

Chapter 8

Waiver and modification of rules



8.3 Applying for a waiver

Conditions for giving a waiver

- 8.3.1** G Under section 138A(4) of the *Act*, the *appropriate regulator* may not give a *waiver* unless it is satisfied that:
- (1) compliance by the *firm* with the *rules*, or with the *rules* as unmodified, would be unduly burdensome, or would not achieve the purpose for which the *rules* were made; and
 - (2) the *waiver* would not adversely affect the advancement of, in the case of the *PRA*, any of its objectives and, in the case of the *FCA*, any of its operational objectives.

- 8.3.1A** G Even if the conditions in section 138A(4) of the *Act* are satisfied, the *appropriate regulator* will consider other relevant factors before giving a *waiver*.

Publication of waivers

- 8.3.2** G The *appropriate regulator* is required by section 138B of the *Act* to publish a *waiver* unless it is satisfied that it is inappropriate or unnecessary to do so (see ■ SUP 8.6).

- 8.3.2A** G The *FCA* must consult the *PRA* before publishing or deciding not to publish a *waiver* which relates to:
- (1) a *PRA-authorised person*; or
 - (2) an *authorised person* who has as a member of its *immediate group* a *PRA-authorised person*;

unless the *waiver* relates to rules made by the *FCA* under sections 247 or 248 of the *Act*.

Form and method of application

- 8.3.3** D A firm wishing to apply for a *waiver* must complete the application form in ■ SUP 8 Annex 2 D and submit it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (1) [deleted]

- (2) [deleted]
- (3) [deleted]
- (4) [Deleted]
- (5) [Deleted]
- (6) [Deleted]
- (7) [Deleted]
 - (a) [Deleted]
 - (b) [Deleted]

8.3.3A G (1) The *PRA's* preferred method of submission for *waiver* applications is by e-mail. The *FCA's* preferred method of submission for *waiver* applications is through online submission via the *FCA's* website at www.fca.org.uk.

(2) The form is available on the *appropriate regulator's* website.

8.3.4 G Before sending in a *waiver* application, a *firm* may find it helpful to discuss the application with its appropriate supervisory contact. However, the *firm* should still ensure that all relevant information is included in the application.

8.3.4A G *Firms* or *persons* other than *PRA-authorized persons* should send applications for *waivers* or applications for variations of *waivers* to the *FCA*.

8.3.4B G *PRA-authorized persons* should send applications for *waivers* or applications for variations of *waivers* to:

- (1) the *FCA* in respect of *rules* in the *FCA Handbook* applicable to that *PRA-authorized person*; and
- (2) the *PRA* in respect of *rules* in the *PRA Handbook*.

Procedure on receipt of an application.....

8.3.5 G The *appropriate regulator* will acknowledge an application promptly and if necessary will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. A *firm* should make it clear in the application if it needs a decision within a specific time.

8.3.5A G The *appropriate regulator* will treat a *firm's* application for a *waiver* as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The *appropriate regulator* will not do this if the *firm* has made it clear to the *appropriate regulator* in some other way that it intends to pursue the application.

8.3.6 **G** In some cases, the *appropriate regulator* may give a modification of a *rule* rather than direct that the *rule* is not to apply. The *appropriate regulator* may also impose conditions on a *waiver*, for example additional reporting requirements. A *waiver* may be given for a specified period of time only, after which time it will cease to apply. A *firm* wishing to extend the duration of a *waiver* should follow the procedure in ■ SUP 8.3.3 D. A *waiver* will not apply retrospectively.

8.3.7 **G** If the *appropriate regulator* decides not to give a *waiver*, it will give reasons for the decision.

8.3.8 **G** A *firm* may withdraw its application at any time up to the giving of the *waiver*. In doing so, a *firm* should give the *appropriate regulator* its reasons for withdrawing the application.

8.3.9 **G** If the *appropriate regulator* believes that a particular *waiver* given to a *firm* may have relevance to other *firms*, it may publish general details about the possible availability of the *waiver*. For example, IPRU(INV) 3-80(10)G explains that a *firm* that wishes to use its own internal model to calculate its position risk requirement (PRR) will need to apply for a *waiver* of the relevant *rules*.

Giving a waiver with consent rather than on an application

8.3.10 **G** Under section 138A(1) of the *Act* the *appropriate regulator* may give a *waiver* with the consent of a *firm*. This power may be used by the *appropriate regulator* in exceptional circumstances where the *appropriate regulator* considers that a *waiver* should apply to a number of *firms* (for example, where a *rule* unmodified may not meet the particular circumstances of a particular category of *firm*). In such cases the *appropriate regulator* will inform the *firms* concerned that the *waiver* is available, either by contacting *firms* individually or by publishing details of the availability of the *waiver* on the *appropriate regulator's* website provided that the *FCA* must comply with ■ SUP 8.3.2A G. The *firms* concerned will not have to make a formal application but will have to give their written consent for the *waiver* to apply.

Waiver of an evidential provision

8.3.11 **G** An application for a *waiver* of an *evidential provision* will normally be granted only if a breach of the underlying binding *rule* is actionable under section 138D of the *Act*. Individual *guidance* would normally be a more appropriate response (see ■ SUP 9 (Individual Guidance)) if there is no right of action.

8.3.12 **G** An application for a *waiver* of the presumption of compliance created by an *evidential provision* would not normally be granted.

8.3.13 **G** For an application for a *waiver* of the presumption of contravention of a binding *rule*, which is actionable under section 138D of the *Act*, the *appropriate regulator* would normally wish to be satisfied that the *evidential rule* is itself unduly burdensome or does not achieve the purpose of the *rule*.

8.3.13A **G** In accordance with section 138C(4) of the Act, in ■ SUP 8.3.11 G to ■ SUP 8.3.13 G, a reference to a *rule* does not include a *rule* made under:

- (1) section 137O of the Act; or
- (2) section 192J of the Act.

Waiver of a two-way evidential provision.....

8.3.14 **G** In the case of an application for a *waiver* of a *two-way evidential provision* relating to an actionable binding *rule*, the policy in ■ SUP 8.3.12 G would apply to the presumption of compliance and the policy in ■ SUP 8.3.13 G would apply to the presumption of contravention. In other words, any modification is likely to be in relation to the second presumption only.