

Variation of SMF managers' approval on the FCA's own initiative

Chapter 8

Variation of SMF managers'
approval on the FCA's own
initiative

8.1 Introduction

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■ DEPP 8 sets out the *FCA's* statement of policy on the exercise of its power under section 63ZB of the *Act* to vary, on its own initiative, an approval given by the *FCA* or the *PRA* for the performance of a *designated senior management function* in relation to the carrying on of a *regulated activity* by an *SMCR firm*. The *FCA* is required to publish this statement of policy by section 63ZD of the *Act*.

[**Note:** the *FCA's* statement of policy on the exercise of its power under section 63ZA of the *Act* to vary an approval at the request of an *SMCR firm* is set out in ■ SUP 10C.]

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In ■ DEPP 8, the power under section 63ZB of the *Act* described in ■ DEPP 8.1.1G is referred to as the *FCA's* "own-initiative variation of approval power".



8.2 Use of the own-initiative variation of approval power: general

- 8.2.1** **G** The *FCA* may use the own-initiative variation of approval power where it considers that it is desirable to do so to advance one or more of its operational objectives. The *FCA* will assess this on a case-by-case basis, taking into account the specific circumstances of the *firm* and the *SMF manager*.
- 8.2.2** **G** When considering the use of this power to deal with a particular concern, the *FCA* will have regard to the range of regulatory tools that are available. The *FCA* will consider dealing with any concerns informally through discussion and agreement with the *firm* and the *SMF manager*, instead of using the own-initiative variation of approval power.
- 8.2.3** **G** The power to impose a conditional or time-limited approval does not depend on the *SMF manager* being unfit without that condition or time limitation. The *FCA* can impose a condition or time limitation even if the candidate would still be fit and proper without it. Conversely, where an *SMF manager* is not fit and proper but might be if a condition or time limitation is imposed, the *FCA* is not obliged to impose a condition or time limitation, and may take the view that a *prohibition order* or withdrawal of approval is the appropriate course of action.
- 8.2.4** **G** The *FCA* may vary an approval by:
- (1) imposing a condition;
 - (2) varying a condition;
 - (3) removing a condition; or
 - (4) limiting the period for which the approval is to have effect.
- 8.2.5** **G** The *FCA* may use the own-initiative variation of approval power in a wide range of circumstances. A number of examples are set out in ■ DEPP 8.3. These are not exhaustive.
- 8.2.6** **G** The circumstances which will lead to a condition or time limitation being imposed on a *candidate* for an *SMF manager* role will, where appropriate, also lead to an existing *SMF manager's* approval being varied. ■ SUP 10C is therefore relevant to the *FCA's* use of the own-initiative variation of approval power.

8.3 Use of the own-initiative variation of approval power: specific examples

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Examples of situations where the *FCA* may use the own-initiative variation of approval power include where:

- (1) it has concerns about an *SMF manager's* fitness to remain approved in relation to the performance of a *designated senior management function* but, in all the circumstances, it considers it appropriate to vary their approval by imposing one or more conditions or a time limitation, rather than making a *prohibition order* or withdrawing approval;
- (2) the nature or scope of the *SMF manager's* role has changed, for example where they have taken on additional or different responsibilities. In this situation, the *FCA* may consider it appropriate to impose a condition that they undertake training to enhance their competency and capability regarding their new responsibilities, or a condition that they receive mentoring;
- (3) the size, nature, scope or complexity of the *firm's* activities has significantly changed since the *SMF manager* was first approved;
- (4) the *SMF manager* is required to personally support supervisory action in relation to the *firm*. For example, where a *firm* is running a remedial programme the *FCA* may impose a condition that the *SMF manager* take responsibility for managing or overseeing delivery of aspects of that programme;
- (5) it is appropriate to use the own-initiative variation of approval power as a matter of urgency (see ■ DEPP 8.4);
- (6) the *SMF manager's* approval is subject to an existing condition but the *FCA* considers that condition is insufficient to mitigate the risk in respect of which it was imposed. In this case, the *FCA* will vary the condition to make it more effective. The *FCA* may also, or instead, limit the period of the approval;
- (7) the *SMF manager's* firm applies to the *FCA* to remove a condition, or vary a condition to make it less onerous, where the condition was imposed by the *FCA* on its own initiative, and the *FCA* considers that it is desirable to remove or vary the condition in order to advance one or more of its operational objectives. The *FCA* expects that such a removal or variation would normally occur on the application of the *firm*.



8.4 Use of the own-initiative variation of approval power in urgent cases

- 8.4.1** **G** The *FCA* may impose a variation of approval to take effect immediately, or on a specified date, if it reasonably considers that this is necessary having regard to the reasons for which it is exercising the own-initiative variation of approval power.
- 8.4.2** **G** The *FCA* will consider exercising its own-initiative variation of approval power as a matter of urgency where:
- (1) the information available to it indicates serious concerns about the *SMF manager* or their *firm* that need to be addressed immediately; and
 - (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *SMF manager* to ensure these concerns are addressed.



**8.5 Effects of a breach of condition or
time limitation**

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The effects of breaching a condition or time limitation are set out in
■ SUP 10C and ■ DEPP 6.2.9A.