1) the effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and cooperative relationship between the FSA and the management of credit unions; the FSA’s decision making procedure for giving statutory notices (warning notices, decision notices and supervisory notices); and

(2) the FSA will seek to exercise its investigation and enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies; and the FSA’s policy with respect to the imposition and amount of penalties under the Act.

(3) [deleted]
15.4 The FSA’s policies and procedures for taking enforcement action

15.4.1 The Enforcement Guide (EG) describes the FSA’s approach to exercising the main enforcement powers given to it by the Act and by regulation 12 of the Unfair Terms Regulations. EG is a Regulatory Guide and does not form part of the FSA Handbook.

CRED 15 Annex 2G [is deleted in its entirety]
CRED 15 Annex 3G [is deleted in its entirety]
CRED 16 [is deleted in its entirety]

CRED Appendix 1

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CRED Appendix 2
CRED App 2.1.1
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<td>16</td>
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Part 2 (comes into force on 1 January 2008)

| 14.10.4D | G | If a credit union fails to submit a complete annual report by the date on which it is due in accordance with the rules under SUP 16.12 and any prescribed submission procedures, the credit union must pay an administrative fee of £250 (see SUP 16.3.14R). Failure to submit the report in accordance with the rules in SUP 16.12 may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5 and CRED 15.5DEPP). |
Annex Q

Amendments to the Electronic Commerce Directive sourcebook (ECO)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.1.5 G The E-Commerce Directive also allows the EEA State where the recipient is based to restrict the freedom to provide an electronic commerce activity from another EEA State on a case by case basis, where certain conditions are met. This derogation is implemented in the United Kingdom through provisions of the ECD Regulations. ENF 19 EG 19 outlines the derogation power and the FSA's policy on its use in relation to incoming ECA providers.

1.1.8 G The FSA has a range of investigation and enforcement powers available to it where an incoming ECA provider appears to be in breach of rules to which it is subject under ECO 1. These include powers to seek injunctions (see ENF 6), to apply to a court for restitution (see ENF 9) and, in the case of authorised persons, to order restitution (see ENF 9) and take disciplinary action (see ENF 11 to ENF 13) (see EG and DEPP).

1.1.9 G The market abuse regime and misleading statements and practices offences are not affected by the E-Commerce Directive. The FSA's enforcement powers in this regard are described in EG ENF 14 and ENF 15. The FSA's Code of Market Conduct (MAR 1) contains guidance on whether or not behaviour amounts to market abuse.

1.1.10 R Handbook provisions applicable to, or relevant for, incoming ECA providers. This Table belongs to ECO 1.1.6 R

<table>
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<td>The Code of Market Conduct</td>
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<td>DEC DEPP</td>
<td>Decision making by the FSA. Decision making, procedures and penalties</td>
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<tr>
<td>GEN 2</td>
<td>Interpreting the Handbook</td>
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<tr>
<td>COAF</td>
<td>Complaints against the FSA</td>
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<tr>
<td>SUP 8</td>
<td>Waivers and modification of rules</td>
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<tr>
<td>SUP 9</td>
<td>Individual guidance</td>
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<tr>
<td>SUP 13A.1.1G - SUP 13A.1.2G, SUP 13A.6.5G, SUP 13A Annex 1G</td>
<td>Authorisation guidance</td>
</tr>
<tr>
<td>SUP 14 (if the</td>
<td>EEA firms change of details</td>
</tr>
</tbody>
</table>
Incoming ECA provider is authorised)

Any reference in SUP 8 to a firm should be taken to include a reference to an unauthorised incoming ECA provider.

In addition to the Handbook modules listed above these Regulatory Guides may also be relevant:

1. The Enforcement Guide (EG)
2. [intentionally blank]
Annex R

Amendments to the Electronic Money sourcebook (ELM)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.5.2 G

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<thead>
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<th>Block</th>
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<td>The following chapters of SUP apply to every ELMI: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16 and 20. The following chapters of SUP do not apply to an ELMI: 4, 12, 14, 17, 18 and 19.</td>
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<td>Decision making manual (DEC) Decision, Procedure and Penalties Manual (DEPP)</td>
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<td>Applies to every ELMI.</td>
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</table>

8.3.9 G The application for a small e-money issuer certificate must be determined by the FSA within six months from when it receives the completed application or, if the application is incomplete, within 12 months. The applicant may withdraw his application by written notice. The FSA must give the applicant written notice of the grant of the application or a warning notice if it proposes to refuse the application. Guidance on the decision making procedures is given in DEC 2 (Statutory notice procedure: warning notice and decision notice procedure).

8.3.10 G An applicant who is aggrieved by the determination of the application may refer the matter to the Tribunal (see EG 2.39 DEC 5.1 (The Tribunal)).

8.3.12 G ENF 15 EG 12 (Prosecution of criminal offences) and DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences) contain guidance on the FSA's policy and procedures relating to the exercise of its powers to prosecute criminal offences, including offences under section 24 of the Act.

Procedure
8.6.5 G If the FSA proposes to revoke a small e-money issuer certificate otherwise than at the request of the small e-money issuer, it must give him a warning notice (see DEC 2.2 (Warning notice procedure)). Similarly, if it decides to revoke the certificate, it must give him a decision notice (see DEC 2.3 (Decision notice procedure)). (See DEPP 2)

8.6.6 G A small e-money issuer who is aggrieved at the decision to revoke the small e-money issuer certificate may refer the matter to the Tribunal (see EG 2.39 DEC 5.1 (The Tribunal)).

8.7.11 G The FSA may appoint one or more competent persons to carry out an investigation if it appears to it that there are circumstances suggesting that a small e-money issuer may not meet any of the conditions referred to in ELM 8.4. The FSA may also use this power if the small e-money issuer may not have met any of these conditions at any time since the small e-money issuer certificate was given. ENF 2 (Use of Information gathering and investigation powers) contains See EG 3 for guidance on the FSA’s policies relating to the use of its investigation powers.

Administrative and civil enforcement powers

8.7.17 G Where a small e-money issuer contravenes a rule in ELM 8.7 (Provision of information), or a requirement imposed under the powers referred to in ELM 8.7.6 G to ELM 8.7.11 G, the FSA may, among its other enforcement powers:

1. apply to the courts for an injunction (see ENF 6 EG 10 (Injunctions));

2. apply to the courts for a restitution order (see ENF 9 EG 11 (Restitution and redress)); and

3. revoke the small e-money issuer certificate (see ELM 8.6).

8.7.20 G ENF 15 (Prosecution of criminal offences) and DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences) contain For guidance on the FSA’s policy and procedures relating to the exercise of its powers to prosecute criminal offences, including offences under section 398 and 400 of the Act, see EG 12.
Annex S

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Exempt regulated activities

2.1.3 G Section 327 of the Act (Exemption from the general prohibition) sets out the conditions which must be met for a person to be treated as an exempt professional firm, and for the person's regulated activities to be treated as exempt regulated activities. If the exemption in section 327 does not apply to a person and the person carries on a regulated activity, the person may contravene the general prohibition and be committing a criminal offence. The FSA's approach to the use of its powers in respect of alleged contraventions of the general prohibition is explained in ENF 4$EG 12.

2.1.4 G If the FSA has made a direction under section 328 of the Act (Directions in relation to the general prohibition) (see PROF 3.2) in relation to classes of person (or regulated activity), then a person within the class (or carrying on the regulated activity) specified will not be an exempt professional firm. In addition, section 329 of the Act (Orders in relation to the general prohibition) gives the FSA power to make an order disapplying the Part XX exemption from a person named in the Order. The FSA's general approach to the use of this power is explained in ENF 48EG 16.
Annex T

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.2C  Control over a UK RIE
...

4.2C.7  G  If the FSA refuses to approve a change of control or objects to an existing control, the person concerned may refer the matter to the Tribunal (see EG 2.39). More information on the process for referrals to the Tribunal is set out in DEC 5.1.
...

4.2D.2  G  The procedure the FSA will follow if it exercises its power to require a UK RIE to suspend or remove a financial instrument from trading is set out in section 313B of the Act. The FSA’s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the FSA exercises this power, the UK RIE concerned and the issuer (if any) of the relevant financial instrument may refer the matter to the Tribunal (see EG 2.39). More information on the process for referrals to the Tribunal is set out in DEC 5.1.
Annex U

Amendments to the Listing Rules (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Application

1.1.1 R LR applies as follows:

(1) all of LR (other than LR 8.3, LR 8.4, LR 8.6 and LR 8.7) applies to an issuer; and

(2) LR 1, LR 8.1, LR 8.3, LR 8.4, LR 8.6 and LR 8.7 apply to a sponsor and a person applying for approval as a sponsor.

FSA performing functions as competent authority

Note: In relation to the listing rules, the FSA is performing functions as the competent authority under Part VI of the Act (see section 72(1) of the Act).

Note: when exercising functions as the competent authority under Part VI of the Act, the FSA may use the name: the UK Listing Authority.

Other relevant parts of Handbook

Note: Other parts of the Handbook that may also be relevant to issuers or sponsors include DTR (the Disclosure Rules and Transparency Rules sourcebook), PR (the Prospectus Rules sourcebook), COB (the Conduct of Business sourcebook), DEC (the Decision Making manual), DEPP (Decision Procedure and Penalties Manual), Chapter 9 of SUP (the Supervision manual) and Chapter 21 of ENF (the Enforcement manual) and GEN (General Provisions).

The following Regulatory Guides may also be relevant to issuers or sponsors:

1. The Enforcement Guide (EG)
2. [intentionally blank]

Decision-making procedures for suspension, cancellation etc

5.5.1 G The decision-making procedures that the FSA will follow when it cancels, suspends or refuses a request to restore listing are set out in DEPP (Decision Procedure and Penalties) DEC (the Decision Making manual).

7.1.4 G ENF 21 (Official listing—investigation powers and discipline) DEPP 6 (Penalties) and EG 7 sets out guidance on the
8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:

(1) carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;

(2) request that the applicant or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application;

(3) take into account any information which it considers appropriate in relation to the application.

**Note:** The decision-making procedures that the *FSA* will follow when is considers whether to refuse an application for approval as a *sponsor* are set out in **DEPPDEC**.

8.7.20 G *ENF 21 (Official listing—investigation powers and discipline)* sets out the *FSA*’s policy on when and how it will use its disciplinary powers, including in relation to a *sponsor*.

8.7.24 G (1) The decision-making procedures that the *FSA* will follow when it cancels a *sponsor*’s approval at the *sponsor*’s request are set out in **DEPDEC**.

(2) Under the statutory notice procedure set out in **DEPDEC** a request for cancellation of approval will take a minimum of 8 weeks to take effect.

---

**LR Appendix 1.1 Relevant definitions**

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Annex V

Amendments to the Prospectus Rules (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

PR 3.1 Approval of prospectus

Decision-making procedures

PR 3.1.9 R The FSA will follow the executive procedures for statutory notice decisions and statutory notice associated decisions if it:

(1) proposes to refuse to approve a prospectus; or

(2) decides to refuse to approve a prospectus after having given the applicant a written notice.

Note: DEC 4.3 DEPP 4 sets out the executive procedures for statutory notice decisions and statutory notice associated decisions.

PR Appendix 1 R Relevant definitions

App 1.1 R Note: The following definitions relevant to the prospectus rules are extracted from the Glossary.

| executive procedures | the procedures relating to the giving of warning notices, decision notices and supervisory notices that the FSA proposes to follow in the circumstances specified in DEC 4.1.6 G (Decisions to be taken by executive procedures), and that are described in DEC 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions) DEPP 4 (Decision by FSA staff under executive procedures). |
Annex W

Amendments to the Disclosure Rules and Transparency Rules (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

FSA performing functions as competent authority

1.1.3 G In relation to the disclosure rules, the FSA is exercising its functions as the competent authority under Part VI of the Act (see section 72(1) of the Act).

Other relevant parts of Handbook

Note: Other parts of the Handbook that may also be relevant to persons to whom the disclosure rules apply include DEPP (Decision Procedure and Penalties Manual), DEC (the Decision making manual), and Chapter 9 of SUP (the Supervision manual) and Chapter 21 of ENF (the Enforcement manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (EG)
2. [intentionally blank]

Note: A list of regulated markets can be found on the FSA website at the following address: www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

FSA performing functions as competent authority

1A.1.4 G In relation to the transparency rules, the FSA is exercising its functions as the competent authority under Part VI of the Act (see section 72(1) of the Act).

Other relevant parts of Handbook

Note: Other parts of the Handbook that may also be relevant to persons to whom the transparency rules apply include DEPP (Decision Procedure and Penalties Manual), DEC (the Decision making manual), and Chapter 9 of SUP (the Supervision manual) and Chapter 21 of ENF (the Enforcement manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (EG)
2. [intentionally blank]

Note: A list of regulated markets can be found on the FSA website at the following address: http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html
1.4 Suspension of trading

... 

1.4.5 G The decision-making procedures to be followed by the FSA when it:

(1) requires the suspension of trading of a financial instrument; or

(2) refuses an application by an issuer to lift a suspension made under section 96C;

are set out in *DEPPDEC.*