

## Chapter 5

# Reports by skilled persons



5.6 Confidential information and privilege

Confidential information

5.6.1 **G** Within the legal constraints that apply, the *FCA* may pass on to a *skilled person* any information which it considers relevant to the *skilled person's* function. A *skilled person*, being a primary recipient under section 348 of the *Act* (Restrictions on disclosure of confidential information by Authority etc.), is bound by the confidentiality provisions in Part XXIII of the *Act* (Public record, disclosure of information and cooperation) as regards confidential information received from the *FCA* or directly from a *firm* or other *person*. A *skilled person* may not pass on confidential information without lawful authority, for example, where an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates. The *FCA* will indicate to a *skilled person* if there is any matter which cannot be discussed with the *person* in ■ SUP 5.2.1 G.

Banking confidentiality and legal privilege

5.6.2 **G** The *limitations* in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplemental provisions) under which a person may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); and
- (2) section 413 (Protected items), under which no *person* may be required to produce, disclose or allow the inspection of *protected items*.

5.6.3 **G** In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a contractual or other requirement imposed on a *person* to keep any information confidential will not apply if:

- (1) the information is or may be relevant to anything required to be done as part of the *skilled person's* appointment under section 166A (Appointment of skilled person to collect and update information) of the *Act*;

- (2) a *firm* or a *skilled person* requests or requires the *person* to provide the information for the purpose of securing that those things are done; and
- (3) the *FCA* has approved the making of the request or the imposition of the requirement before it is made or imposed.

### 5.6.4

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A *firm* may provide information that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done in respect of the *skilled person's* collection or updating of information under section 166A (Appointment of skilled person to collect and update information) of the Act.