

Variation of SMF managers' approval on the FCA's own initiative

Chapter 8

Variation of SMF managers'
approval on the FCA's own
initiative



8.1 Introduction

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■ DEPP 8 sets out the FCA's statement of policy on the exercise of its power under section 63ZB of the Act to vary, on its own initiative, an approval given by the FCA or the PRA for the performance of a *designated senior management function* in relation to the carrying on of a *regulated activity* by a *relevant authorised person*. The FCA is required to publish this statement of policy by section 63ZD of the Act.

[Note: the FCA's statement of policy on the exercise of its power under section 63ZA of the Act to vary an approval at the request of a *relevant authorised person* is set out in ■ SUP 10C]

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In ■ DEPP 8, the power under section 63ZB of the Act described in ■ DEPP 8.1.1G is referred to as the FCA's "own-initiative variation of approval power".



8.2 Use of the own-initiative variation of approval power: general

- 8.2.1 **G** The *FCA* may use the own-initiative variation of approval power where it considers that it is desirable to do so to advance one or more of its operational objectives. The *FCA* will assess this on a case-by-case basis, taking into account the specific circumstances of the *firm* and the *SMF manager*.
- 8.2.2 **G** When considering the use of this power to deal with a particular concern, the *FCA* will have regard to the range of regulatory tools that are available. The *FCA* will consider dealing with any concerns informally through discussion and agreement with the *firm* and the *SMF manager*, instead of using the own-initiative variation of approval power.
- 8.2.3 **G** The power to impose a conditional or time-limited approval does not depend on the *SMF manager* being unfit without that condition or time limitation. The *FCA* can impose a condition or time limitation even if the candidate would still be fit and proper without it. Conversely, where an *SMF manager* is not fit and proper but might be if a condition or time limitation is imposed, the *FCA* is not obliged to impose a condition or time limitation, and may take the view that a *prohibition order* or withdrawal of approval is the appropriate course of action.
- 8.2.4 **G** The *FCA* may vary an approval by:
- (1) imposing a condition;
 - (2) varying a condition;
 - (3) removing a condition; or
 - (4) limiting the period for which the approval is to have effect.
- 8.2.5 **G** The *FCA* may use the own-initiative variation of approval power in a wide range of circumstances. A number of examples are set out in ■ DEPP 8.3. These are not exhaustive.
- 8.2.6 **G** The circumstances which will lead to a condition or time limitation being imposed on a *candidate* for an *SMF manager* role will, where appropriate, also lead to an existing *SMF manager's* approval being varied. ■ SUP 10C is therefore relevant to the *FCA's* use of the own-initiative variation of approval power.

8.3 Use of the own-initiative variation of approval power: specific examples

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Examples of situations where the *FCA* may use the own-initiative variation of approval power include where:

- (1) it has concerns about an *SMF manager's* fitness to remain approved in relation to the performance of a *designated senior management function* but, in all the circumstances, it considers it appropriate to vary their approval by imposing one or more conditions or a time limitation, rather than making a *prohibition order* or withdrawing approval;
- (2) the nature or scope of the *SMF manager's* role has changed, for example where they have taken on additional or different responsibilities. In this situation, the *FCA* may consider it appropriate to impose a condition that they undertake training to enhance their competency and capability regarding their new responsibilities, or a condition that they receive mentoring;
- (3) the size, nature, scope or complexity of the *firm's* activities has significantly changed since the *SMF manager* was first approved;
- (4) the *SMF manager* is required to personally support supervisory action in relation to the *firm*. For example, where a *firm* is running a remedial programme the *FCA* may impose a condition that the *SMF manager* take responsibility for managing or overseeing delivery of aspects of that programme;
- (5) it is appropriate to use the own-initiative variation of approval power as a matter of urgency (see ■ DEPP 8.4);
- (6) the *SMF manager's* approval is subject to an existing condition but the *FCA* considers that condition is insufficient to mitigate the risk in respect of which it was imposed. In this case, the *FCA* will vary the condition to make it more effective. The *FCA* may also, or instead, limit the period of the approval;
- (7) the *SMF manager's* firm applies to the *FCA* to remove a condition, or vary a condition to make it less onerous, where the condition was imposed by the *FCA* on its own initiative, and the *FCA* considers that it is desirable to remove or vary the condition in order to advance one or more of its operational objectives. The *FCA* expects that such a removal or variation would normally occur on the application of the *firm*.



8.4 Use of the own-initiative variation of approval power in urgent cases

- 8.4.1** **G** The *FCA* may impose a variation of approval to take effect immediately, or on a specified date, if it reasonably considers that this is necessary having regard to the reasons for which it is exercising the own-initiative variation of approval power.
- 8.4.2** **G** The *FCA* will consider exercising its own-initiative variation of approval power as a matter of urgency where:
- (1) the information available to it indicates serious concerns about the *SMF manager* or their *firm* that need to be addressed immediately; and
 - (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *SMF manager* to ensure these concerns are addressed.



**8.5 Effects of a breach of condition or
time limitation**

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The effects of breaching a condition or time limitation are set out in
■ SUP 10C and ■ DEPP 6.2.9A.