

**DECISION PROCEDURE AND PENALTIES MANUAL (FINANCIAL PENALTIES)
INSTRUMENT 2010**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 69(1) (Statement of policy);
 - (b) section 93(1) (Statement of policy);
 - (c) section 124(1) (Statement of policy);
 - (d) section 157(1) (Guidance); and
 - (e) section 210(1) (Statements of policy);
 - (2) regulations 36 (Financial penalties) and 42 (Guidance) of the Regulated Covered Bonds Regulations 2008; and
 - (3) regulations 86 (Proposal to take disciplinary measures) and 93 (Guidance) of and paragraph 1 of Schedule 5 (Disciplinary powers) to the Payment Services Regulations 2009.

Commencement

- B. This instrument comes into force on 6 March 2010.

Amendments to the Handbook

- C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.
- D. The Regulated Covered Bonds sourcebook (RCB) is amended in accordance with Annex B to this instrument.

Amendments to the Enforcement Guide

- E. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

Notes

- E. In Annex A to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Decision Procedure and Penalties Manual (Financial Penalties) Instrument 2010.

By order of the Board
25 February 2010

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

6.4 Financial penalty or public censure

6.4.1 G The *FSA* will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a *public censure*. As such, the factors set out in *DEPP* 6.4.2G are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

6.4.2 G The criteria for determining whether it is appropriate to issue a *public censure* rather than impose a financial penalty ~~are similar to those for~~ include those factors that the *FSA* will consider in determining the amount of penalty set out in *DEPP* 6.5 6.5A to *DEPP* 6.5D. Some particular considerations that may be relevant when the *FSA* determines whether to issue a *public censure* rather than impose a financial penalty are:

...

(8) the impact on the *person* concerned. ~~In exceptional circumstances, if the *person* has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their *breach* would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. However, it~~ It would only be in an exceptional case that the *FSA* would be prepared to agree to issue a *public censure* rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include where there is:

- (a) verifiable evidence that a *person* would suffer serious financial hardship if the *FSA* imposed a financial penalty where the application of the *FSA*'s policy on serious financial hardship (set out in *DEPP* 6.5D) results in a financial penalty being reduced to zero;
- (b) where there is verifiable evidence that the *person* would be unable to meet other regulatory requirements, particularly financial resource requirements, if the *FSA* imposed a financial penalty at an appropriate level; or
- (c) in Part VI cases in which the *FSA* may impose a financial penalty, where there is the likelihood of a severe adverse impact on a *person*'s shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition

of a financial penalty even though this may have an impact on a *person's* shareholders.

DEPP 6.5 is deleted in its entirety. The deleted text is not shown.

DEPP 6.5 is replaced by DEPP 6.5, DEPP 6.5A, DEPP 6.5B, DEPP 6.5C and DEPP 6.5D. The new text is not underlined.

6.5 Determining the appropriate level of financial penalty

6.5.1 G For the purpose of *DEPP 6.5* to *DEPP 6.5D* and *DEPP 6.6.2G*, the term “firm” means *firms* and those *unauthorised persons* who are not individuals.

6.5.2 G The *FSA's* penalty-setting regime is based on the following principles:

- (1) Disgorgement - a firm or individual should not benefit from any *breach*;
- (2) Discipline - a firm or individual should be penalised for wrongdoing; and
- (3) Deterrence - any penalty imposed should deter the firm or individual who committed the *breach*, and others, from committing further or similar *breaches*.

6.5.3 G (1) The total amount payable by a person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the *breach*; and (ii) a financial penalty reflecting the seriousness of the *breach*. These elements are incorporated in a five-step framework, which can be summarised as follows:

- (a) Step 1: the removal of any financial benefit derived directly from the *breach*;
- (b) Step 2: the determination of a figure which reflects the seriousness of the *breach*;
- (c) Step 3: an adjustment made to the Step 2 figure to take account of any aggravating and mitigating circumstances;
- (d) Step 4: an upwards adjustment made to the amount arrived at after Steps 2 and 3, where appropriate, to ensure that the penalty has an appropriate deterrent effect; and
- (e) Step 5: if applicable, a settlement discount will be applied. This discount does not apply to disgorgement of any financial benefit derived directly from the *breach*.

- (2) These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (*DEPP 6.5A*), cases against individuals (*DEPP 6.5B*) and *market abuse* cases against individuals (*DEPP 6.5C*).
- (3) The *FSA* recognises that a penalty must be proportionate to the *breach*. The *FSA* may decrease the level of the penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the *breach* concerned. For cases against firms, the *FSA* will have regard to whether the *firm* is also an individual (for example, a sole trader) in determining whether the figure arrived at after applying Step 2 is disproportionate.
- (4) The lists of factors and circumstances in *DEPP 6.5A* to *DEPP 6.5D* are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.
- (5) The *FSA* may decide to impose a financial penalty on a mutual (such as a *building society*), even though this may have a direct impact on that mutual's *customers*. This reflects the fact that a significant proportion of a mutual's *customers* are shareholder-members; to that extent, their position involves an assumption of risk that is not assumed by *customers* of a firm that is not a mutual. Whether a firm is a mutual will not, by itself, increase or decrease the level of a financial penalty.
- (6) Part III (Penalties and Fees) of Schedule 1 to the *Act* specifically provides that the *FSA* may not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

6.5A The five steps for penalties imposed on firms

Step 1 – disgorgement

- 6.5A.1 G
- (1) The *FSA* will seek to deprive a firm of the financial benefit derived directly from the *breach* (which may include the profit made or loss avoided) where it is practicable to quantify this. The *FSA* will ordinarily also charge interest on the benefit.
 - (2) Where the success of a firm's entire business model is dependent on breaching *FSA rules* or other requirements of the *regulatory system* and the *breach* is at the core of the firm's *regulated activities*, the *FSA* will seek to deprive the firm of all the financial benefit derived from such activities. Where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the *breach*, or where the *FSA* decides to impose a redress programme, the *FSA* will take this into consideration. In such cases

the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

[**Note:** For the purposes of *DEPP* 6.5A, “firm” has the special meaning given to it in *DEPP* 6.5.1G.]

Step 2 – the seriousness of the *breach*

- 6.5A.2 G (1) The *FSA* will determine a figure that reflects the seriousness of the *breach*. In many cases, the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its *breach* may cause, and in such cases the *FSA* will determine a figure which will be based on a percentage of the firm’s revenue from the relevant products or business areas. The *FSA* also believes that the amount of revenue generated by a firm from a particular product or business area is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. However, the *FSA* recognises that there may be cases where revenue is not an appropriate indicator of the harm or potential harm that a firm’s *breach* may cause, and in those cases the *FSA* will use an appropriate alternative.
- (2) In those cases where the *FSA* considers that revenue is an appropriate indicator of the harm or potential harm that a firm’s *breach* may cause, the *FSA* will determine a figure which will be based on a percentage of the firm’s “relevant revenue”. “Relevant revenue” will be the revenue derived by the firm during the period of the *breach* from the products or business areas to which the *breach* relates. Where the *breach* lasted less than 12 months, or was a one-off event, the relevant revenue will be that derived by the firm in the 12 months preceding the end of the *breach*. Where the firm was in existence for less than 12 months, its relevant revenue will be calculated on a pro rata basis to the equivalent of 12 months’ relevant revenue.
- (3) Having determined the relevant revenue, the *FSA* will then decide on the percentage of that revenue which will form the basis of the penalty. In making this determination the *FSA* will consider the seriousness of the *breach* and choose a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the *breach*. The more serious the *breach*, the higher the level. For penalties imposed on firms there are the following five levels:
- (a) level 1 - 0%;
 - (b) level 2 - 5%;
 - (c) level 3 - 10%;
 - (d) level 4 - 15%; and

- (e) level 5 - 20%.
- (4) The *FSA* will assess the seriousness of a *breach* to determine which level is most appropriate to the case.
- (5) In deciding which level is most appropriate to a case involving a firm, the *FSA* will take into account various factors, which will usually fall into the following four categories:
- (a) factors relating to the impact of the *breach*;
 - (b) factors relating to the nature of the *breach*;
 - (c) factors tending to show whether the *breach* was deliberate; and
 - (d) factors tending to show whether the *breach* was reckless.
- (6) Factors relating to the impact of a *breach* committed by a firm include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the firm from the *breach*, either directly or indirectly;
 - (b) the loss or risk of loss, as a whole, caused to *consumers*, investors or other market users in general;
 - (c) the loss or risk of loss caused to individual *consumers*, investors or other market users;
 - (d) whether the *breach* had an effect on particularly vulnerable people, whether intentionally or otherwise;
 - (e) the inconvenience or distress caused to *consumers*; and
 - (f) whether the *breach* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.
- (7) Factors relating to the nature of a *breach* by a firm include:
- (a) the nature of the *rules*, requirements or provisions breached;
 - (b) the frequency of the *breach*;
 - (c) whether the *breach* revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business;
 - (d) whether the firm's senior management were aware of the

breach;

- (e) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*;
 - (f) the scope for any potential *financial crime* to be facilitated, occasioned or otherwise occur as a result of the *breach*;
 - (g) whether the firm failed to conduct its business with integrity;
 - (h) whether the firm, in committing the *breach*, took any steps to comply with *FSA rules*, and the adequacy of those steps; and
 - (i) in the context of contraventions of Part VI of the *Act*, the extent to which the *behaviour* which constitutes the contravention departs from current market practice.
- (8) Factors tending to show the *breach* was deliberate include:
- (a) the *breach* was intentional, in that the firm's senior management, or a responsible individual, intended or foresaw that the likely or actual consequences of their actions or inaction would result in a *breach*;
 - (b) the firm's senior management, or a responsible individual, knew that their actions were not in accordance with the firm's internal procedures;
 - (c) the firm's senior management, or a responsible individual, sought to conceal their misconduct;
 - (d) the firm's senior management, or a responsible individual, committed the *breach* in such a way as to avoid or reduce the risk that the *breach* would be discovered;
 - (e) the firm's senior management, or a responsible individual, were influenced to commit the *breach* by the belief that it would be difficult to detect;
 - (f) the *breach* was repeated; and
 - (g) in the context of a contravention of any *rule* or requirement imposed by or under Part VI of the *Act*, the firm obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a *person's* responsibility for compliance with applicable *rules* and requirements.
- (9) Factors tending to show the *breach* was reckless include:
- (a) the firm's senior management, or a responsible individual, appreciated there was a risk that their actions or inaction

- could result in a *breach* and failed adequately to mitigate that risk; and
- (b) the firm's senior management, or a responsible individual, were aware there was a risk that their actions or inaction could result in a *breach* but failed to check if they were acting in accordance with the firm's internal procedures.
- (10) Additional factors to which the *FSA* will have regard when determining the appropriate level of financial penalty to be imposed under regulation 34 of the *RCB Regulations* are set out in *RCB* 4.2.5G.
- (11) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:
- (a) the *breach* caused a significant loss or risk of loss to individual *consumers*, investors or other market users;
- (b) the *breach* revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business;
- (c) *financial crime* was facilitated, occasioned or otherwise attributable to the *breach*;
- (d) the *breach* created a significant risk that *financial crime* would be facilitated, occasioned or otherwise occur;
- (e) the firm failed to conduct its business with integrity; and
- (f) the *breach* was committed deliberately or recklessly.
- (12) Factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:
- (a) little, or no, profits were made or losses avoided as a result of the *breach*, either directly or indirectly;
- (b) there was no or little loss or risk of loss to *consumers*, investors or other market users individually and in general;
- (c) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the *breach*;
- (d) there is no evidence that the *breach* indicates a widespread problem or weakness at the firm; and
- (e) the *breach* was committed negligently or inadvertently.
- (13) In those cases where revenue is not an appropriate indicator of the

harm or potential harm that a firm's *breach* may cause, the *FSA* will adopt a similar approach, and so will determine the appropriate Step 2 amount for a particular *breach* by taking into account relevant factors, including those listed above. In these cases the *FSA* may not use the percentage levels that are applied in those cases in which revenue is an appropriate indicator of the harm or potential harm that a firm's *breach* may cause.

Step 3 – mitigating and aggravating factors

- 6.5A.3 G (1) The *FSA* may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *breach*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *breach*:
- (a) the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the *breach* to the *FSA*'s attention (or the attention of other regulatory authorities, where relevant);
 - (b) the degree of cooperation the firm showed during the investigation of the *breach* by the *FSA*, or any other regulatory authority allowed to share information with the *FSA*;
 - (c) where the firm's senior management were aware of the *breach* or of the potential for a *breach*, whether they took any steps to stop the *breach*, and when these steps were taken;
 - (d) any remedial steps taken since the *breach* was identified, including whether these were taken on the firm's own initiative or that of the *FSA* or another regulatory authority; for example, identifying whether *consumers* or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future. The size and resources of the firm may be relevant to assessing the reasonableness of the steps taken;
 - (e) whether the firm has arranged its resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
 - (f) whether the firm had previously been told about the *FSA*'s

concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;

- (g) whether the firm had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the firm concerned has complied with any requirements or rulings of another regulatory authority relating to the *breach*;
- (i) the previous disciplinary record and general compliance history of the firm;
- (j) action taken against the firm by other domestic or international regulatory authorities that is relevant to the *breach* in question;
- (k) whether *FSA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- (l) whether the *FSA* publicly called for an improvement in standards in relation to the behaviour constituting the *breach* or similar behaviour before or during the occurrence of the *breach*.

Step 4 – adjustment for deterrence

- 6.5A.4 G (1) If the *FSA* considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the *breach*, or others, from committing further or similar *breaches* then the *FSA* may increase the penalty. Circumstances where the *FSA* may do this include:
- (a) where the *FSA* considers the absolute value of the penalty too small in relation to the *breach* to meet its objective of credible deterrence;
 - (b) where previous *FSA* action in respect of similar *breaches* has failed to improve industry standards. This may include similar *breaches* relating to different products (for example, action for mis-selling or claims handling failures in respect of ‘x’ product may be relevant to a case for mis-selling or claims handling failures in respect of ‘y’ product);
 - (c) where the *FSA* considers it is likely that similar *breaches* will be committed by the firm or by other firms in the future in the absence of such an increase to the penalty; and
 - (d) where the *FSA* considers that the likelihood of the detection of such a *breach* is low.

Step 5 – settlement discount

- 6.5A.5 G The *FSA* and the firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the firm concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.5B The five steps for penalties imposed on individuals in non-market abuse cases

Step 1 – disgorgement

- 6.5B.1 G The *FSA* will seek to deprive an individual of the financial benefit derived directly from the *breach* (which may include the profit made or loss avoided) where it is practicable to quantify this. The *FSA* will ordinarily also charge interest on the benefit. Where the success of a firm's entire business model is dependent on breaching *FSA rules* or other requirements of the *regulatory system* and the individual's *breach* is at the core of the firm's *regulated activities*, the *FSA* will seek to deprive the individual of all the financial benefit he has derived from such activities.

[**Note:** For the purposes of *DEPP* 6.5B, “firm” has the special meaning given to it in *DEPP* 6.5.1G.]

Step 2 – the seriousness of the *breach*

- 6.5B.2 G (1) The *FSA* will determine a figure which will be based on a percentage of an individual's “relevant income”. “Relevant income” will be the gross amount of all benefits received by the individual from the employment in connection with which the *breach* occurred (the “relevant employment”), and for the period of the *breach*. In determining an individual's relevant income, “benefits” includes, but is not limited to, salary, bonus, pension contributions, *share* options and *share* schemes; and “employment” includes, but is not limited to, employment as an adviser, *director*, partner or contractor.
- (2) Where the *breach* lasted less than 12 *months*, or was a one-off event, the relevant income will be that earned by the individual in the 12 *months* preceding the end of the *breach*. Where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 *months*' relevant income.
- (3) This approach reflects the *FSA*'s view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The *FSA* also believes that the

extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The *FSA* recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the *FSA* still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if his employment is not totally related to a controlled function.

- (4) Having determined the relevant income the *FSA* will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the *FSA* will consider the seriousness of the *breach* and choose a percentage between 0% and 40%.
- (5) This range is divided into five fixed levels which reflect, on a sliding scale, the seriousness of the *breach*. The more serious the *breach*, the higher the level. For penalties imposed on individuals there are the following five levels:
 - (a) level 1 – 0%;
 - (b) level 2 - 10%;
 - (c) level 3 - 20%;
 - (d) level 4 - 30%; and
 - (e) level 5 - 40%.
- (6) The *FSA* will assess the seriousness of a *breach* to determine which level is most appropriate to the case.
- (7) In deciding which level is most appropriate to a case against an individual, the *FSA* will take into account various factors which will usually fall into the following four categories:
 - (a) factors relating to the impact of the *breach*;
 - (b) factors relating to the nature of the *breach*;
 - (c) factors tending to show whether the *breach* was deliberate; and
 - (d) factors tending to show whether the *breach* was reckless.
- (8) Factors relating to the impact of a *breach* committed by an individual include:
 - (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the *breach*, either

- directly or indirectly;
- (b) the loss or risk of loss, as a whole, caused to *consumers*, investors or other market users in general;
 - (c) the loss or risk of loss caused to individual *consumers*, investors or other market users;
 - (d) whether the *breach* had an effect on particularly vulnerable people, whether intentionally or otherwise;
 - (e) the inconvenience or distress caused to *consumers*; and
 - (f) whether the *breach* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.
- (9) Factors relating to the nature of a *breach* by an individual include:
- (a) the nature of the *rules*, requirements or provisions breached;
 - (b) the frequency of the *breach*;
 - (c) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*;
 - (d) the scope for any potential *financial crime* to be facilitated, occasioned or otherwise occur as a result of the *breach*;
 - (e) whether the individual failed to act with integrity;
 - (f) whether the individual abused a position of trust;
 - (g) whether the individual committed a breach of any professional code of conduct;
 - (h) whether the individual caused or encouraged other individuals to commit *breaches*;
 - (i) whether the individual held a prominent position within the industry;
 - (j) whether the individual is an experienced industry professional;
 - (k) whether the individual held a senior position with the firm;
 - (l) the extent of the responsibility of the individual for the product or business areas affected by the *breach*, and for the particular matter that was the subject of the *breach*;

- (m) whether the individual acted under duress;
 - (n) whether the individual took any steps to comply with *FSA rules*, and the adequacy of those steps; and
 - (o) in the context of contraventions of Part VI of the *Act*, the extent to which the *behaviour* which constitutes the contravention departs from current market practice.
- (10) Factors tending to show the *breach* was deliberate include:
- (a) the *breach* was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions or inaction would result in a *breach*;
 - (b) the individual intended to benefit financially from the *breach*, either directly or indirectly;
 - (c) the individual knew that his actions were not in accordance with his firm's internal procedures;
 - (d) the individual sought to conceal his misconduct;
 - (e) the individual committed the *breach* in such a way as to avoid or reduce the risk that the *breach* would be discovered;
 - (f) the individual was influenced to commit the *breach* by the belief that it would be difficult to detect;
 - (g) the individual knowingly took decisions relating to the *breach* beyond his field of competence; and
 - (h) the individual's actions were repeated.
- (11) Factors tending to show the *breach* was reckless include:
- (a) the individual appreciated there was a risk that his actions or inaction could result in a *breach* and failed adequately to mitigate that risk; and
 - (b) the individual was aware there was a risk that his actions or inaction could result in a *breach* but failed to check if he was acting in accordance with internal procedures.
- (12) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:
- (a) the *breach* caused a significant loss or risk of loss to individual *consumers*, investors or other market users;
 - (b) *financial crime* was facilitated, occasioned or otherwise

- attributable to the *breach*;
- (c) the *breach* created a significant risk that *financial crime* would be facilitated, occasioned or otherwise occur;
 - (d) the individual failed to act with integrity;
 - (e) the individual abused a position of trust;
 - (f) the individual held a prominent position within the industry; and
 - (g) the *breach* was committed deliberately or recklessly.
- (13) Factors which are likely to be considered ‘level 1 factors’, ‘level 2 factors’ or ‘level 3 factors’ include:
- (a) little, or no, profits were made or losses avoided as a result of the *breach*, either directly or indirectly;
 - (b) there was no or little loss or risk of loss to *consumers*, investors or other market users individually and in general;
 - (c) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the *breach*; and
 - (d) the *breach* was committed negligently or inadvertently.

Step 3 – mitigating and aggravating factors

- 6.5B.3 G (1) The *FSA* may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *breach*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *breach*:
- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *breach* to the *FSA*’s attention (or the attention of other regulatory authorities, where relevant);
 - (b) the degree of cooperation the individual showed during the investigation of the *breach* by the *FSA*, or any other regulatory authority allowed to share information with the *FSA*;
 - (c) whether the individual took any steps to stop the *breach*, and

when these steps were taken;

- (d) any remedial steps taken since the *breach* was identified, including whether these were taken on the individual's own initiative or that of the *FSA* or another regulatory authority;
- (e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the individual had previously been told about the *FSA's* concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the *breach*;
- (i) the previous disciplinary record and general compliance history of the individual;
- (j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the *breach* in question;
- (k) whether *FSA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
- (l) whether the *FSA* publicly called for an improvement in standards in relation to the behaviour constituting the *breach* or similar behaviour before or during the occurrence of the *breach*; and
- (m) whether the individual agreed to undertake training subsequent to the *breach*.

Step 4 – adjustment for deterrence

- 6.5B.4 G (1) If the *FSA* considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *breach*, or others, from committing further or similar *breaches* then the *FSA* may increase the penalty. Circumstances where the *FSA* may do this include:
- (a) where the *FSA* considers the absolute value of the penalty too small in relation to the *breach* to meet its objective of credible deterrence;

- (b) where previous *FSA* action in respect of similar *breaches* has failed to improve industry standards. This may include similar *breaches* relating to different products (for example, action for mis-selling or claims handling failures in respect of ‘x’ product may be relevant to a case for mis-selling or claims handling failures in respect of ‘y’ product);
- (c) where the *FSA* considers it is likely that similar *breaches* will be committed by the individual or by other individuals in the future;
- (d) where the *FSA* considers that the likelihood of the detection of such a *breach* is low; and
- (e) where a penalty based on an individual’s income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

Step 5 – settlement discount

- 6.5B.5 G The *FSA* and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.5C The five steps for penalties imposed on individuals in market abuse cases

Step 1 – disgorgement

- 6.5C.1 G The *FSA* will seek to deprive an individual of the financial benefit derived as a direct result of the *market abuse* (which may include the profit made or loss avoided) where it is practicable to quantify this. The *FSA* will ordinarily also charge interest on the benefit.

Step 2 – the seriousness of the *market abuse*

- 6.5C.2 G (1) The *FSA* will determine a figure dependent on the seriousness of the *market abuse* and whether or not it was referable to the individual’s employment. This reflects the *FSA*’s view that where an individual has been put into a position where he can commit *market abuse* because of his employment the fine imposed should reflect this by reference to the gross amount of all benefits derived from that employment.
- (2) In cases where the *market abuse* was referable to the individual’s employment, the figure for the purpose of Step 2 will be the greater

of:

- (a) a figure based on a percentage of the individual's "relevant income". The percentage of relevant income which will apply is explained in paragraphs (6) and (8) to (16) below;
 - (b) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the *market abuse* (the "profit multiple"). The profit multiple which will apply is explained in paragraphs (6) and (8) to (16) below; and
 - (c) for *market abuse* cases which the *FSA* assesses to be seriousness level 4 or 5, £100,000. How the *FSA* will assess the seriousness level of the *market abuse* is explained in paragraphs (9) to (16) below. The *FSA* usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.
- (3) In cases where the *market abuse* was not referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:
- (a) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the *market abuse* (the "profit multiple"). The profit multiple which will apply is explained in paragraphs (7) to (16) below; and
 - (b) for *market abuse* cases which the *FSA* assesses to be seriousness level 4 or 5, £100,000. How the *FSA* will assess the seriousness level of the *market abuse* is explained in paragraphs (9) to (16) below. The *FSA* usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.
- (4) An individual's "relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the *market abuse* occurred (the "relevant employment") for the period of the *market abuse*. In determining an individual's relevant income, "benefits" includes, but is not limited to, salary, bonus, pension contributions, *share* options and *share* schemes; and "employment" includes, but is not limited to, employment as an adviser, *director*, partner or contractor.
- (5) Where the *market abuse* lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the final *market abuse*. Where the individual was in the relevant employment for less than 12 months, his relevant

income will be calculated on a pro rata basis to the equivalent of 12 *months*' relevant income.

- (6) In cases where the *market abuse* was referable to the individual's employment:
 - (a) the *FSA* will determine the percentage of relevant income which will apply by considering the seriousness of the *market abuse* and choosing a percentage between 0% and 40%; and
 - (b) the *FSA* will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.
- (7) In cases where the *market abuse* was not referable to the individual's employment the *FSA* will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.
- (8) The percentage range (where the *market abuse* was referable to the individual's employment) and profit multiple range (in all cases) are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the *market abuse*. The more serious the *market abuse*, the higher the level. For penalties imposed on individuals for *market abuse* there are the following five levels (the percentage figures only apply where the *market abuse* was referable to the individual's employment):
 - (a) level 1 – 0%, profit multiple of 0;
 - (b) level 2 – 10%, profit multiple of 1;
 - (c) level 3 – 20%, profit multiple of 2;
 - (d) level 4 – 30%, profit multiple of 3; and
 - (e) level 5 – 40%, profit multiple of 4.
- (9) The *FSA* will assess the seriousness of the *market abuse* to determine which level is most appropriate to the case.
- (10) In deciding which level is most appropriate to a *market abuse* case, the *FSA* will take into account various factors which will usually fall into the following four categories:
 - (a) factors relating to the impact of the *market abuse*;
 - (b) factors relating to the nature of the *market abuse*;
 - (c) factors tending to show whether the *market abuse* was deliberate; and

- (d) factors tending to show whether the *market abuse* was reckless.
- (11) Factors relating to the impact of the *market abuse* include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the *market abuse*, either directly or indirectly;
 - (b) whether the *market abuse* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk; and
 - (c) whether the *market abuse* had a significant impact on the price of *shares* or other *investments*.
- (12) Factors relating to the nature of the *market abuse* include:
- (a) the frequency of the *market abuse*;
 - (b) whether the individual abused a position of trust;
 - (c) whether the individual caused or encouraged other individuals to commit *market abuse*;
 - (d) whether the individual has a prominent position in the market;
 - (e) whether the individual is an experienced industry professional;
 - (f) whether the individual held a senior position with the firm; and
 - (g) whether the individual acted under duress.
- (13) Factors tending to show the *market abuse* was deliberate include:
- (a) the *market abuse* was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions would result in *market abuse*;
 - (b) the individual intended to benefit financially from the *market abuse*, either directly or indirectly;
 - (c) the individual knew that his actions were not in accordance with exchange rules, *share* dealing rules and/or the firm's internal procedures;
 - (d) the individual sought to conceal his misconduct;

- (e) the individual committed the *market abuse* in such a way as to avoid or reduce the risk that the *market abuse* would be discovered;
 - (f) the individual was influenced to commit the *market abuse* by the belief that it would be difficult to detect;
 - (g) the individual's actions were repeated;
 - (h) for *market abuse* falling within section 118(2) of the *Act*, the individual knew or recognised that the information on which the *dealing* was based was *inside information*; and
 - (i) for *market abuse* falling within section 118(4) of the *Act*, the individual's behaviour was based on information which he knew or recognised was not generally available to those using the market, and the individual regarded the information as relevant when deciding the terms on which transactions in qualifying *investments* should be effected.
- (14) Factors tending to show the *market abuse* was reckless include:
- (a) the individual appreciated there was a risk that his actions could result in *market abuse* and failed adequately to mitigate that risk; and
 - (b) the individual was aware there was a risk that his actions could result in *market abuse* but failed to check if he was acting in accordance with internal procedures.
- (15) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, directly by the individual from the *market abuse* was significant;
 - (b) the *market abuse* had a serious adverse effect on the orderliness of, or confidence in, markets;
 - (c) the *market abuse* was committed on multiple occasions;
 - (d) the individual breached a position of trust;
 - (e) the individual has a prominent position in the market; and
 - (f) the *market abuse* was committed deliberately or recklessly.
- (16) In following this approach factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:

- (a) little, or no, profits were made or losses avoided as a result of the *market abuse*, either directly or indirectly;
- (b) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the *market abuse*; and
- (c) the *market abuse* was committed negligently or inadvertently.

[Note: For the purposes of *DEPP* 6.5C, “firm” has the special meaning given to it in *DEPP* 6.5.1G.]

Step 3 – mitigating and aggravating factors

- 6.5C.3 G (1) The *FSA* may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *market abuse*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *market abuse*:
- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *market abuse* to the *FSA*'s attention (or the attention of other regulatory authorities, where relevant);
 - (b) the degree of cooperation the individual showed during the investigation of the *market abuse* by the *FSA*, or any other regulatory authority allowed to share information with the *FSA*;
 - (c) whether the individual assists the *FSA* in action taken against other individuals for *market abuse* and/or in criminal proceedings;
 - (d) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
 - (e) whether the individual had previously been told about the *FSA*'s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
 - (f) the previous disciplinary record and general compliance history of the individual;
 - (g) action taken against the individual by other domestic or international regulatory authorities that is relevant to the

market abuse in question;

- (h) whether *FSA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- (i) whether the individual agreed to undertake training subsequent to the *market abuse*.

Step 4 – adjustment for deterrence

- 6.5C.4 G (1) If the *FSA* considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *market abuse*, or others, from committing further or similar abuse then the *FSA* may increase the penalty. Circumstances where the *FSA* may do this include:
- (a) where the *FSA* considers the absolute value of the penalty too small in relation to the *market abuse* to meet its objective of credible deterrence;
 - (b) where previous *FSA* action in respect of similar *market abuse* has failed to improve industry standards; and
 - (c) where the penalty may not act as a deterrent in light of the size of the individual's income or net assets.

Step 5 – settlement discount

- 6.5C.5 G The *FSA* and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.5D Serious financial hardship

- 6.5D.1 G (1) The *FSA*'s approach to determining penalties described in *DEPP* 6.5 to *DEPP* 6.5C is intended to ensure that financial penalties are proportionate to the *breach*. The *FSA* recognises that penalties may affect persons differently, and that the *FSA* should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.
- (2) Where an individual or firm claims that payment of the penalty proposed by the *FSA* will cause them serious financial hardship, the *FSA* will consider whether to reduce the proposed penalty only if:

- (a) the individual or firm provides verifiable evidence that payment of the penalty will cause them serious financial hardship; and
 - (b) the individual or firm provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the *FSA* about their financial position.
- (3) The onus is on the individual or firm to satisfy the *FSA* that payment of the penalty will cause them serious financial hardship.

[**Note:** For the purposes of *DEPP* 6.5D, “firm” has the special meaning given to it in *DEPP* 6.5.1G.]

Individuals

- 6.5D.2 G (1) In assessing whether a penalty would cause an individual serious financial hardship, the *FSA* will consider the individual’s ability to pay the penalty over a reasonable period (normally no greater than three years). The *FSA*’s starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty. Unless the *FSA* believes that both the individual’s income and capital will fall below these respective thresholds as a result of payment of the penalty, the *FSA* is unlikely to be satisfied that the penalty will result in serious financial hardship.
- (2) The *FSA* will consider all relevant circumstances in determining whether the income and capital threshold levels should be increased in a particular case.
- (3) The *FSA* will consider agreeing to payment of the penalty by instalments where the individual requires time to realise his assets, for example by waiting for payment of a salary or by selling property.
- (4) For the purposes of considering whether an individual will suffer serious financial hardship, the *FSA* will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), *investments* and land. The *FSA* will normally consider as capital the equity that an individual has in the home in which he lives, but will consider any representations by the individual about this; for example, as to the exceptionally severe impact a sale of the property might have upon other occupants of the property or the impracticability of re-mortgaging or selling the property within a reasonable period.
- (5) The *FSA* may also consider the extent to which the individual has access to other means of financial support in determining whether he

is able to pay the penalty without being caused serious financial hardship.

- (6) Where a penalty is reduced it will be reduced to an amount which the individual can pay without going below the threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.
- (7) There may be cases where, even though the individual has satisfied the *FSA* that payment of the financial penalty would cause him serious financial hardship, the *FSA* considers the *breach* to be so serious that it is not appropriate to reduce the penalty. The *FSA* will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
 - (a) the individual directly derived a financial benefit from the *breach* and, if so, the extent of that financial benefit;
 - (b) the individual acted fraudulently or dishonestly with a view to personal gain;
 - (c) previous *FSA* action in respect of similar *breaches* has failed to improve industry standards; or
 - (d) the individual has spent money or dissipated assets in anticipation of *FSA* or other enforcement action with a view to frustrating or limiting the impact of action taken by the *FSA* or other authorities.

Prohibition orders and withdrawal of approval

- 6.5D.3 G In cases against individuals, including *market abuse* cases, the *FSA* may make a *prohibition order* under section 56 of the *Act* or withdraw an individual's approval under section 63 of the *Act*, as well as impose a financial penalty. Such action by the *FSA* reflects the *FSA*'s assessment of the individual's fitness to perform *regulated activity* or suitability for a particular role, and does not affect the *FSA*'s assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the *FSA* has made a *prohibition order* against an individual or withdrawn his approval, as a result of which the individual may have less earning potential, may be relevant in assessing whether the penalty will cause the individual serious financial hardship.

Firms

- 6.5D.4 G (1) The *FSA* will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the *FSA* will take into consideration the firm's financial circumstances, including whether the penalty would render the firm

insolvent or threaten the firm's solvency. The *FSA* will also take into account its regulatory objectives, for example in situations where *consumers* would be harmed or market confidence would suffer, the *FSA* may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.

- (2) There may be cases where, even though the firm has satisfied the *FSA* that payment of the financial penalty would cause it serious financial hardship, the *FSA* considers the *breach* to be so serious that it is not appropriate to reduce the penalty. The *FSA* will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
- (a) the firm directly derived a financial benefit from the *breach* and, if so, the extent of that financial benefit;
 - (b) the firm acted fraudulently or dishonestly in order to benefit financially;
 - (c) previous *FSA* action in respect of similar *breaches* has failed to improve industry standards; or
 - (d) the firm has spent money or dissipated assets in anticipation of *FSA* or other enforcement action with a view to frustrating or limiting the impact of action taken by the *FSA* or other authorities.

Transfers of assets

- 6.5D.5 G Where the *FSA* considers that, following commencement of an *FSA* investigation, an individual or firm has reduced their solvency in order to reduce the amount of any disgorgement or financial penalty payable, for example by transferring assets to third parties, the *FSA* will normally take account of those assets when determining whether the individual or firm would suffer serious financial hardship as a result of the disgorgement and financial penalty.

Amend the following as shown.

6.6 Financial penalties for late and incomplete submission of reports

- 6.6.1 G (1) The *FSA* attaches considerable importance to the timely submission by *firms* of reports. This is because the information that they contain is essential to the *FSA*'s assessment of whether a *firm* is complying with the requirements and standards of the *regulatory system* and to the *FSA*'s understanding of that *firm's* business.
- (2) *DEPP* 6.6.1G to *DEPP* 6.6.5G set out the *FSA*'s policy in relation to financial penalties for late submission of reports and is in addition to the *FSA*'s policy relating to financial penalties ~~including the factors~~

~~relevant to determining their appropriate level (see *DEPP 6.5.2G*) as set out in *DEPP 6.5* to *DEPP 6.5D*.~~

- 6.6.2 G In addition to the factors ~~relevant to determining the appropriate level of financial penalty (see *DEPP 6.5.2G*) considered in Step 2 for cases against firms (*DEPP 6.5A*) and cases against individuals (*DEPP 6.5B*), the following considerations are relevant.~~
- (1) In general, the *FSA's* approach to disciplinary action arising from the late submission of a report will depend upon the length of time after the due date that the report in question is submitted.
 - (2) If the *person* concerned is an individual, it is open to him to make representations to the *FSA* as to why he should not be the subject of a financial penalty, or why a lower penalty should be imposed. If he does so, the matters to which the *FSA* will have regard will include the matters set out in ~~*DEPP 6.5.2G(4)* and *DEPP 6.5.2G(5)*~~ *6.5B*. It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute a relevant circumstance for this purpose.

...

[Note: For the purposes of *DEPP 6.6.2G*, “firm” has the special meaning given to it in *DEPP 6.5.1G*.]

6.7 Discount for early settlement

...

- 6.7.2 G In appropriate cases the *FSA's* approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the ~~factors set out in *DEPP 6.5.2G*~~ *FSA's* statement of policy as set out in *DEPP 6.5* to *DEPP 6.5D* and *DEPP 6.6*. (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the *breach*. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

...

Schedule 4 Powers Exercised

...

4.2	G	The following additional powers and related provisions have been exercised by the <i>FSA</i> to make the statements of policy in <i>DEPP</i> :
		...
		Regulation 44 ...
		<u>Regulation 86 (Proposal to take disciplinary measures) of the <i>Payment Services Regulations</i></u>
		...

Annex B

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

4.2 Enforcement powers and penalties

...

Financial penalties

- 4.2.4 G The *FSA'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 *FSA* 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*;
 - (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*.

Annex C

Amendments to the Enforcement Guide (EG)

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

6 Publicity

Publicity during FSA investigations

...

6.4 The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for the FSA to make public the fact of its investigation in order to allay concern, or contain the speculation or rumour. Where the matter in question relates to a *takeover bid*, the FSA will discuss any announcement beforehand with the *Takeover Panel*. Any announcement will be subject to the restriction on disclosure of *confidential information* in section 348 of the *Act*.

6.5 ~~There will also be cases where publicity is unavoidable. For example, investigations into suspected criminal offences may often lead the FSA into making enquiries amongst the general public which might attract publicity. [deleted]~~

...

Publicity during, or upon the conclusion of criminal action (see chapter 12)

6.17 ~~Like civil proceedings, criminal court proceedings nearly always take place in public from the time they begin. However, the FSA will always be very careful to ensure that any FSA publicity does not prejudice the fairness of any subsequent trial. The FSA will normally publicise the outcome of public hearings in criminal prosecutions.~~

6.17A When conducting a criminal investigation the FSA will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid. A public announcement may also be made at other stages of the investigation when this is considered appropriate.

6.17B The FSA will always be very careful to ensure that any FSA publicity does not prejudice the fairness of any subsequent trial.

...

7 Financial penalties and public censures

...

FSA's statements of policy

- 7.4 The FSA's statement of policy in relation to the imposition of financial penalties is set out in *DEPP* 6.2 (Deciding whether to take action), *DEPP* 6.3 (Penalties for market abuse) and *DEPP* 6.4 (Financial penalty or public censure). The FSA's statement of policy in relation to the amount of a financial penalty is set out in *DEPP* 6.5 to *DEPP* 6.5D.

...

Payment of financial penalties

- 7.6 Financial penalties must be paid within the period (usually 14 days) that is stated on the FSA's *final notice*. The FSA's policy in relation to reducing a penalty because its payment may cause a person serious financial hardship is set out in *DEPP* 6.5D.
- 7.7 ~~A person may ask the FSA to allow them to pay a financial penalty by instalments. However, the FSA will consider agreeing to payment of a financial penalty by instalments only where there is verifiable evidence of serious financial hardship or financial difficulties if the person was required to pay the full payment in a single instalment. This reflects the fact that the purpose of a penalty is not to render a person insolvent or to threaten solvency. The FSA will determine the appropriate level and number of instalments having regard to the overall circumstances of the case. However, in such cases, the full payment of the penalty will generally have to be made within one year from the date of the *final notice*. [deleted]~~

...

19 Non-FSMA powers

...

The conduct of investigations under the Money Laundering Regulations

...

- 19.82 When imposing or determining the level of a financial penalty under the Regulations, the FSA's policy includes having regard, where relevant, to relevant factors in *DEPP* 6.2.1G and *DEPP* 6.5 to *DEPP* 6.5D. The FSA may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the *Money Laundering Regulations* would be met. In deciding whether a person has failed to comply with a requirement of the *Money Laundering Regulations*, the FSA must consider whether he followed any relevant guidance which was issued by a supervisory authority or other appropriate body; approved by the Treasury; and published in a manner approved by the Treasury. The Joint Money Laundering Steering Group Guidance satisfies this requirement.

...

Regulated Covered Bonds Regulations 2008

...

- 19.88 The FSA's approach to the use of its enforcement powers, and its statement of policy in relation to imposing and determining financial penalties under the *RCB Regulations*, are set out in *RCB 4.2*. The FSA's penalty policy includes having regard, where relevant, to the relevant factors in *DEPP 6.2.1G* and *DEPP 6.5* to *DEPP 6.5D* and such other specific matters as the likely impact of the penalty on the interests of investors in the relevant bonds. The FSA's statement of procedure in relation to giving *warning notices* or *decision notices* under the *RCB Regulations* is set out in *RCB 6*. It confirms that the *RDC* will be the decision maker in relation to the imposition of financial penalties under the *RCB Regulations*, following the procedure outlined in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and that decision notices given under the Regulations may be referred to the *Tribunal*.

...

Payment Services Regulations 2009

...

Imposition of penalties under the Payment Services Regulations

- 19.101 When imposing ~~or determining the level of~~ a financial penalty the FSA's policy includes having regard to the relevant factors in *DEPP 6.2.1G* and *DEPP 6.5 6.2*, *DEPP 6.3* and *DEPP 6.4*. The FSA's policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP 6.5* to *DEPP 6.5D*.