

## Chapter 9

# Prohibition Orders and withdrawal of approval

### 9.3 Prohibition orders and withdrawal of approval - approved persons

#### 9.3.1

When the *FCA* has concerns about the fitness and propriety of an *approved person*, it may consider whether it should prohibit that *person* from performing functions in relation to *regulated activities*, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a *prohibition order*, the *FCA* will consider in each case whether its *statutory objectives* can be achieved adequately by imposing disciplinary sanctions, for example, *public censures* or financial penalties, or by issuing a private warning.

#### 9.3.2

When the *FCA* decides whether to make a *prohibition order* against an *approved person* and/or withdraw their approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

- (1) The matters set out in section 61(2) of the *Act*.
- (2) Whether the individual is fit and proper to perform functions in relation to *regulated activities*. The criteria for assessing the fitness and propriety of *approved persons* are set out in ■ FIT 2.1 (Honesty, integrity and reputation); ■ FIT 2.2 (Competence and capability) and ■ FIT 2.3 (Financial soundness).
- (3) Whether, and to what extent, the *approved person* has:
  - (a) failed to comply with the *Statements of Principle* or *COCON*, as applicable, issued by the *FCA* with respect to the conduct of *approved persons*; or
  - (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*), the *AIFMD UK regulation* or any qualifying provision specified, or of a description specified, for the purpose of section 66(2) by the Treasury by order.
- (4) Whether the *approved person* has engaged in *market abuse*.
- (5) The relevance and materiality of any matters indicating unfitness.
- (6) The length of time since the occurrence of any matters indicating unfitness.

- (7) The particular *controlled function* the *approved person* is (or was) performing, the nature and activities of the *firm* concerned and the markets in which he operates.
- (8) The severity of the risk which the individual poses to *consumers* and to confidence in the *financial system*.
- (9) The previous disciplinary record and general compliance history of the individual including whether the *FCA*, any *previous regulator*, *designated professional body* or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
- (10) Where the *approved person* is an *SMF manager*, whether they would be a fit and proper person to perform functions in relation to *regulated activities* if the *FCA* varied their approval by imposing one or more conditions. If so, whether it is appropriate for the *FCA* to exercise its power to impose such conditions, instead of making a prohibition order or withdrawing the *approved person's* approval.

### 9.3.3

The *FCA* may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a *controlled function* or other function in relation to *regulated activities*. It may also take account of the particular *controlled function* which an *approved person* is performing for a *firm*, the nature and activities of the *firm* concerned and the markets within which it operates.

### 9.3.4

Due to the diverse nature of the activities and functions which the *FCA* regulates, it is not possible to produce a definitive list of matters which the *FCA* might take into account when considering whether an individual is not a fit and proper *person* to perform a particular, or any, function in relation to a particular, or any, *firm*.

### 9.3.5

The following are examples of types of behaviour which have previously resulted in the *FCA* the deciding to issue a *prohibition order* or withdraw the approval of an *approved person*:

- (1) Providing false or misleading information to the *FCA*; including information relating to identity, ability to work in the United Kingdom, and business arrangements;
- (2) Failure to disclose material considerations on application forms, such as details of County Court Judgments, criminal convictions and dismissal from employment for regulatory or criminal breaches. The nature of the information not disclosed can also be relevant;
- (3) Severe acts of dishonesty, e.g. which may have resulted in financial crime;
- (4) Serious lack of competence; and
- (5) Serious breaches of the *APER* or *COCON*, for *approved persons*, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions;

providing misleading information to clients; consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a *firm* acted within the scope of its permissions.

**9.3.6** Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the *FCA* will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

**9.3.7** Where it considers it is appropriate to withdraw an individual's approval to perform a *controlled function* within a particular *firm*, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.

**9.3.8** The *FCA* will consult the *PRA* before withdrawing an approval given by the *PRA*.