

WAIVER APPLICATION FORM (AMENDMENTS) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138A (Modification or waiver of rules); and
 - (2) section 139A (Power of the FCA to give guidance).

Commencement

- B. This instrument comes into force on 30 September 2019.

Amendments to the Handbook

- C. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Waiver Application Form (Amendments) Instrument 2019.

By order of the Board
26 September 2019

Annex

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

8 Waiver and modification of rules

...

8.3 Applying for a waiver

...

- 8.3.3A G (1) ~~The appropriate regulator's~~ 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.

...

...

Replace the form titled "Waiver Application form" at SUP 8 Annex 2D with the new version set out below. The text is not underlined.

8 Annex 2D Application form for a waiver or modification of rules

Waiver – Application Form (SUP 8 Ann 2D)

Waiver Application number (for FCA / PRA use only)

Firm Name

Firm Reference Number (FRN)

Address

Please tick if this firm has a PRA firm within its immediate group

Before completing this form, you may find it helpful to discuss your application with your appropriate supervisory contact at the Financial Conduct Authority or the Prudential Regulation Authority. However, you must still ensure you include all relevant information in this form. If you do not, your application will be delayed while you answer further questions from us.

Before completing this application form please read the notes at the end of the form as they explain or give help for many of the questions.

The FCA and Bank of England process personal data in line with the requirements of The General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018. For further information about the way we use the personal data collected in this form, please read our privacy notices available on our websites:

- FCA: www.fca.org.uk/privacy
- Bank of England: <https://www.bankofengland.co.uk/prudential-regulation/authorisations>

If you need more space you must use a separate sheet of paper. If you have used separate sheets of paper you must indicate how many and label them clearly.

If you are a solo-regulated or dual-regulated firm applying for a waiver or modification for a rule in the FCA Handbook, you can submit this notification via the FCA Connect Portal:

<https://www.fca.org.uk/firms/connect>. Alternatively, please return this form via email to centralwaiversteam@fca.org.uk.

If you are applying for a waiver or modification for a rule in the PRA Rulebook please submit this notification via email to the ATLAS Team at the PRA: PRA-waivers@bankofengland.co.uk

1

Personal details and timings for this application

If you are submitting your application using Connect you can continue to Question 1.3

Contact for this application**1.1 Contact name for this application**

Title	
First names	
Surname	

1.2 Contact details

Business address		
Postcode		
Position in firm		
Daytime telephone number		
Email address		
Individual reference number (IRN), if applicable		
Name of Approved Person responsible for this application, if applicable		

1.3 Does the applicant have any timing factors that it would like us to consider?

Yes ▶ Please enter date required and the reason why

No

/ /

Additional details

Group applications

1.4 Where applicable, please list the group firms on behalf of which this application is also being made

Firm Reference Number (FRN)	Firm Name

1.5 What types of client would be affected if we granted your application? (tick all that apply)

- Retail Clients
- Professional Clients
- Eligible Counterparty
- Retail Customers (insurance distribution activities only)
- Commercial Customers (insurance distribution activities only)
- Customers (home finance business only)

2 Rule(s) to which the application relates

If you are applying for a waiver or modification of more than one rule, you should copy this section as appropriate and attach the copies to this application.

2.1 Please state the Handbook/Rulebook rule to which the application relates

2.2 Is there a related Handbook/Rulebook Annex?

- Yes ▶ Please provide the Annex Reference below
 No

2.3 Is there a related Handbook/Rulebook table?

- Yes ▶ Please provide the Table Reference below
 No

2.4 Which section of the Financial Service and Markets Act 2000 (FSMA) forms the basis for the application for waiver/modification of this rule?

- section 138A of FSMA (relevant for most rules)
 section 250 of FSMA (relevant for certain rules in the Collective Investment Schemes sourcebook, see SUP 8.2.3G)
 section 294 of FSMA (relevant for certain rules in the Recognised Investment Exchanges and Recognised Clearing Houses Sourcebook, see REC 3.3)
 OEIC Regulations – Regulation 7 (relevant for certain rules in the Collective Investment Schemes sourcebook, see SUP 8.2.3G)

2.5 Are you applying for a waiver or modification of this rule?

- Waiver
 Modification ▶ Please describe the modification you require

Unmodified Handbook text

Draft of modified Handbook text

2.6 Are you applying for a variation of an existing waiver/modification which has previously been granted to the firm?

- Yes ▶ Please give the Direction reference number
- No

2.7 Have you been able to establish whether this rule implements a European directive requirement? (The notes at the end of this form give more guidance for this question)

- Yes, implements a directive requirement ▶ Please state the matters considered to be relevant in assessing whether the waiver would be compatible with European directive requirements
- No implementation of a directive requirement
- Not known

3 Precedents

3.1 Have you checked the waivers published by us for a precedent on which this application may be based?

Published waivers can be inspected at:

<https://www.fca.org.uk/publications>

Yes

No ▶ Please state why you think it is not relevant in this instance

3.2 If your application is based on a precedent, please give the direction reference number and preferably highlight the similarities and differences with your application.

4 Additional details

4.1 Please give a brief description of the nature of your business and a full and clear explanation of why you are applying for the waiver or modification. You may attach any documents that you wish to submit with this application.

4.2 Please give a full and clear explanation of why you think you satisfy the statutory tests:

a Your compliance with the rules, or with the rules as unmodified, would be unduly burdensome because...

(In answering this question you will need to include detailed figures showing the costs to your firm of complying with the rules as is and as modified)

OR

b Your compliance with the rules, or with the rules as unmodified, would not achieve the purpose for which the rules were made because...

AND

c The direction would not adversely affect the advancement of any of the regulator's objectives because...

- If solo regulated (regardless of whether the firm is part of a PRA group) or dual regulated and applying for the waiver/modification of a rule in the FCA Handbook please reference the FCA's operational objectives.
- If dual regulated and applying for the waiver/modification of a rule in the PRA Rulebook please reference the PRA's objectives.
- If dual regulated and applying for the waiver/modification of a shared rule please reference both regulator's objectives.

The FCA's operational objectives are:

- i. the consumer protection objective
- ii. the integrity objective, and
- iii. the competition objective

Additional guidance regarding the FCA's operational objectives: \

<https://www.fca.org.uk/about/the-fca>

The PRA's objectives are:

- i. the general objective – to promote the safety and soundness of firms it supervises, and
- ii. the insurance objective – to contribute to securing an appropriate degree of protection for those who are or may become policyholders

4.3 Are you happy for us to publish the waiver?

(Please see SUP 8.6.7G, Firm's objection to publication)

Yes

No ▶ Please state your reasons

We prefer to publish waivers wherever possible. If you believe you have good grounds for not publishing, you will need to give clear and substantive arguments. Please refer to section 138B of FSMA.

5 Supporting documents

5.1 Indicate the required supporting documents to accompany this form.

Documents	Mode (by email, fax or post)

Other information (please specify)

6 Declaration and signatures

Warning

Knowingly or recklessly giving the FCA or the PRA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of FSMA). SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA or the PRA and to notify the FCA or the PRA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FCA or the PRA. It should not be assumed that information is known to the FCA or the PRA merely because it is in the public domain or has previously been disclosed to the FCA or the PRA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the FCA or the PRA information that is false or misleading in a material particular.
- Some questions do not require supporting evidence. However, the records, which demonstrate the applicant's compliance with the rules in relation to the questions, must be available to the FCA or the PRA on request.
- I/we will notify the FCA or the PRA immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Date (dd/mm/yyyy)

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Name of first signatory ¹

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Position of first signatory²

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Individual reference number

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Signature*

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Name of second signatory

--

Position of second signatory

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Individual reference number

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Signature*

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¹ For a sole trader, the signature of the principal is required.

For a limited company, the signature of two directors or one director and the company secretary is required.

For a partnership, the signature of at least one partner is required.

² E.g. Director, Partner or Sole Trader.

* The above question should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.

Declaration and signature if a third party is named

If the waiver will name a third party (for example, the firm to whom Client Money balance will be transferred to when applying for a waiver of CASS 7.11.34R), please check the box below to confirm that you have the agreement of the third party and enter the third party's name below.

I confirm the information in this form that concerns my circumstances is accurate and complete to the best of my knowledge and belief. I also confirm that I am happy for the waiver to be published, unless otherwise indicated in Question 4.3 of this form*.

Signature of named Third Party *

Name and date

* The above question should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.

7 Notes on completing the waivers form

Please note that defined terms used in the text are shown in italics. Definitions can be found in the Handbook Glossary or PRA Rulebook Glossary.

Question Number	Notes
Front Cover	If the applicant is not a <i>firm</i> , for example an applicant for a <i>Part 4A permission</i> , give its name and indicate that it is not an <i>authorised person</i> . There is no need to give the Firm Reference Number (FRN).
Section 1	We may contact the <i>approved person</i> , or other designated individual, about the application. The individual may have responsibility for an application for more than one applicant if they have the authority to do so.
Section 1	If the application is submitted by, or on behalf of, more than one applicant (for example, by more than one firm in a group), the names of each applicant must be given as well as each Firm Reference Number (FRN), if applicable.
Section 2 Question 2.4	Section 138A of FSMA is the power used to give most waivers. Section 250 of FSMA and regulation 7 of the <i>OEIC Regulations</i> are relevant only for certain <i>rules</i> in the Collective Investment Schemes sourcebook (see SUP 8.2.3G). Section 294 of FSMA is relevant only for certain <i>rules</i> in the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (see REC 3.3).
Section 2 Question 2.5	Your draft modification must show how you propose to change the original text of the <i>rule(s)</i> . You must do this by underlining inserted text and scoring through deleted text.
Section 2 Question 2.6	You can find the Direction reference number on the Direction we send you.
Section 2 Question 2.7	We cannot give a <i>waiver</i> that would be incompatible with the <i>United Kingdom's</i> responsibilities under European directives. In many cases, the 'Purpose' section of a chapter or section of the FCA Handbook/PRA Rulebook will identify whether the text implements a directive requirement. We only expect you to take reasonable steps in answering this question; what is reasonable will depend on your

	resources. If you are unable to confirm which particular European directive requirements the <i>rule</i> to be waived implements, you should reply 'unable to confirm'. You will have to give us details if you are able to identify a particular European directive requirement implemented by the <i>rule</i> to be waived, but think the proposed waiver would not breach that requirement.
Section 3	You can find published <i>waivers</i> at: https://www.fca.org.uk/publications
Section 4 Question 4.1	<p>We expect you to provide (where applicable):</p> <ul style="list-style-type: none"> • relevant background information about the firm and the context in which you are applying for a <i>waiver</i> • details of any relevant correspondence with former or other regulators • details of any relevant correspondence with us • details of any changes in a: <ul style="list-style-type: none"> ○ <i>rule</i> ○ circumstance, or ○ market condition <p>that has affected the applicant or prompted your application for a <i>waiver</i>;</p> <ul style="list-style-type: none"> • details of the anticipated benefits that may be received if the <i>waiver</i> was granted (and, if arguing the 'unduly burdensome' argument, what the estimated impact on the firm and its customers would be if the <i>waiver</i> was not granted), and • an explanation of why the <i>waiver</i> is required <p>This list is not exhaustive. You should include any other information that you think is relevant.</p> <p>You should know what information we require and cross-reference it to the answers set out in Question 4.3, where relevant, to avoid duplication.</p>
Section 4 Question 4.2	We cannot give a <i>waiver</i> unless the statutory tests are satisfied. The tests are set out in section 138A(4) of FSMA, and reproduced in SUP 8.3.1G. The tests under sections 250 and 294 of FSMA and regulation 7 of the <i>OEIC Regulations</i> , are similar. You need to be aware that both matters ('unduly burdensome' or 'not achieve the purpose'; and 'not affect the advancement of any of the regulator's objectives') noted require detailed explanation and substantive

	<p>argument before we can process the application. Unless there are satisfactory responses to these matters, we may reject the <i>waiver</i> application, or we may need more information. You should set out only the relevant arguments in support of the unduly burdensome or purpose tests.</p> <p>The FCA and the PRA have a duty to coordinate their activities in relation to waivers and rule modifications where there are matters of common regulatory interest or where the grant of a direction by one regulator could adversely affect the advancement of the other regulator's objectives. Where this duty applies, the second regulator may need to evaluate whether approving your application might adversely affect the advancement of its own objectives. In these cases, we may ask you to provide additional supporting information.</p>
Section 4 Question 4.3	See SUP 8.6.7G (Firm's objection to publication). Please see section 138B of FSMA in relation to publication considerations.