Fit and Proper test for Employees and Senior Personnel sourcebook
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sourcebook

FIT 1 General

1.1 Application and purpose
1.2 Introduction
1.3 Assessing fitness and propriety

FIT 2 Main assessment criteria

2.1 Honesty, integrity and reputation
2.2 Competence and capability
2.3 Financial soundness

Transitional provisions and Schedules

TP 1 Transitional provisions
Sch 1 Record keeping requirements
Sch 2 Notification requirements
Sch 3 Fees and other required payments
Sch 4 Powers exercised
Sch 5 Rights of action for damages
Sch 6 Rules that can be waived
Chapter 1

General
1.1 Application and purpose

FIT applies to:

1. a firm (including an SMCR firm);
2. an applicant for Part 4A permission;
3. an EEA firm or a Treaty firm that wishes to establish a branch into the United Kingdom using EEA rights or Treaty rights; or apply for a top-up permission;
4. an approved person performing an FCA controlled function;
5. a candidate for an FCA controlled function;
6. a certification employee performing an FCA certification function;
7. a person whom an SMCR firm is proposing to certify to perform an FCA certification function; and
8. a board director as set out in FIT 1.1.2(1)(e).

The purpose of FIT is to set out and describe the criteria that:

1. an SMCR firm should consider when:
   a. assessing the fitness and propriety of a candidate whom the firm is proposing to put forward for approval as an FCA-approved SMF manager;
   b. assessing the continuing fitness and propriety of a person approved to perform the function of an FCA-approved SMF manager, including for formulating an opinion about whether there are any grounds on which the regulator could withdraw the approval given to that individual to perform that function under section 63(2A) of the Act;
   c. assessing the fitness and propriety of a person whom the firm is proposing to certify to perform an FCA certification function;
   d. assessing the continuing fitness and propriety of a person whom the firm has certified to perform an FCA certification function; and
   e. (in the case an FCA-authorised person that is not a limited scope SMCR firm) assessing the fitness of a non-SMF board director subject to competence requirements under the competent employees rule, any onshored regulation or any other requirement of the regulatory system.

2. the FCA will consider when assessing the fitness and propriety of a candidate for a controlled function, including a designated senior
management function (see generally ■ SUP 10A and ■ SUP 10C on approved persons), and may consider when assessing the continuing fitness and propriety of approved persons.

1.1.3 The table in ▪FIT 1.1.4G summarises the situations to which FIT applies.

1.1.4 Table: Situations to which FIT applies

<table>
<thead>
<tr>
<th>What FIT applies to</th>
<th>Does it apply to SMCR firms?</th>
<th>Does it apply to firms that are not SMCR firms?</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A firm assessing the fitness and propriety of a candidate whom the firm is proposing to put forward for approval</td>
<td>Yes</td>
<td>No</td>
<td>However, the answer to Question 11 in SUP 10A Annex 1 (Frequently asked questions) says that the FCA’s approval process is not a substitute for the checks that a firm should be carrying out on its prospective recruits. FIT may be a useful guide to matters that a firm that is not an SMCR firm should take into account.</td>
</tr>
<tr>
<td>(2) A firm assessing the continuing fitness and propriety of an approved person</td>
<td>Yes</td>
<td>No</td>
<td>However, a firm should employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1). FIT may be a useful guide to matters which a firm should take into account if it is not an SMCR firm.</td>
</tr>
<tr>
<td>(3) The FCA assessing the fitness and propriety of a candidate for approval as an approved person</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>(4) The FCA assessing the continuing fitness and propriety of</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>What FIT applies to</td>
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<tr>
<td>an approved person (5) A firm assessing the fitness and propriety of a person whom a firm is proposing to certify to perform an FCA certification function</td>
<td>Yes</td>
<td>No</td>
<td>FCA certification functions do not apply to a firm that is not an SMCR firm. However, see the comment on row (2).</td>
</tr>
<tr>
<td>(6) A firm assessing the continuing fitness and propriety of a person whom a firm has certified to perform an FCA certification function</td>
<td>Yes</td>
<td>No</td>
<td>FCA certification functions do not apply to a firm that is not an SMCR firm. However, see the comment on row (2).</td>
</tr>
</tbody>
</table>
1.2 Introduction

1.2-1 Under section 60A(1) of the Act, before an SMCR firm may make an application for the FCA’s approval of a controlled function the firm must be satisfied that the person for whom the application is made is a fit and proper person to perform that function.

1.2.1 Under section 61(1) of the Act (Determination of applications), the FCA may grant an application for approval made under section 60 (Applications for approval) of the Act only if it is satisfied that the candidate is fit and proper to perform the controlled function to which the application relates.

1.2.1A Under section 63F of the Act, an SMCR firm may issue a certificate to a person to perform a certification function only if it is satisfied that the person is a fit and proper person to perform that function.

1.2.1B Under sections 60A and 63F of the Act, in assessing whether a person is a fit and proper person to perform an FCA designated senior management function or an FCA certification function, an SMCR firm must have particular regard to whether that person:

1. has obtained a qualification; or
2. has undergone, or is undergoing, training; or
3. possesses a level of competence; or
4. has the personal characteristics; required by general rules made by the FCA.

1.2.1C The key general rules relating to the criteria listed in ■FIT 1.2.1BG include:

1. in the case of very senior employees, ■SYSC 4.2 (persons who effectively direct the business) and ■SYSC 4.3A.3R (management body);
2. for personnel of firms generally, the competent employees rule;
3. in relation to retail activities, ■TC 2.1.1R, ■TC 2.1.5BR and ■TC 2.1.12R (employees’ competence); and
4. for those who are employees of insurance firms, ■SYSC 3.1.6R.
Under section 63(1) of the Act (Withdrawal of approval), the FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if it considers that the person is not a fit and proper person to perform the function.

The Act does not prescribe the matters which the FCA should take into account when determining fitness and propriety. However, section 61(2) states that the FCA may have regard (among other things) to whether the candidate or approved person:

(1) has obtained a qualification; or
(2) has undergone, or is undergoing, training; or
(3) possesses a level of competence; or
(4) has the personal characteristics;

required by general rules made by the FCA.

(1) Under Article 21(1)(d) of the MiFID Org Regulation and articles 34 and 35 of MiFID, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the firm’s Home State. Therefore, in assessing the fitness and propriety of:

(a) a person to perform a controlled function; or
(b) a certification employee;

solely in relation to the MiFID business of an incoming EEA firm, the FCA will not have regard to that person’s competence and capability.

(2) Where the function relates to:

(a) matters outside the scope of MiFID; or
(b) business outside the scope of the MiFID business of an incoming EEA firm, for example insurance distribution activities in relation to life policies; or
(c) matters within the responsibility of the FCA as the Host State regulator, for example money laundering responsibilities (see the money laundering reporting function (CF11 and SMF17)) or (3) below;
the FCA will have regard to a person’s competence and capability as well as their honesty, integrity, reputation and financial soundness.

(3) The FCA will have regard to a natural person’s competence and capability to the extent they give a personal recommendation or information about financial instruments, structured deposits, investment services or ancillary services on behalf of a UK branch of:

(a) an investment firm authorised under MiFID;
(b) an AIFM investment firm carrying out activities under article 6(4) of the AIFMD (provision of additional services);
(c) a UCITS investment firm carrying out activities under article 6(3) of the UCITS Directive (provision of additional services); or
(d) a credit institution.

(4) (3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of MiFID.

(5) (1) to (4) are also relevant to the matters an EEA SMCR firm should take into account when assessing any staff being assessed under FIT. Where, under (1) to (4):

(a) the FCA will have regard to a person’s competence and capability, so should a firm when assessing any staff being assessed under FIT; and

(b) the FCA will not have regard to a person’s competence and capability, a firm need not do so either when assessing any staff being assessed under FIT.

1.2.4B Where the application relates to a function within a Solvency II firm and is for an FCA controlled function which is also a Solvency II Directive ‘key function’ as defined in the PRA Rulebook: Glossary, then the FCA will also have regard to the assessment made by the firm as required in article 273 of the Solvency II Regulation (EU) 2015/35 of 10 October 2014; Rules 2.1 and 2.2 of the PRA Rulebook: Solvency II Firms: Insurance - Fitness and Propriety, and other factors, as set out in EIOPA Guidelines on system of governance dated 28 January 2015 (see Guideline 16).

1.2.4C Under article 10(1) and (2) of the IDD appropriate knowledge and ability is reserved to the firm’s Home State (see SUP 13A Annex 2G).
1.3 Assessing fitness and propriety

1.3.1 The FCA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, as more particularly described in FIT 2 (Main assessment criteria).

1.3.1A The FCA would expect firms that are required to assess the fitness and propriety of staff being assessed under FIT to have regard to substantially the same factors as those outlined in FIT 2.

1.3.1B In the FCA’s view, the most important considerations will be the person’s:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

1.3.2 In assessing fitness and propriety, the FCA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates.

1.3.2A An SMCR firm assessing the fitness and propriety of staff being assessed under FIT should consider:

1. the nature, scale and complexity of its business, the nature and range of financial services and activities undertaken in the course of that business; and
2. whether the candidate or person has the knowledge, skills and experience to perform the specific role that the candidate or person is intended to perform.

1.3.2B An SMCR firm is reminded that, in assessing a candidate for a position within the management body of the firm, SYSC 4.3A.3R(3) requires the firm to ensure that the management body, as a collective, possesses adequate knowledge, skills and experience to understand the firm’s activities.
1.3.3  The criteria listed in FIT 2.1 to FIT 2.3 are *guidance* and will be applied in general terms when the FCA is determining a person’s fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. An SMCR firm assessing the fitness and propriety of staff being assessed under FIT should be guided by substantially the same criteria in FIT 2.1 to FIT 2.3 (to the extent applicable to the firm), recognising that this is not intended to be a definitive list of matters to be considered.

1.3.4  If a matter comes to the FCA’s attention which suggests that the person might not be fit and proper, the FCA will take into account how relevant and how important it is. In the same way, if a matter comes to the attention of an SMCR firm which suggests that any staff being assessed under FIT might not be fit and proper, the firm should take into account how relevant and how important that matter is.

1.3.4A  An SMCR firm assessing the continuing fitness and propriety of an approved person is required to notify the FCA under section 63(2A) of the Act if it forms the opinion that there are grounds on which the FCA could withdraw its approval (see SUP 10C.14.24R). In discharging its obligation to notify the FCA, an SMCR firm should take into account how relevant and how important the matter is that comes to its attention which suggests an approved person might not be fit and proper before determining that a notification should be made.

1.3.4B  An SMCR firm assessing the continuing fitness and propriety of staff being assessed under FIT should assess the role that the individual is actually performing at the time the assessment is done. For this purpose, the assessor(s) should be provided with an up-to-date job description for that individual in advance of the assessment.

1.3.5  During the application process for a controlled function, the FCA may discuss the assessment of the candidate’s fitness and propriety informally with the firm making the application and may retain any notes of those discussions.
Chapter 2

Main assessment criteria
2.1 Honesty, integrity and reputation

2.1.1 In determining a person's honesty, integrity and reputation, the FCA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere. The FCA should be informed of these matters (see SUP 10A.14.17 and SUP 10C.14.18R), but will consider the circumstances only where relevant to the requirements and standards of the regulatory system. For example, under FIT 2.1.3G(1), conviction for a criminal offence will not automatically mean an application will be rejected. The FCA treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

2.1.1A An SMCR firm determining the honesty, integrity and reputation of staff being assessed under FIT, should consider all relevant matters, including those set out in FIT 2.1.3G, which may have arisen either in the United Kingdom or elsewhere. Firms should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that candidate or person. If any staff being assessed under FIT has a conviction for a criminal offence, the firm should consider the seriousness of and circumstances surrounding the offence, the explanation offered by that person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

2.1.2 In considering the matters in FIT 2.1.1G, the FCA will look at whether the person's reputation might have an adverse impact upon the firm for which the controlled function is or is to be performed and at the person's responsibilities.

2.1.2A In considering the reputation of staff being assessed under FIT 2.1.1AG an SMCR firm should have regard to whether that person's reputation might have an adverse impact upon the firm for which the function is to be performed and the person's responsibilities.

2.1.3 The matters referred to in FIT 2.1.1G to which the FCA will have regard, and to which an SMCR firm should also have regard, include, but are not limited to:
(1) whether the person has been convicted of any criminal offence; this must include, where provided for by the Rehabilitation Exceptions Orders to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the United Kingdom;

(2) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;

(3) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the appropriate regulator, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;

(4) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;

(5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;

(6) whether the person has been the subject of any justified complaint relating to regulated activities;

(7) whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;

(8) whether, as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;

(9) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;

(10) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or
criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately;

(11) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;

(12) whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity;

(13) whether, in the past, the person has been candid and truthful in all their dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.
2.2  Competence and capability

2.2.1  In determining a person's competence and capability, the FCA, in accordance with FIT 1.1.2G, will have regard to all relevant matters including but not limited to:

(1) whether the person satisfies the relevant FCA training and competence requirements in relation to the controlled function the person performs or is intended to perform;

(2) whether the person has demonstrated by experience and training that they are suitable, or will be suitable if approved, to perform the controlled function;

(3) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function.

2.2.1A  In determining a person's competence and capability to perform an FCA designated senior management function or an FCA certification function, an SMCR firm, in accordance with FIT 1.1.2G, should have regard to all relevant matters including but not limited to:

(1) whether the person satisfies any applicable training and competence requirements (in relation to the function that the person performs or is intended to perform);

(2) whether the person has demonstrated by experience and training that they are suitable to perform the function they are intended to perform;

(3) whether the person has adequate time to perform the function in question and meet the responsibilities associated with that function.

2.2.2  A person may have been convicted of, or dismissed or suspended from employment for, drug or alcohol abuses or other abusive acts. This will be considered by the FCA only in relation to a person's continuing ability to perform the particular controlled function for which the person is or is to be employed.

2.2.2A  The FCA would expect an SMCR firm determining the competence and capability of staff being assessed under FIT to consider convictions, dismissals and suspensions from employment for drug or alcohol abuses or other abusive acts only in relation to a person's continuing ability to perform the
particular FCA designated senior management function or an FCA certification function for which the person is, or is to be, employed.
2.3 Financial soundness

2.3.1 In determining a person's financial soundness, the FCA will have regard, and an SMCR firm should also have regard, to any factors including, but not limited to:

(1) whether the person has been the subject of any judgment debt or award, in the United Kingdom or elsewhere, that remains outstanding or was not satisfied within a reasonable period;

(2) whether, in the United Kingdom or elsewhere, the person has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.

2.3.2 The FCA will not normally require a candidate to supply a statement of assets or liabilities. The fact that a person may be of limited financial means will not, in itself, affect their suitability to perform a controlled function. The FCA would expect an SMCR firm to take a similar view in assessing whether staff being assessed under FIT, are fit and proper.
The Fit and Proper test for Approved Persons

FIT TP 1
Transitional provisions

There are no transitional provisions in FIT. However, GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.
The Fit and Proper test for Approved Persons

Schedule 1
Record keeping requirements

Sch 1.1 G
There are no record keeping requirements in FIT.
The Fit and Proper test for Approved Persons

Schedule 2
Notification requirements

Sch 2.1 G
There are no notification requirements in FIT.
Schedule 2
Notification requirements
The Fit and Proper test for Approved Persons

Schedule 3
Fees and other required payments

Sch 3.1 G
There are no requirements for fees or other payments in FIT.
Schedule 3
Fees and other required payments
The Fit and Proper test for Approved Persons

Schedule 4
Powers exercised

Sch 4.1 G
[deleted]
The Fit and Proper test for Approved Persons

Schedule 5
Rights of action for damages

Sch 5.1 G
There are no rules in FIT.
The Fit and Proper test for Approved Persons

Schedule 6
Rules that can be waived

Sch 6.1 G
There are no *rules* in *FIT*.