

## Annex E

## Amendments to the Decision Procedure and Penalties manual (DEPP)

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

**2 Statutory notices and the allocation of decision making**

...

**2 Annex 1G Warning notices and decision notices under the Act and certain other enactments**

...

Section of the Act	Description	Handbook reference	Decision maker
...			
S142T(1)/ (4)	When the <i>FCA</i> is proposing or deciding to take action against a <i>person</i> under section 142S*		RDC
<u>S143T(1)</u> <u>S143T(3)</u>	<u>When the <i>FCA</i> is proposing or deciding to make a <i>Part 9C prohibition order</i> under S143S(2) of the Act</u>		<u>RDC or executive procedures</u>
<u>S143U(2) (b)</u> <u>S143U(2) (c)</u>	<u>When the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of a <i>prohibition order</i> under S143U</u>		<u>RDC or executive procedures</u>
<u>S143W(1)</u> <u>S143W(5)</u>	<u>When the <i>FCA</i> is proposing or deciding to impose a penalty on a <i>person</i> under section 143V (2) of the Act</u>		<u>RDC or executive procedures</u>
<u>S143X(1)</u> <u>S143X(5)</u>	<u>When the <i>FCA</i> is proposing or deciding to publish a statement on a</u>		<u>RDC or executive procedures</u>

	<u>person under section 143P 143W((3) of the Act</u>		
...	...	...	...

...

## 2 Annex 2G Supervisory notices

...

Section of the Act	Description	Handbook reference	Decision maker
...			
137S(5) 137S(8)(a)	when the <i>FCA</i> gives a direction under section 137S		<i>Executive procedures</i>
<u>S143U(2)(a)</u>	<u>When the <i>FCA</i> decides to grant an application for the variation or revocation of a prohibition order under S143N(1) of the Act</u>		<u><i>Executive procedures</i></u>
<u>S143X</u>	<u>When the <i>FCA</i> decides to vary or cancel a restriction under S143W(6) of the Act</u>		<u><i>RDC or executive procedures</i></u>
...	...		...

...

### 6A The power to impose a suspension, restriction, condition limitation or disciplinary prohibition

...

#### 6A.1 Introduction

6A.1.1 G *DEPP* 6A sets out the *FCA*'s statement of policy with respect to:

- (1) The imposition of suspensions or restrictions under sections 88A, 89Q, 143W and 206A of the *Act*, and the period for which

those suspensions or restrictions are to have effect, as required by sections 88C(1), 89S(1) and 210(1) of the *Act*;

...

6A.1.2 G

...

(2) “restriction” refers to limitations or other restrictions in relation to:

...

(c) the performance of services to which a *sponsor’s* approval relates (under section 88A(2)(c) of the *Act*), ~~and~~;

(d) the dissemination of *regulated information* by a primary information provider (under section 89Q(2)(c) of the *Act*); and

(e) the exercising of functions by a *person* of an *FCA investment firm* or a *parent undertaking* of an *FCA investment firm* (under section 143W(5) of the *Act*)).

...

6A.1.3 G

...

(1) ...

...

(3) we may impose a restriction on the exercise of the functions by a *person* of an *FCA investment firm* or a *parent undertaking* of an *FCA investment firm*.

6A.1.4 G

The powers to impose a suspension, restriction, condition or limitation in relation to *authorised persons* and *approved persons*, to impose a restriction on *non-authorised parent undertakings* of *FCA investment firms*, members of the *management body* and *employees* of *non-authorised parent undertakings* who are *knowingly concerned in contravention of FCA rules* and to impose a disciplinary prohibition in relation to individuals, are disciplinary measures; where the *FCA* considers it necessary to take action, for example, to protect *consumers* from an *authorised person*, the *FCA* will seek to cancel or vary the *authorised person’s permissions*.

...

...

...

**6A.3 Determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition**

...

6A.3.2 G ...

(1) ...

...

(4) The impact of suspension, restriction, condition or disciplinary prohibition on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking*:

- (a) the *authorised person's, sponsor's, ~~or primary information provider's, or non-authorised parent undertaking's~~* expected lost revenue and profits from not being able to carry out the suspended or restricted activity;
- (b) the cost of any measures the *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* must undertake to comply with the suspension or restriction;
- ...
- (d) the effect on other areas of the *authorised person's, sponsor's, ~~or primary information provider's~~ or non-authorised parent undertaking's* business; and
- (e) whether the suspension or restriction would cause the *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* serious financial hardship.

The following considerations may be relevant to the assessment of the impact of suspension or condition on an *approved person* or the impact of a disciplinary prohibition or restriction on an individual:

...

...

6A.3.3 G The *FCA* may delay the commencement of the period of suspension, restriction or disciplinary prohibition. In deciding whether this is

appropriate, the *FCA* will take into account all the circumstances of a case. Considerations that may be relevant in respect of an *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* include:

...

- (2) any practical measures the *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;
- (3) the impact of the suspension or restriction on other costs incurred by the *authorised person, sponsor ~~or primary information provider~~ or non-authorised parent undertaking*, for example, cancelling suppliers or suspending employees.

...

**Sch 3 Fees and other required payments**

...

3.2	G	The <i>FCA</i> 's power to impose financial penalties is contained in:
		...
		section 131G (Power to impose penalty or issue censure) of the <i>Act</i>
		<u>Section 143W (Disciplinary powers for non-authorised parent undertakings) of the <i>Act</i>.</u>
		...

...

**Sch 4 Powers Exercised**

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
		...
		Section 139A (Power of the <i>FCA</i> to give guidance)
		<u>Section 143Y (Statement of policy for penalties under section 143W)</u>
		...

...