

Chapter 5

Reports by skilled persons



5.4 Appointment and reporting process

Scope of report

- 5.4.1

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Where the *FCA* requires a report by a *skilled person* under section 166 of the *Act* (Reports by skilled persons), the *FCA* will send a notice in writing requiring the *person* in ■ SUP 5.2.1 G to provide a report by a *skilled person*, or notifying the *person* in ■ SUP 5.2.1 G in writing of the *FCA*'s appointment of a *skilled person* to provide a report, on any matter if it is reasonably required in connection with the exercise of its functions conferred by or under the *Act*. The *FCA* may require the report to be in whatever form it specifies in the notice.
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Where the *FCA* requires the updating or collection of information by a *skilled person* under section 166A of the *Act* (Appointment of skilled person to collect and update information), the *FCA* will send a notice in writing requiring the *firm* to appoint a *skilled person*, or notifying the *firm* of the *FCA*'s appointment of a *skilled person*, to collect or update the relevant information.
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As part of the decision making process the *FCA* will normally contact the *person* in ■ SUP 5.2.1 G or in ■ SUP 5.2.2 G to discuss its needs before finalising its decision to require a report or the updating or collection of information by a *skilled person*. This will provide an opportunity for discussion about the appointment, whether an alternative means of obtaining the information would be better, what the scope of a report should be, who should be appointed, who should appoint, and the likely cost.
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The *FCA* will give written notification to the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G of the purpose of the report or collection or updating of information, its scope, the timetable for completion and any other relevant matters. The *FCA* will state the matters which the report is to contain, or the information which is to be collected or updated, as well as any requirements as to the report's format. For example, a report on controls may be required to address key risks, key controls and the control environment. The *FCA* attaches importance to there being a timetable for each report and to the *skilled person*, with the cooperation of the *person* in ■ SUP 5.2.1 G or the *firm* in ■ SUP 5.2.2 G, as relevant, keeping to that timetable.
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The written notification in ■ SUP 5.4.3 G may be preceded or followed by a discussion of the *FCA*'s requirements and the reasons for them. This may involve the *FCA* the *person* in ■ SUP 5.2.1 G or in ■ SUP 5.2.2 G and the *person* who has been, or is expected to be, appointed as the *skilled person*. The *FCA*

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recognises that there will normally be value in holding discussions involving the *skilled person* at this stage. These discussions may include others if appropriate.

The *FCA* will wish to conduct the discussion with the *firm*, the *skilled person* and any others within a timescale appropriate to the circumstances of the case.

Appointment process

- 5.4.6

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Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the *appropriate regulator* will normally seek to agree in advance with the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G the *skilled person* who will make the report or collect or update the relevant information. The *Act* requires that such *skilled person* be nominated or approved by the *appropriate regulator*:

(1)

if the *appropriate regulator* decides to nominate the *skilled person* who is to make the report or collect or update the information, it will notify the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G accordingly; and

(2)

alternatively, if the *appropriate regulator* is content to approve a *skilled person* selected by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, it will notify the latter *person* of that fact.

The *appropriate regulator* may give the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G a shortlist from which to choose.

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A *skilled person* must appear to the *FCA* to have the skills necessary to make a report on the matter concerned or collect or update the relevant information. A *skilled person* may be an accountant, lawyer, compliance consultant, *actuary* or *person* with relevant business, technical or technological skills.

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When considering whether to nominate, approve or appoint a *skilled person* to make a report or collect or update information, the *FCA* will have regard to the circumstances of the case, including whether the proposed *skilled person* appears to have:

(1)

the skills necessary to make a report on the matter concerned or collect or update the relevant information;

(2)

the ability to complete the report or collect or update the information within the time expected by the *FCA*;

(3)

any relevant specialised knowledge, for instance of the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the type of business carried on by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, or the matter to be reported on or information to be collected or updated;

(4)

any professional difficulty or potential conflict of interest in reviewing the matters to be reported on, or the information to be collected or updated, for instance because it may involve questions reflecting on

the quality or reliability of work previously carried out by the proposed *skilled person*; and

- (5) enough detachment, bearing in mind the closeness of an existing professional or commercial relationship, to be able to collect or update the information or to give an objective opinion on matters such as:
 - (a) matters already reported on by the *skilled person* (for example, on the financial statements of the *person* in ■ SUP 5.2.1 G or in ■ SUP 5.2.2 G or in relation to their systems and controls); or
 - (b) matters that are likely to be contentious and may result in disciplinary or other enforcement action against the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, its management, shareholders or controllers; or
 - (c) matters that the *skilled person* has been involved in, in another capacity (for example, when a *skilled person* has been involved in developing an information system it may not be appropriate for him to provide a subsequent opinion on the adequacy of the system).

5.4.9 G In appropriate circumstances, it may be cost effective for the FCA to nominate or approve the appointment of, or appoint itself, a *skilled person* who has previously acted for, or advised, the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G. For example, the FCA may nominate or approve the appointment of, or appoint, the auditor of a *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G to prepare a report or collect or update the information taking into account, where relevant, the considerations set out in ■ SUP 5.4.7 G.

Reporting process

5.4.10 G Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the FCA will normally require the *skilled person* to be appointed to report to the FCA through that *person*. In the normal course of events the FCA expects that the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G will be given the opportunity to provide written comments on the report or the collection of the relevant information prior to its submission to the FCA.

5.4.10A G Where the *skilled person* is to be appointed by the FCA itself, the *skilled person* will report directly to the FCA.

5.4.11 G The FCA may enter into a dialogue with the *skilled person*, and is ready to discuss matters relevant to the report or the collection or updating of the relevant information with that *person*, during the preparation of the report or the collection or updating of the relevant information. Such discussions may involve or be through the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G.

5.4.12 G The FCA will normally specify a time limit within which it expects the *skilled person* to deliver the report or collect or update the relevant information. Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the *skilled person* should, in complying with its contractual duty under ■ SUP 5.5.1 R, take reasonable steps to achieve delivery by that time. If the *skilled person* becomes aware that the report may not be delivered, or

collection or updating of the relevant information may not be, on time, the *skilled person* should inform the *FCA* and the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G as soon as possible. Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, if the *skilled person* becomes aware that there may be difficulties delivering the report or collecting or updating the relevant information within cost estimates, the *skilled person* will no doubt wish to advise the *firm*.

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The *FCA* may meet with the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G and the *skilled person* together to discuss the final report. The *FCA* may also wish to discuss the final report with the *skilled person* present but without the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G.