

**ENFORCEMENT (SETTLEMENT AND OTHER PROCEDURES) INSTRUMENT
2005**

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 157(1) (Guidance);
 - (4) section 210(1) (Statement of Policy); and
 - (5) section 395(5) (The Authority's procedures).

Commencement

- B. This instrument comes into force on 20 October 2005.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Authorisation manual	Annex B
Supervision manual	Annex C
Enforcement manual	Annex D
Decision Making manual	Annex E
Credit Unions sourcebook	Annex F
Electronic Money sourcebook	Annex G

Citation

- D. This instrument may be cited as the Enforcement (Settlement and Other Procedures) Instrument 2005.

By order of the Board
19 October 2005

Annex A

Amendments to the Glossary of definitions

In this Annex, entire sections of text are being inserted, the place where the changes will be made is indicated and the text is not underlined.

Insert the following new definitions in the appropriate alphabetical positions:

settlement decision makers (in *DEC*) 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 1.2.2AG.

settlement decision procedure (in *DEC*) the procedure for the making of *statutory notice decisions* in the circumstances described in *DEC* Appendix 1.2.2AG.

settlement discount scheme (in *ENF*) the scheme described in *ENF* 13.7 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.

Annex B

Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not shown struck through.

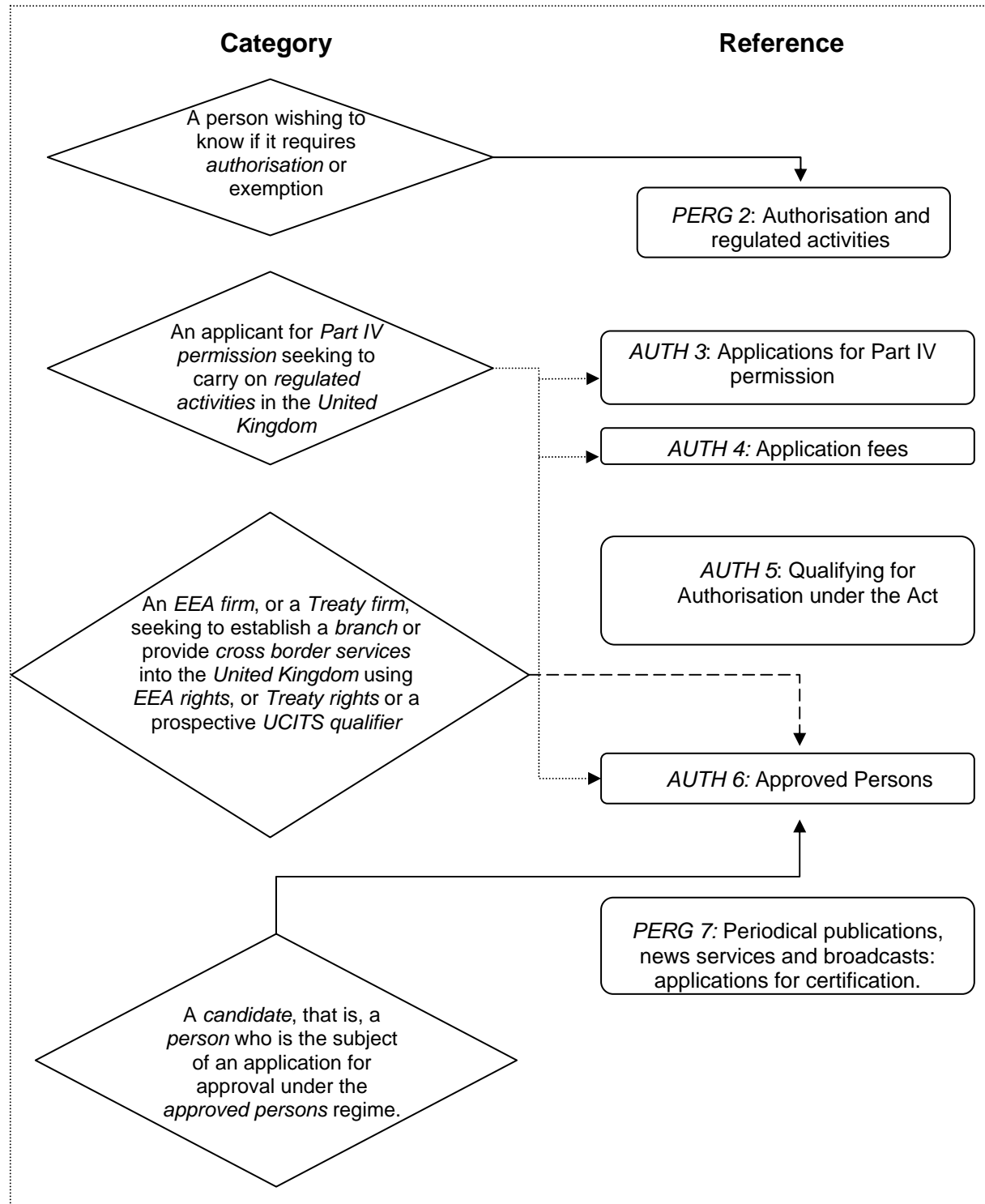
- 1.1.1 G ...
- (4) a *candidate* for approval under Part V of the *Act*, but only in respect of *AUTH* 6 (Approved persons), which is of general relevance, ~~and *AUTH* 8 (Determining applications)~~; and
- ...
- ...
- 1.1.3 G ...
- (4) the *FSA's* powers in relation to *authorisation* and how it will use them (see *AUTH* 3 and *AUTH* 5), ~~including a summary of how applications will be determined; see *AUTH* 8 (Determining applications)~~.
- ...
- 1.3.9 G Summary of *AUTH* and parts of *PERG*
- This table belongs to *AUTH* 1.3.7G.

Chapter:	Applicable to:	On:
...		
<i>AUTH</i> 8: Determining applications	1. applicants for <i>Part IV permission</i> generally;	1. the procedures which the <i>FSA</i> will follow when granting an application; and
	2. an <i>EEA firm</i> or a <i>Treaty firm</i> that has submitted an application for approval of a <i>person</i> under the <i>approved persons regime</i>;	2. a summary of the <i>FSA's</i> decision making procedures for: (a) refusing, or proposing to refuse, an application for <i>Part IV permission</i> or an application for approval under the <i>approved persons regime</i> ; or
	3. a <i>candidate</i>.	(b) granting, or proposing to grant, an application for <i>Part IV permission</i> subject to <i>limitations</i> or <i>requirements</i> not applied for or with a narrower description of <i>regulated activity</i> than that to which the application relates.

...

The flowchart in *AUTH 1 Annex 1* is replaced in its entirety by the following flowchart. This change removes references to *AUTH 8* and changes *AUTH 2* and *AUTH 7* to *PERG 2* and *PERG 7* respectively.

AUTH 1 Annex 1G Introduction to the Authorisation Manual



3.6.5 G If, after reviewing an application, the *FSA* proposes to impose a *limitation*, the applicant will be advised formally (that is, the applicant will be sent a *warning notice*) and given an opportunity to make representations before the *FSA* reaches a final decision. ~~For an overview of how the *FSA* determines applications and a summary of the *FSA*'s decision-making procedures, see *AUTH 8 (Determining applications)*.~~

...

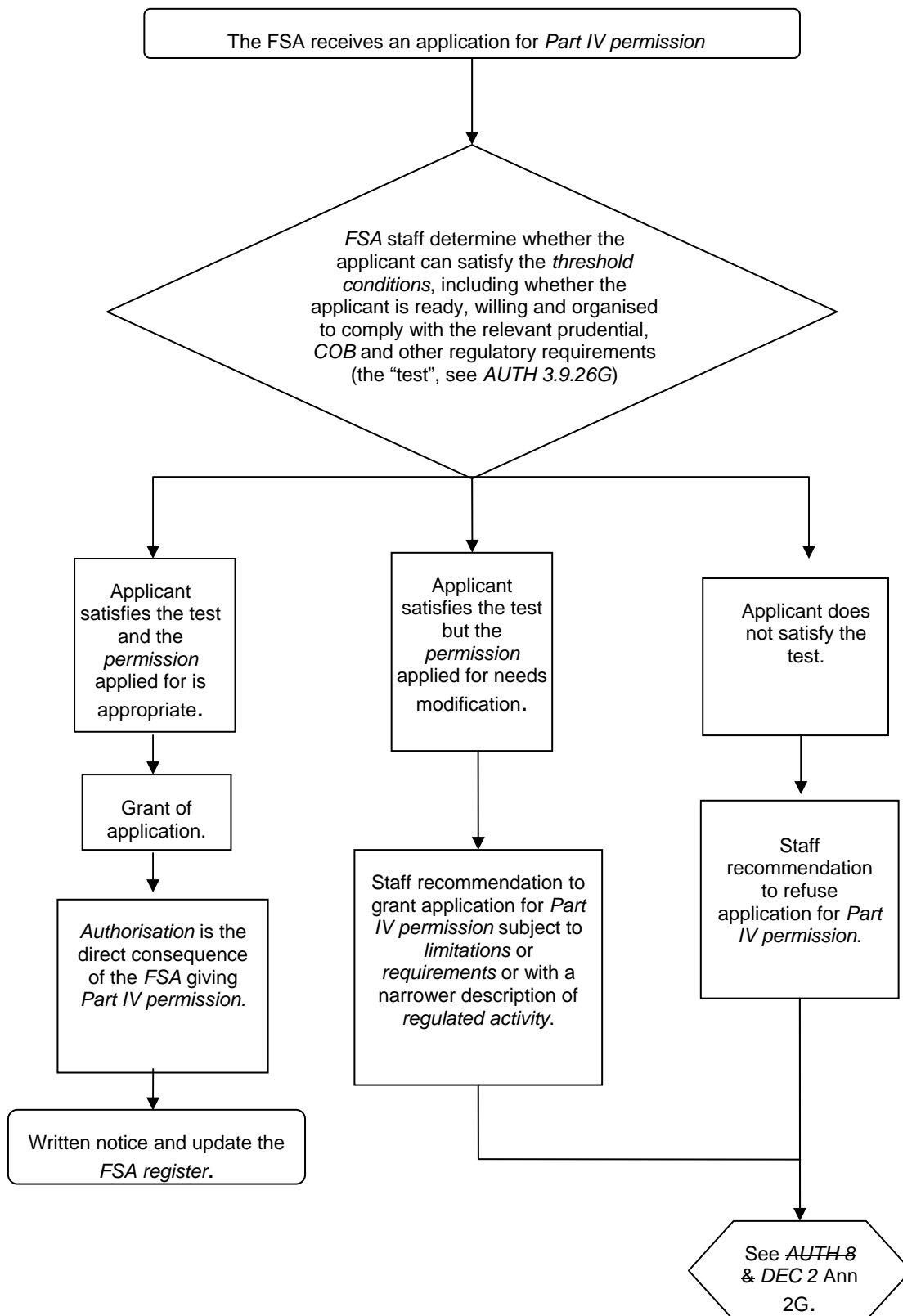
3.7.7 G If, after reviewing an application, the *FSA* proposes to impose a *requirement*, the applicant will be advised formally (that is, the applicant will be sent a *warning notice*) and given an opportunity to make representations before the *FSA* reaches a final decision. ~~For an overview of how the *FSA* determines applications and a summary of the *FSA*'s decision-making procedures, see *AUTH 8*.~~

...

3.9.31 G ~~*AUTH 8 (Determining applications)* gives an overview of how the *FSA* will determine an application.~~ The *FSA*'s decision making procedures are in *DEC* and include the procedures the *FSA* will follow if it proposes to refuse an application for *Part IV permission* or grant an application subject to *limitations* or *requirements* not applied for.

...

AUTH 3 Annex 1G Application for Part IV Permission



6.3.9 G Before making a decision either to approve or to give a *warning notice* (~~see AUTH 8.3 (Statutory notices and other matters)~~), the *FSA* may request further information about the *candidate* from the applicant for *Part IV permission*. If it does this, the three month approval period:

...

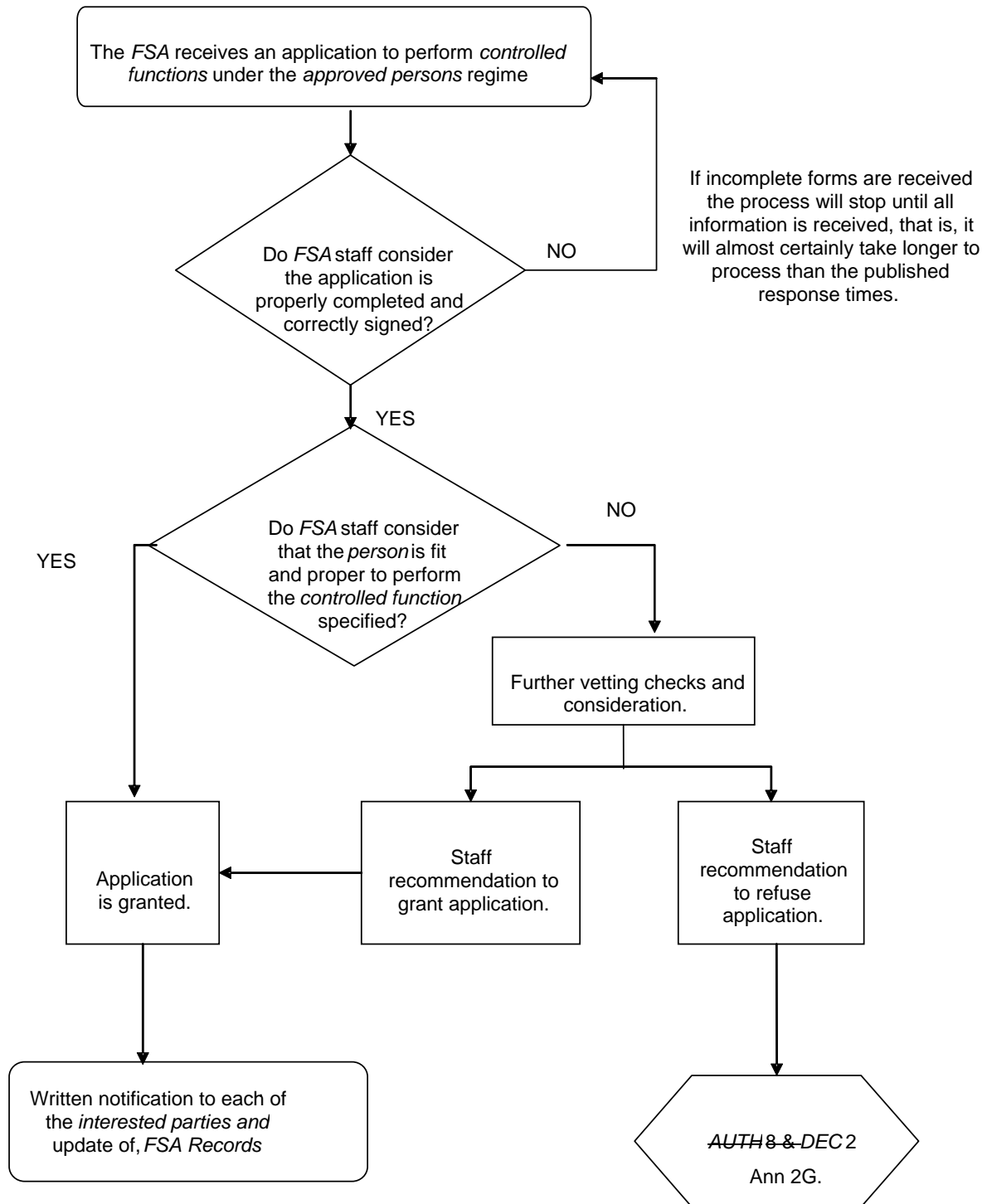
...

Decisions on applications

6.3.12 G ~~See AUTH 8 (Determining applications) for an overview of how applications for *Part IV permission* and for approval of a *candidate* under section 59 of the *Act* (Approval for particular arrangements) will be determined. AUTH 8 also includes a summary of the decision making procedures which apply.~~[deleted]

...

AUTH 6 Annex 2G Approved Persons



AUTH Chapter 8 is deleted in its entirety. The deleted text is not shown struck through.

AUTH 8 [deleted]

Annex C

Amendments to the Supervision manual

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

...

- 6.4.28 G A decision to grant an application for cancellation of *permission* will be taken by appropriately experienced *FSA* staff. Where, however, the *FSA* staff dealing with the application recommend that a *firm's* application for cancellation of *Part IV permission* be refused, the decision will be taken by the *RDC*; if the applicant makes representations to the *FSA*. If there are no representations, the decision will be made under *executive procedures*.

...

Annex D

Amendments to the Enforcement manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

- 13.3.3 G The factors which may be relevant when the *FSA* determines the amount of financial penalty for a *firm* or *approved person* include the following.
- ...
- (9) The timing of any agreement as to the amount of the disciplinary penalty. The *FSA* and the *person* subject to disciplinary action may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *ENF* 13.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the *person* concerned reach an agreement.

...

- 13.5.9 G The settlement discount scheme set out in *ENF* 13.7 does not apply to financial penalties for late submission of reports.

...

After *ENF* 13.6 insert the following new section:

- 13.7 Discount for early settlement
- 13.7.1 G *Persons* subject to disciplinary action may be prepared to agree the amount of any financial penalty and other conditions which the *FSA* seeks to impose by way of disciplinary action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The *FSA* recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the *FSA* itself in contesting the financial penalty. The penalty that might otherwise be payable in respect of misconduct or contravention by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.
- 13.7.2 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 *ENF* 13.3. (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 misconduct or contravention.

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.

13.7.3

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- (1) *FSA* has identified four stages of a disciplinary action for these purposes:
- (a) the period from commencement of an investigation until the *FSA* has
 - (i) a sufficient understanding of the nature and gravity of the misconduct or contravention to make a reasonable assessment of the appropriate penalty; and
 - (ii) communicated that assessment to the *person* concerned and allowed a reasonable opportunity to reach agreement as to the amount of the penalty ("stage 1");
 - (b) the period from the end of stage 1 until the expiry of the period for making written representations or, if sooner, the date on which the written representations are sent in response to the giving of a *warning notice* ("stage 2");
 - (c) the period from the end of stage 2 until the giving of a *decision notice* ("stage 3");
 - (d) the period after the end of stage 3, including proceedings before the *Tribunal* and any subsequent appeals ("stage 4").
- (2) The communication of the *FSA*'s assessment of the appropriate penalty for the purposes of *ENF* 13.7.3G(1)(a) need not be in a prescribed form but will include an indication of the breaches alleged by the *FSA*. It may include the provision of a draft *warning notice*.

- (3) The reductions in penalty will be as follows:

Stage at which agreement reached	Percentage reduction
Stage 1	30
Stage 2	20
Stage 3	10
Stage 4	0

13.7.4

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- (1) Any settlement agreement between the *FSA* and the *person* concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.

- (2) In certain circumstances the *person* concerned may consider that it would have been possible to reach a settlement at an earlier stage in the action, and argue that it should be entitled to a greater percentage reduction in penalty than is suggested by the table at *ENF 13.7.3G(3)*. It may be, for example, that the *FSA* no longer wishes to pursue disciplinary action in respect of all of the acts or omissions previously alleged to give rise to the contravention of a requirement. In such cases, the *person* concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from the discount which would have been available at that time. Equally, *FSA* staff may consider that greater openness from the *person* concerned could have resulted in an earlier settlement.
- (3) Arguments of this nature risk compromising the goals of greater clarity and transparency in respect of the benefits of early settlement, and invite dispute in each case as to when an agreement might have been possible. It will not usually be appropriate therefore to argue for a greater reduction in the amount of penalty on the basis that settlement could have been achieved earlier.
- (4) However, in exceptional cases *FSA* may accept that there has been a substantial change in the nature or seriousness of the disciplinary action being taken against the *person* concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the *FSA* and person concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible.

...

14.7.4 G The *FSA* considers that the factors which may be relevant when it sets the amount of a penalty in *market abuse* cases include, the following.

...

- (9) The timing of any agreement as to the amount of the penalty for *market abuse*. The *FSA* and the *person* 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 in disciplinary actions, *ENF 13.7* provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the *person* concerned reach an agreement. The same regime is to apply to agreements as to the amount of the penalty in *market abuse* cases.

...

21.7.6 G The FSA will consider any of the following factors ...

...

(11) (The timing of any agreement as to the amount of the penalty for the particular breach) The FSA and the person 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 in disciplinary actions, ENF 13.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement. The same regime is to apply to agreements as to the amount of the penalty in Part VI cases.

...

ENF TP 1.1 Transitional provisions applying to the Enforcement manual

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: Dates in force	(6) Handbook provision coming into force
...					
4	<u>ENF 13.3.3G(9), ENF 13.5.9G, ENF 13.7 (Discount for early settlement), ENF 14.7.4G(9), and ENF 21.7.6G(11)</u>	G	<u>These provisions (in summary, relating to the discount scheme) apply only to cases where investigators are appointed on or after 20 October 2005.</u>	<u>From 20 October 2005</u>	<u>20 October 2005</u>

...

Annex E

Amendments to the Decision Making manual

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

- 1.2.6 G Decisions whether to give a *statutory notice* and decisions associated with the *statutory notice* once it has been given (a "*statutory notice associated decision*", see DEC 4.1.2G) will be taken by a "decision maker". References to the "decision maker" concerning *statutory notice decisions* refer to decisions taken by:
- (1) the *Regulatory Decisions Committee (RDC)*; ~~or~~
 - (2) *FSA staff under executive procedures*; or
 - (3) *FSA staff under the settlement decision procedure.*
- 1.2.7 G DEC 4.1 describes the allocation of decisions between the *RDC* and *executive procedures*. DEC 4.2 provides further information on the *RDC*. DEC 4.3 provides further information on *executive procedures*. DEC Appendix 1 explains settlement procedures and the mediation scheme for FSA enforcement cases. It includes a description of the circumstances in which decisions that would normally be made by the RDC will be made by FSA staff under settlement decision procedure.
- 1.2.8 G The *FSA* will make regulatory decisions falling outside section 395 of the *Act*. These will include exercise of statutory powers which do not require *statutory notices* to be given, for example: when the *FSA* grants an application for a *Part IV permission* on the terms applied for (~~such decisions are made by internal staff procedures as described in AUTH 8.2.5 G to AUTH 8.2.8 G~~); when the *FSA* grants other applications; decisions on applications for *waivers*; decisions to give individual *guidance*; and decisions generally in the course of the *FSA*'s oversight of regulated institutions. They also include decisions on recommendations by *FSA* staff to the *RDC*.

...

DEC 2 Annex 1G Statutory notice procedure: Warning notice and decision notice procedure

List of warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to <i>FSA</i> material apply to the powers listed in this table where indicated by an asterisk * (see <i>DEC 2.4</i>)			
Section of the Act	Description	Handbook reference	Decision maker
52(6)(a) / 52(9)(a)	when the <i>FSA</i> is proposing/ deciding to grant an application for a <i>Part IV permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for	<i>AUTH 3</i>	RDC / e <u>Executive procedures</u>
52(6)(b) / 52(9)(b)	when the <i>FSA</i> is proposing/ deciding to grant an application to vary a <i>firm's Part IV permission</i> but, otherwise than as part of the application, to restrict the <i>Part IV permission</i> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)	<i>SUP 6</i>	RDC / e <u>Executive procedures (Note 1)</u>
52(7) / 52(9)(e)	when the <i>FSA</i> is proposing/ deciding to refuse an application for a <i>Part IV permission</i>	<i>AUTH 3</i>	RDC / e <u>Executive procedures</u>
<u>52(9)(a)</u>	<u>when the <i>FSA</i> is deciding to grant an application for a <i>Part IV permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for</u>	<u><i>AUTH 3</i></u>	<u><i>RDC / executive procedures (Note 1)</i></u>
<u>52(9)(b)</u>	<u>when the <i>FSA</i> is deciding to grant an application to vary a <i>firm's Part IV permission</i> but, otherwise than as part of the application, to restrict the <i>Part IV permission</i> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)</u>	<u><i>SUP 6</i></u>	<u><i>RDC / executive procedures (Note 1)</i></u>
<u>52(9)(c)</u>	<u>when the <i>FSA</i> is deciding to refuse an application for a <i>Part IV permission</i></u>	<u><i>AUTH 3</i></u>	<u><i>RDC / executive procedures (Note 1A)</i></u>
52(7) / 52(9)(e)	when the <i>FSA</i> is proposing/ deciding to refuse an application to vary a <i>firm's Part IV permission</i>	<i>SUP 6</i>	RDC / e <u>Executive procedures (Note 1)</u>
<u>52(9)(c)</u>	<u>when the <i>FSA</i> is deciding to refuse an application to vary a <i>firm's Part IV permission</i></u>	<u><i>SUP 6</i></u>	<u><i>RDC / executive procedures (Note 1)</i></u>
52(7) / 52(9)(e)	when the <i>FSA</i> is proposing/ deciding to refuse an application to cancel a <i>firm's Part IV permission</i>	<i>SUP 6</i>	RDC / e <u>Executive procedures</u>

52(9)(c)	<u>when the FSA is deciding to refuse an application to cancel a firm's Part IV permission</u>	SUP 6	<u>RDC / executive procedures (Note 1A)</u>
...			
62(2)/(3)	when the FSA is proposing/ deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> under section 59 of the Act (in conjunction with an application for <i>Part IV permission</i>)	AUTH 6	RDC <u>Executive procedures</u>
62(3)	<u>when the FSA is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> under section 59 of the Act (in conjunction with an application for <i>Part IV permission</i>)</u>	AUTH 6	<u>RDC / executive procedures (Note 1A)</u>
62(2)/(3)	when the FSA is proposing/ deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> (otherwise than in conjunction with an application for <i>Part IV permission</i>)	SUP 10	RDC <u>Executive procedures</u>
62(3)	<u>when the FSA is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> (otherwise than in conjunction with an application for <i>Part IV permission</i>)</u>	SUP 10	<u>RDC / executive procedures (Note 1A)</u>
...			
183(3)/186(1)	when the FSA is proposing/deciding to object to a change in <i>control</i> following receipt of a notice of <i>control</i>	SUP 11	<u>RDC/Executive procedures (Note 13)</u>
185(3)/(4)	when the FSA is proposing/deciding to approve a change in <i>control</i> following receipt of a notice of control but subject to conditions	SUP 11	<u>RDC/Executive procedures (Note 13)</u>
187(1)/(3) and 188(1)	when the FSA is proposing/deciding to object to a <i>person</i> who has failed to submit a notice of <i>control</i> or a notice on acquiring, or increasing, <i>control</i> , or to object to an existing <i>controller</i>	SUP 11	<u>RDC/Executive procedures (Note 13)</u>
...			

Note 1: The decision will be made by the *RDC* if it involves a fundamental (see *DEC 4.1.5G*) change to the nature of a *permission* and the applicant makes representations to the *FSA*.

Note 1A: The decision will be made by the *RDC* if the applicant makes representations to the *FSA*. If there are no representations, the decision will be made under *executive procedures*.

....

Note 13: The decision will be made under *executive procedures* unless the *RDC* is already considering or is shortly to consider a closely related matter and it seems appropriate to those making

the decision under *executive procedures* for the *RDC* to have responsibility for the decision, having regard to such factors as those listed in *DEC 1.2.9G*.

...

4.1.4 G Decisions to be taken by the RDC

The *RDC* has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the *FSA* proposes or takes any of the following actions:

(1) ~~to impose a *limitation* or a *requirement* which was not applied for, or specify a narrower description of *regulated activity* than that applied for, on the grant of a *Part IV permission*; [deleted]~~

...

(3) ~~to refuse an application to vary a *Part IV permission*, or to restrict a *Part IV permission* on the grant of a variation (by imposing a *limitation* or *requirement* which was not applied for or by specifying a narrower description of *regulated activity* than that applied for), in a way that would make a fundamental change (see *DEC 4.1.5G*) to the nature of the *Part IV permission* that would have been held had the application been granted in full (whether indefinitely, or for a limited period); [deleted]~~

(4) ~~to refuse an application for a *Part IV permission*, to refuse an application to cancel a *Part IV permission* or to cancel a *Part IV permission* on the *FSA*'s own initiative;~~

(4A) ~~to refuse an application for, or to revoke, a *small e-money issuer certificate* (see *ELM 8* (Small e-money issuers));~~

(5) ~~to refuse *approved person* status, or withdraw it *approved person status* under section 63 of the *Act* (Withdrawal of approval);~~

...

(25) to publish a statement censuring a *sponsor*; ~~and~~

(26) to impose a financial penalty or to issue a statement censuring a *person* for breach of any requirement set out in *LR*; ~~and~~

(27) to object to the acquisition or increase of *control* under section 186 of the *Act* (Objection to acquisition of control), to object to existing *control* under section 187 of the *Act* (Objecting to existing control) or to attach conditions to an approval to a change in *control* under section 185 of the *Act* (Conditions attached to approval) in circumstances where the *RDC* is already considering or is shortly to consider a closely related matter and it seems appropriate to those making the decision under *executive procedures* for the *RDC* to have responsibility for the decision, having regard to such factors as those

listed in DEC 1.2.9G.

4.1.4A G The RDC has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the FSA takes any of the following actions, but only if the action involves a fundamental (see DEC 4.1.5G) change to the nature of a *permission* and the applicant makes representations to the FSA:

(1) to impose a *limitation* or a *requirement* which was not applied for, or specify a narrower description of *regulated activity* than that applied for, on the grant of a *Part IV permission*; and

(2) to refuse an application to vary a *Part IV permission*, or to restrict a *Part IV permission* on the grant of a variation (by imposing a *limitation* or *requirement* which was not applied for or by specifying a narrower description of *regulated activity* than that applied for).

4.1.4B G The RDC has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the FSA takes any of the following actions but only if the applicant makes representations to the FSA:

(1) to refuse an application for a *Part IV permission* or to refuse an application to cancel a *Part IV permission*;

(2) to refuse an application for a *small e-money issuer certificate* (see ELM 8 (Small e-money issuers)); and

(3) to refuse *approved person* status.

4.1.5 G In DEC 2 Annex 1G, DEC 4.1.4G(2), ~~(3)~~ and (7), DEC 4.1.4AG and DEC 4.1.8G(5), making a fundamental change to the nature of a *permission* means:

...

...

4.1.7 G Examples of matters decided by the RDC include:

(1) deciding to give a *decision notice*, refusing an application to vary a *Part IV permission* to carry on *insurance business* or to *accept deposits* for the first time in circumstances where the applicant makes representations to the FSA; in these cases, the *firm* will normally have been required to complete parts of the application pack (SUP 6.4.14G);

(2) deciding to give a *decision notice*, refusing an application to vary a *Part IV permission* to carry on *regulated activities* with *private*

customers for the first time in circumstances where the applicant makes representations to the FSA;

- (3) deciding to give a *decision notice*, refusing an application to vary a *Part IV permission* to remove a *requirement* to enable the *firm* to hold or control *client money* for the first time in circumstances where the applicant makes representations to the FSA; and
- (4) varying a *Part IV permission* on the FSA's own initiative by removing a *regulated activity* from a *firm's permission*.

4.1.8 G Examples of matters decided by *executive procedures* (where the FSA decides or is required to use the statutory powers in question rather than to achieve the action required in other ways, for example through individual *guidance* or securing the agreement of a *firm* to take action on a voluntary basis) include:

...

- (5) refusing an application to vary a *Part IV permission*, or ~~to restrict~~ restricting a *Part IV permission* on the grant of a variation (by imposing a *limitation* or *requirement* which was not applied for, or by specifying a narrower description of *regulated activity* than that applied for), in a way that would not make a fundamental change (see DEC 4.1.5G) to the nature of the *Part IV permission* that would have been held had the application been granted in full (indefinitely, or for a limited period) or in a way that would make such a fundamental change in circumstances where the applicant makes no representations to the FSA;
- (6) objecting to the acquisition or increase of *control* under section 186 of the *Act* (Objection to acquisition of control), objecting to existing *control* under section 187 of the *Act* (Objecting to existing control), or attaching conditions to an approval to a change in *control* under section 185 of the *Act* (Conditions attached to approval) unless the RDC is already considering or is shortly to consider a closely related matter and it seems appropriate to those making the decision under *executive procedures* for the RDC to have responsibility for the decision, having regard to such factors as those listed in DEC 1.2.9G, in which case the decision will be made by the RDC;
- (7) refusing a request for an *authorisation order* for an operator's proposed *AUT* or *ICVC* (if the operator is an operator of an existing *AUT* or *ICVC*), refusing approval of a *scheme* becoming a *recognised scheme* authorised in a designated territory under section 270 of the *Act* or refusing an application in respect of a proposed individually recognised overseas *scheme* under section 272 of the *Act*;

...

...

4.2 The Regulatory Decisions Committee

...

4.2.4 G The *RDC* is supported by the *RDC Secretariat Office*. The *RDC Secretariat Office* is separate from *FSA* staff involved in making recommendations to the *RDC*.

...

4.2.10 G (1) If a member of the *RDC* has a potential conflict of interest in any matter before the *RDC* he will disclose the conflict to the Chairman of the *RDC* (or if he is the Chairman of the *RDC*, to the Chairman or Deputy Chairman of the *FSA*). He will also disclose the conflict to the *RDC Secretariat Office*.

...

4.2.11 G The *RDC Secretariat Office* will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

...

4.2.18 G The *FSA RDC Office, in conjunction with the Chairman or a Deputy Chairman of the RDC*, will fix a date or dates for a meeting to consider the representations and to decide:

- (1) whether to take the action proposed;
- (2) if the action has been taken, whether to rescind the action; and
- (3) in either case, whether to take the action in a different way.

4.2.19 G The *RDC Secretariat Office* will ensure that a record is kept of:

- (1) who took the decision;
- (2) the representations made to the *RDC*;
- (3) the material considered by the *RDC*;
- (4) the nature of the decision;
- (5) the reasons for the decision; and
- (6) the dates on which the decision was taken and then communicated by the *FSA* to the *person* concerned.

...

4.3.13 G A *statutory notice* given under *executive procedures* will identify the decision maker. A decision to give a ~~*decision notice*~~ or second *supervisory notice* will normally be made by the same decision maker (that is, the individual or committee) who made the decision to give the ~~*warning notice*~~ or first *supervisory notice*.

...

Modified procedures in straightforward cases

- 4.5.16 G The making of *statutory notice decisions* and *statutory notice associated decisions* falling within DEC 4.1.4G (Decisions to be taken by the RDC) which, in the opinion of the Chairman or a Deputy Chairman of the RDC, are straightforward (see DEC 4.5.17G), may be discharged, on behalf of the RDC, by the Chairman or a Deputy Chairman alone or together with one other member of the RDC if, in the opinion of the Chairman or Deputy Chairman, this is appropriate, so that they will be made by modified rather than full RDC procedure.
- 4.5.17 G The Chairman or a Deputy Chairman of the RDC may decide, whether or not following a recommendation from FSA staff, that a decision falling within DEC 4.5.16G is a straightforward decision, having regard to all the circumstances of the case, including those factors listed in DEC 1.2.9G. However, a *statutory notice decision* falling within DEC 4.5.16G is not a straightforward decision if the *person* concerned makes representations to the RDC and, in such a case, the decision will be made by full RDC procedure.

...

DEC Appendix 1

Settlement procedure and mediation scheme for FSA enforcement cases

- 1.1.1 G *A person* who is or may be subject to enforcement action may discuss the proposed action with FSA staff through settlement discussions. Settlement discussions may take place on an informal basis at any time during the enforcement process. Where FSA staff have recommended that enforcement action be taken against a *person*, the mediation scheme will be available to those *persons* against whom action is proposed where settlement discussions are, in the opinion of either party, unlikely to lead to an agreed settlement. This appendix sets out the procedure for settlement and the framework of the mediation scheme, and explains the special procedure for making *statutory notice decisions* where a settlement is reached.
- 1.2 Settlement
- 1.2.1 G If a *person* who is or may be subject to enforcement action wishes to discuss the proposed action with FSA staff on an informal basis, he may do so at any time during the enforcement process. This might be before the giving of a *warning notice*, before a *decision notice*, or even after referral of the matter to the *Tribunal*. The FSA and the *person* concerned should agree that discussions will take place on a "without prejudice" basis, and that neither party may subsequently rely on admissions or statements made in the context of the discussions, or documents recording the discussions. Neither FSA staff nor the *person* concerned may disclose to the RDC any such admissions or statements made by the other.

- 1.2.2 G The terms of any proposed settlement will:
- (1) be put in writing and be agreed by *FSA* staff and the *person* concerned;
 - (2) include a statement of the facts and any breaches admitted by the *person* concerned and the proposed action to be taken; and
 - (3) be considered in accordance with the *settlement decision procedure* set out in *DEC App 1.2.2AG* by the *RDC*.
- 1.2.2A G
- (1) The fact that the *person* subject to enforcement action agrees to a financial penalty or other outcome will not usually obviate the need for a *statutory notice* recording the *FSA*'s decision to take that action.
 - (2) Where, however, the *person* subject to enforcement action agrees not to contest the content of a proposed *statutory notice*, the decision whether to give that *statutory notice* will be taken by senior *FSA* staff.
 - (3) The decision will be taken jointly by two members of the *FSA*'s executive of at least director of division level (the "*settlement decision makers*").
 - (4) One of the directors taking the decision will usually be, but need not be, the director of Enforcement. (In exceptional cases, the director of Enforcement may have been directly involved in establishing the evidence on which the decision is based and would not therefore be able to participate (see section 395(2) of the *Act*.)
 - (5) "Statutory notice" for these purposes:
 - (a) means any *statutory notice* the giving of which would otherwise require a decision by the *RDC*;
 - (b) includes a *statutory notice associated decision*.
- 1.2.2B G
- (1) The *settlement decision makers* will often participate in the without prejudice discussions exploring possible settlement. Their involvement may facilitate agreement between *FSA* staff and the *person* concerned and avoid the delay that might otherwise result from needing to explain the basis for any settlement reached.
 - (2) If the *settlement decision makers* have not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant *FSA* staff or the *person* concerned in order to assist in the consideration of the proposed settlement.
- 1.2.3 G ~~Having considered the terms of the proposed settlement, the *RDC* may ask to meet the relevant *FSA* staff or the *person* concerned in order to assist in its consideration of the proposed settlement. The *RDC* may~~ The *settlement decision makers* may:

- (1) accept the proposed settlement by issuing a *decision notice*, second *supervisory notice* or (where appropriate) *notice of discontinuance* based on the terms of the settlement; or
- (2) decline the proposed settlement;

whether or not the ~~RDC has~~ settlement decision makers have met with the relevant *FSA* staff or the *person* concerned.

- 1.2.4 G (1) Where the RDC declines the proposed settlement, it may invite FSA staff and the person concerned to enter into further discussions to try to achieve a settlement. The RDC may extend the period for representations (if they have not already done so), or, if representations have already been made, the RDC will proceed to give a decisions notice. Where the settlement decision makers decline to issue a statutory notice despite the proposed settlement, they may invite FSA staff and the person concerned to enter into further discussions to try to achieve an outcome the settlement decision makers would be prepared to endorse.
- (2) However, if the proposed action by the FSA has been submitted to the RDC for consideration, it will be for the RDC to decide:
- (a) whether to extend the period for representations in response to a warning notice; or
 - (b) if representations have been made in response to a warning notice, whether to proceed to give a decision notice.

...

- 1.3.2 G As mediation will be on a "without prejudice" basis, admissions made by the parties in the course of the mediation and documents prepared for the purposes of the mediation may not be referred to in subsequent proceedings relating to the dispute if the mediation is unsuccessful. However, if the mediation results in a proposed settlement of the dispute which is approved by the ~~RDC~~ settlement decision makers, the terms of the proposed settlement will form the basis of a *decision notice*, and subsequent *final notice*, or second *supervisory notice* or (where appropriate) *notice of discontinuance*, given by the *FSA*.

- 1.3.3 G Following the issue of a *warning notice* the *person* will have access to certain material on which the *FSA* has relied in deciding to commence disciplinary proceedings (see *DEC 2.4.2G*). The period following the issue of the *warning notice* is therefore a natural point for ~~informal settlement discussions to take place in an attempt to resolve the matter. Mediation is intended to supplement those discussions where mediation if~~ the parties consider that the involvement of a neutral mediator is required to facilitate further progress in any settlement discussions.

...

- 1.6.1 G If a case is submitted to mediation, the parties will send a joint mediation notice in an agreed form to:
- (1) the mediation provider; and
 - (2) if the mediation is between the giving of the *warning notice* and the *decision notice*, the secretary to the *RDC Office*.

...

- 1.7.8 G (1) ...
- (2) Under the mediation scheme, however, confidentiality will be limited in that:
- (a) if any information indicating potentially criminal conduct is disclosed to the mediator, the mediator will not be required to keep that matter confidential (and may choose to terminate the mediation);
 - (b) the terms of any settlement reached will, if approved by the *settlement decision makers RDC*, be incorporated in a *decision notice*, and subsequent *final notice* or second *supervisory notice*, or (where appropriate) *notice of discontinuance* which may be made public;

...

- 1.7.9 G (1) A key feature of mediation is the requirement that those who attend the mediation on behalf of each party have full authority to agree proposed settlement terms. ~~In general, the *FSA's* decision making procedure for regulatory enforcement cases requires that the *RDC* approve any decision to take or refrain from taking disciplinary action. (The exception is some cases involving late submission of reports, see *DEC 4.5.2G* to *DEC 4.5.6G*) Therefore, the *RDC* must approve any proposed settlement terms agreed at the mediation.~~
- (2) The *FSA* will be represented during the mediation proceedings and at the mediation itself by the *FSA* staff who initially recommended that disciplinary action be taken. ~~In order to minimise the risk that the proposed settlement terms agreed at the mediation will not be approved, the *FSA* will endeavour to ensure that the relevant members of the *RDC*, or as many of its relevant members as possible, are available for consultation by telephone during the mediation. This is to enable a clear indication to be given to the parties and the mediator whether the *RDC* will find the proposed settlement terms acceptable.~~

- (3) One or both of the *settlement decision makers* who would make the decision as to the giving of the *statutory notice* or notices in the event of a settlement may also attend. If their attendance is impracticable, the *FSA* will endeavour to ensure that the *settlement decision makers* are available for consultation during the mediation. This is to enable a clear indication to be given to the parties and the mediator whether the *settlement decision makers* will find the proposed settlement terms acceptable. However, no involvement of the *RDC* in the mediation will in any way compromise its right subsequently to decline to approve the settlement terms.
- (4) ~~If the *RDC* decides to decline to approve the settlement terms agreed at the mediation, the parties may, with the consent of the *RDC*, return to the mediation process if they wish to explore further settlement options. If they do, the *RDC* will ensure that its views are clearly stated as to why the terms previously agreed were not acceptable. [deleted]~~

...

- 1.10.3 G If a settlement proposal is agreed, it will be considered in accordance with the *settlement decision procedure* by the *RDC*, which will decide whether to approve it. If it is approved, a *decision notice*, and subsequently a *final notice*, will be issued reflecting the terms of the agreement reached. If it is not approved, ~~the parties may return to the mediation only with the *RDC*'s consent. If the *RDC* does not consent,~~ the case will return to the point it had reached in the enforcement process prior to the mediation.

...

DEC App 1.13 Position of third parties on settlement

- 1.13.1 G (1) *DEC 2.4.7G* to *DEC 2.4.12G* set out the *FSA*'s approach to giving third parties copies of *statutory notices* pursuant to section 393 of the *Act*.
- (2) The decision to give a *warning notice* or a *decision notice* to a third party is a *statutory notice associated decision*.
- (3) In cases therefore where the decision to give a *warning notice* or *decision notice* is taken by *settlement decision makers*, those decision makers will decide whether a copy of the notice should be given to a third party in accordance with section 393 of the *Act*. Any representations made by the third party in response to a *warning notice* will be considered by the *settlement decision makers*.

Annex F

Amendments to the Credit Unions sourcebook

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

...

13.3.3 G A credit union must become *authorised* under the *Act* (see *CRED 13.5*~~*CRED 13.8*~~) before it can undertake the activity of *accepting deposits*.

...

13.5.4 G The *FSA's Authorisation* manual (*AUTH*) explains in full the circumstances in which *authorisation* is required, the *authorisation* process and the *FSA's* powers in relation to *authorisation*. The key chapters of *AUTH* for a *person* applying, or considering applying, to the *FSA* to become a *credit union* with a *Part IV permission to accept deposits* are:

- (1) *AUTH 3: Applications for Part IV permission;*
- (2) *AUTH 4: Authorisation fees; and*
- (3) *AUTH 6: Approved persons; and*
- (4) ~~*AUTH 8: Determining applications.*~~

...

CRED Section 13.8 is deleted in its entirety. The deleted text is not shown struck through.

CRED 13.8 [deleted]

Annex G

Amendments to the Electronic Money sourcebook

In this Annex, striking through indicates deleted text.

...

- 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 ~~*AUTH 8 (Determining applications)*~~ and *DEC 2* (Statutory notice procedure: warning notice and decision notice procedure).

...