

Chapter 5

Reports by skilled persons

5.1 Application and purpose

Application

- 5.1.1** **R** (1) This chapter applies to every *firm*.
- (2) The *rules*, and the *guidance on rules* in ■ SUP 5.5 (Duties of firms), do not apply to a *UCITS qualifier*.
- 5.1.1A** **R** In respect of the *FCA's power* in section 166 of the *Act* (Reports by skilled persons), reference to a *firm* in ■ SUP 5.5.1 R, ■ SUP 5.5.5 R and ■ SUP 5.5.9 R includes a *recognised investment exchange*.
- 5.1.1B** **G** In respect of the *FCA's power* in section 166 of the *Act* (Reports by skilled persons), the *guidance* in this chapter applies to a *recognised investment exchange* in the same way as it applies to a *firm*.
- 5.1.1C** **D** ■ SUP 5.5.1R and ■ SUP 5.5.5R apply to *CBTL firms* in relation to their *CBTL business* as if a reference to *firm* in these *rules* were a reference to a *CBTL firm* and a reference to section 166 of the *Act* were a reference to section 166 of the *Act*, as applied by article 23(2)(b) of the *MCD Order*.
- 5.1.1D** **G** ■ SUP 5.5.1R and ■ SUP 5.5.5R apply to former *CBTL firms* in relation to their *CBTL business* as guidance and as if:
- (1) a reference to *firm* in those *rules* were a reference to a *CBTL firm*;
- (2) section 166 of the *Act* were a reference to section 166 of the *Act* as applied by article 23(2)(b) of the *MCD Order*; and
- (3) the word “*must*” were replaced by the word “*should*”.
- 5.1.1E** **G** The *guidance* in ■ SUP 5.2.1G, ■ SUP 5.3, ■ SUP 5.4 (except ■ SUP 5.4.1AG), and ■ SUP 5.5 (except ■ SUP 5.5.10G and ■ SUP 5.5.11G) applies to *CBTL firms* and former *CBTL firms* in relation to their *CBTL business* as if:
- (1) a reference to *firm* in that *guidance* included a *CBTL firm*;
- (2) a reference to a section of the *Act* were a reference to that section as applied by article 23 of the *MCD Order* if applicable; and

- (3) a reference to the *FCA's* functions under the *Act* were a reference to the *FCA's* functions under Part 3 of the *MCD Order*.

5.1.2

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This chapter (other than the *rules*, and *guidance on rules*, in ■ SUP 5.5 (Duties of firms)) is also relevant to certain unauthorised *persons* within the scope of section 166 of the *Act* (Reports by skilled persons) (see ■ SUP 5.2.1 G).

5.1.2A

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- (1) This chapter also applies, as guidance, to a *designated bank*, *designated credit reference agency* or a *designated finance platform*:
 - (a) in relation to its activities under the *Small and Medium Sized Business (Credit Information) Regulations* or in relation to its activities under the *Small and Medium Sized Business (Finance Platforms) Regulations*, as the case may be;
 - (b) as if, in relation to the activities in (a), references to “must” in ■ SUP 5 were read as “should”; and
 - (c) where it is not a *firm*, as if it were a *firm*.
- (2) Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 11 of the *Act* which includes the provisions concerning skilled persons in relation to activities of a *designated bank* or a *designated credit reference agency* under those Regulations. Regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* has the same effect in relation to a *designated bank* under those Regulations or a *designated finance platform*.
- (3) In relation to a *designated bank* or a *designated credit reference agency*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Credit Information) Regulations*. In relation to a *designated finance platform* or a *designated bank*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Finance Platforms) Regulations*.
- (4) The application of section 166 by regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* or by regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* does not include the *persons* set out in section 166(11). Therefore, any reference to those persons in this chapter does not apply in relation to a *designated bank*, *designated credit reference agency* or a *designated finance platform*.
- (5) In relation to an appointment under section 166A as applied by the *Small and Medium Sized Business (Credit Information) Regulations* or the *Small and Medium Sized Business (Finance Platforms) Regulations*, any reference in this chapter to a breach of rules concerning collecting and keeping up-to-date information is a reference to contravention of the requirement under regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* or under regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations*, as the case may be.

Purpose

5.1.3

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The purpose of this chapter is to give *guidance* on the *FCA's* use of the power in section 166 (Reports by skilled persons) and section 166A (Appointment of skilled person to collect and update information) of the *Act*. The purpose is also to make *rules* requiring a *firm* to give assistance to a *skilled person* and, where a *firm* is required to appoint a *skilled person*, to include certain provisions in its contract with a *skilled person*. These *rules* are designed to ensure that the *FCA* receives certain information from a *skilled person* and that a *skilled person* receives assistance from a *firm*.