

Chapter 6A

Permission to approve financial promotions



6A.1 Application and purpose

Application

- 6A.1.1 **G** This chapter applies to a *firm*:

 - (1) that wishes to apply to the *FCA* for *approver permission*; or
 - (2) with *approver permission*.

- 6A.1.2 **G** This chapter will also be of interest to a *person* who is applying, or is considering applying, for *Part 4A permission* and who may also wish to apply for *approver permission*.

Purpose

- 6A.1.3 **G** Under sections 21(2A) and 55NA of the *Act* a *firm* is unable to *approve* a *financial promotion* for the purposes of section 21 of the *Act* unless:

 - (1) the *firm* has obtained *approver permission* entitling it to *approve* that *financial promotion*; or
 - (2) an *approver permission exemption* applies.

- 6A.1.4 **G** A *firm* that *approves*, or purports to *approve*, a *financial promotion* other than:

 - (1) in accordance with the terms of its *approver permission*, if it has such a permission; or
 - (2) within the scope of an *approver permission exemption*,

is taken to have contravened a requirement imposed on the *firm* under the *Act*.

[Note: section 55NA(2) and (11) of the *Act*]

- 6A.1.5 **G** This chapter explains how:

 - (1) a *firm* can apply for *approver permission*;

- (2) a *firm* with *approver permission* can apply to the *FCA* to vary the terms of that *approver permission* or to cancel it; and
- (3) the *FCA* assesses and determines those applications.

6A.1.6 **G** This chapter also outlines the *FCA’s* power, on its own initiative, to vary the terms of a *firm’s approver permission* or to cancel it.

6A.1.7 **G** This chapter also includes a *rule* that requires a *firm* to keep the *FCA* informed of its plans to *approve financial promotions* of *investments* subject to marketing restrictions (■ SUP 6A.2.19R).

Interaction with other powers.....

6A.1.8 **G** Apart from the *FCA’s* power to grant, vary or cancel *approver permission*, section 55NA(12) of the *Act* confirms that the *FCA* may exercise other powers under the *Act* to restrict a *firm’s* ability to *approve financial promotions* beyond the restriction imposed by section 55NA. For example, the *FCA* may exercise its power to impose requirements under section 55L of the *Act* to restrict a *firm’s* ability to *approve financial promotions* for which it would not otherwise require *approver permission* (see ■ SUP 6.3 and ■ SUP 7).



6A.2 Applications relating to approver permission

Applying for approver permission

6A.2.1

G

- (1) The following *persons* may apply to the FCA for the grant of *approver permission*:
 - (a) a *firm*; or
 - (b) a *person* whose application for *Part 4A permission* has yet to be determined.
- (2) In the case of an applicant for *Part 4A permission*, the FCA is likely to consider the application for *approver permission* alongside the application for *Part 4A permission*.

Determination of applications for approver permission

6A.2.2

G

- (1) The FCA may grant *approver permission* to a *firm* enabling it to *approve*:
 - (a) any *financial promotions*; or
 - (b) only certain *financial promotions*.
- (2) In relation to (1)(b), the FCA may grant *approver permission* subject to any terms the FCA considers appropriate. This may, in particular, provide for the *approver permission* to cover only *financial promotions* relating to certain kinds of *controlled investment*.
- (3) Where the FCA grants *approver permission* only in relation to certain *financial promotions* this may be:
 - (a) in accordance with the *firm's* own application; or
 - (b) because the FCA determines that it is appropriate to grant *approver permission* on terms which are different to those applied for.

[Note: section 55NA(4) of the Act]

6A.2.3

G

If the FCA grants or varies *approver permission*, the FCA will set out the terms on which the permission is granted, in particular, by describing what kinds of *financial promotion* the *firm* is entitled to *approve* and any conditions applicable to the exercise of the *approver permission*.

[Note: section 55NA(6) of the Act]

6A.2.4

G

- (1) The FCA may refuse to grant an application for *approver permission* under section 55NA of the Act, or refuse an application to vary or cancel an existing *approver permission*, if it appears to the FCA that it is desirable to do so in order to advance one or more of its *operational objectives*.
- (2) The FCA can only grant an application for *approver permission* made by an applicant for *Part 4A permission* if the applicant obtains *authorisation*.

[Note: section 55NA(7) of the Act]

6A.2.5

G

The FCA will assess an application for *approver permission* by reference to its *operational objectives*. In making this assessment, the FCA is likely to have particular regard to:

- (1) the applicant’s systems, controls and resources (including relevant personnel) relating to the *approval of financial promotions*;
- (2) the competence and expertise of relevant individuals;
- (3) the applicant’s processes (or intended processes) for *approving financial promotions*; and
- (4) the applicant’s readiness to comply with the relevant *financial promotion rules*.

[Note: for the FCA’s guidance on *approving financial promotions* see: <https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions>]

Applicant’s competence and expertise to approve financial promotions

6A.2.6

G

- (1) The FCA ordinarily expects to grant permission only to *approve financial promotions* relating to *controlled investments* (or, where relevant, *controlled claims management activity*) of a kind in relation to which the applicant can demonstrate that it has appropriate competence and expertise to assess compliance with the applicable *financial promotion rules*.
- (2) In assessing an applicant’s expertise in (1), the FCA will have regard, among other factors, to the *regulated activities* for which the applicant has applied for, or for which the applicant has, *Part 4A permission*.

6A.2.7

G

- (1) The FCA expects a *person* applying for *approver permission* to apply only for permission to *approve financial promotions*:
 - (a) of a kind which the *person* anticipates they will, in fact, assess for the purposes of giving, or refusing to give, *approval* (if *approver permission* is granted); and
 - (b) relating to *controlled investments* (or, where relevant, *controlled claims management activity*) of a kind in relation to which the *person* reasonably believes they have appropriate competence

and expertise to assess compliance with the applicable *financial promotion rules*.

- (2) In accordance with (1), the *FCA* discourages applicants from applying for blanket *approver permission* in respect of *financial promotions* generally.

Preparing for an application

6A.2.8

G

A *firm* that intends to apply for:

- (1) *approver permission*;
- (2) a variation of its *approver permission*; or
- (3) cancellation of its *approver permission*,

should, consistent with *Principle 11* (Relations with regulators), discuss its plans with its supervisory contact at the *FCA* as early as possible before making an application. These discussions will help the *FCA* and the *firm* to agree the correct approach for the *firm's* application.

Making an application

6A.2.9

D

- (1) A *firm* wishing to apply for *approver permission*, or for a variation or cancellation of its *approver permission*, must apply online using the relevant form specified on the *online notification and application system*.
- (2) Until the application has been determined, a *firm* which submits an application must inform the *FCA* of any significant change to the information given in the application immediately after it becomes aware of the change.
- (3) If the *online notification and application system* fails and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the relevant form in ■ SUP 6 Annex 5D in the way set out in ■ SUP 15.7.4R to ■ SUP 15.7.9G (Form and method of notification).

6A.2.10

G

- (1) If the *online notification and application system* fails and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 15.7.4R to ■ SUP 15.7.9G (Form and method of notification) should be used.
- (2) Where ■ SUP 6A.2.9D(3) applies to a *firm*, ■ GEN 1.3.2R (Emergency) does not apply.

6A.2.11

G

An applicant for *Part 4A permission* that also wishes to apply for *approver permission* should refer to the *FCA's* website for information on how to make this application.

6A.2.12 **G** As soon as possible after receipt of an application for *approver permission*, the *FCA* will advise the applicant of any additional information which is required as part of its application. The amount of information required will vary depending on the type of *financial promotions* in relation to which the applicant is seeking *approver permission* and the related risk profile of the application.

6A.2.13 **G** The fees payable by a *person* applying for *approver permission*, or an extension of *approver permission*, are set out in ■ FEES 3 Annex 14R.

How long will an application take?

- 6A.2.14** **G**
- (1) Under section 55V(1) of the *Act* (Determination of applications), the *FCA* has 6 months to consider a completed application from the date of receipt.
 - (2) If the *FCA* receives an application which is incomplete (that is, if information or a document required as part of the application is not provided), section 55V(2) of the *Act* requires the *FCA* to determine that incomplete application within 12 months of the initial receipt of the application.
 - (3) If the *FCA* fails to determine an application within the time period specified in section 55V of the *Act*, this does not mean that *approver permission* is deemed to be granted.

How will an application be determined?

- 6A.2.15** **G**
- (1) A decision to grant an application will be taken by appropriately experienced staff at the *FCA*. However, if the staff dealing with the application recommend that a *firm's* application for *approver permission*, or for a variation of its *approver permission*, be either refused or granted on terms other than those applied for, the decision will be subject to the *FCA's* formal decision-making process.
 - (2) *DEPP* gives *guidance* on the *FCA's* decision-making procedures, including the procedures it will follow if it proposes to refuse an application for *approver permission* either in whole or in part.

Consultation with other regulators

- 6A.2.16** **G** Before granting *approver permission*, or varying or cancelling a *firm's* *approver permission* in response to an application under section 55NA of the *Act*, the *FCA* will consult:
- (1) the *PRA*, if the applicant is a *person*:
 - (a) who is, or on the granting of an application for *Part 4A permission* will be, a *PRA-authorized person*; or
 - (b) who is a member of a *group* which includes a *PRA-authorized person*;

- (2) the Gibraltar regulator, if the applicant or *firm* is a Gibraltar-based person (in each case within the meaning of Schedule 2A of the Act).

[Note: section 55NA(9) and (10) of the Act]

Threshold conditions

6A.2.17 **G**

In granting *approver permission*, the FCA is required by section 55B(3) of the Act to ensure that the applicant or *firm* satisfies, and will continue to satisfy, the *threshold conditions* for which the FCA is responsible in relation to all the *regulated activities* for which the applicant or *firm* has, or will have, *Part 4A permission*.

Approvals of financial promotions of investments subject to marketing restrictions

6A.2.18 **G**

- (1) A *firm* that applies for permission to *approve financial promotions* relating to certain types of *investment* will be asked whether it expects to *approve financial promotions* relating to:
 - (a) *restricted mass market investments*; and
 - (b) *non-mass market investments*.
- (2) Reference to these categories of *investment* subject to marketing restrictions is unlikely to form part of a *firm's approver permission*.
- (3) Nevertheless, the FCA expects *firms* to keep it informed of changes to their plans to *approve financial promotions* relating to *restricted mass market investments* and *non-mass market investments*.

6A.2.19 **R**

- (1) A *firm* must give the FCA:
 - (a) reasonable advance notice if it intends to begin *approving financial promotions* relating to *restricted mass market investments* or *non-mass market investments* for the first time; or
 - (b) notice if it ceases *approving financial promotions* relating to *restricted mass market investments* or *non-mass market investments*.
- (2) A notification in accordance with (1) must be made in the manner set out in ■ SUP 15.7.



6A.3 FCA's own-initiative power

6A

- 6A.3.1** **G** Where the *FCA* grants *approver permission* to a *firm* under section 55NA of the *Act*, the *FCA* may vary the terms of that permission, or cancel it:
- (1) on the application of the *firm* to whom it was given; or
 - (2) on the *FCA's* own initiative, if it appears to the *FCA* that:
 - (a) the *firm* has failed, during a period of at least 12 months, to give, or to refuse to give, any *approvals* in accordance with its *approver permission*. In practice, this might arise where:
 - (i) the *firm* does not appear to have assessed any *financial promotions* for the purposes of potential *approval* for a period of at least 12 months; or
 - (ii) the *firm* has only *approved* (or refused to *approve*) *financial promotions* of a substantially narrower description than the kinds for which it has *approver permission*; or
 - (b) it is desirable to do so in order to advance one or more of its *operational objectives*.

[Note: section 55NA(8) of the *Act*]

- 6A.3.2** **G** In deciding whether to vary or cancel a *firm's approver permission* on its own initiative, the *FCA* will take into account all relevant factors in relation to the *firm's* business. This may include its business model, the commercial environment and any legitimate explanation for the manner in which the *firm* has used its *approver permission* or for its failure to use its *approver permission*.

- 6A.3.3** **G**
- (1) The *FCA* will consult the *PRA* before varying or cancelling, on the *FCA's* own initiative, the terms of the *approver permission* of a *PRA-authorized person* or a member of a *group* which includes a *PRA-authorized person*.
 - (2) Where the *FCA* varies the terms of, or cancels, the *approver permission* of a Gibraltar-based person on its own initiative, the *FCA* is not obliged to consult with the Gibraltar regulator but the *FCA* will inform the Gibraltar regulator in writing of the variation or cancellation.

[Note: section 55NA(9) and (10) of the *Act*]

6A.3.4

G

- (1) If the *FCA* exercises its power to vary the terms of a *firm's approver permission* on its own initiative, it will do so by issuing a *supervisory notice*.
- (2) If the *FCA* proposes to cancel a *firm's approver permission* on its own initiative, it will give the *firm* a *warning notice* and, where the *FCA* decides to cancel, it will give the *firm* a *decision notice*.
- (3) The procedure that will be followed in each case is set out in ■ DEPP 2.

6A.3.5

G

A *firm* has a right of referral to the *Tribunal* in respect of the *FCA* exercising its power to vary or cancel a *firm's approver permission* on its own initiative.

6A