

The Fit and Proper test for Approved Persons

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The Fit and Proper test for Approved Persons

Chapter 1

General

1.1 Application and purpose

1.1.1

G FIT applies to:

- (1) a *firm* (including a *relevant authorised person*);
- (2) an applicant for *Part 4A permission*;
- (3) an *EEA firm*, a *Treaty firm* or a *UCITS qualifier* that wishes to establish a *branch* into the *United Kingdom* using *EEA rights*, *Treaty rights* or *UCITS directive rights* (see ■ SUP 10A.1.10 G and ■ SUP 10A.1.11 R), or apply for a *top-up permission* (see ■ SUP 10A.1.13 R);
- (4) an *approved person*;
- (5) a *candidate*;
- (6) a *certification employee* performing an *FCA specified significant-harm function*; and
- (7) a *person* whom a *firm* is proposing to certify to perform an *FCA specified significant-harm function*.

1.1.2

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

- (1) a *relevant authorised person* 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 specified significant-harm function*; and
 - (d) assessing the continuing fitness and propriety of a *person* whom the *firm* has certified to perform an *FCA specified significant-harm function*; and
- (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 **G** The table in ■ FIT 1.1.4G summarises the situations to which *FIT* applies.

1.1.4 **G** Table: Situations to which *FIT* applies

What FIT applies to	Does it apply to <i>relevant authorised persons</i> ?	Does it apply to <i>firms</i> that are not <i>relevant authorised persons</i> ?	Comment
(1) A <i>firm</i> assessing the fitness and propriety of a <i>candidate</i> whom the <i>firm</i> is proposing to put forward for approval	Yes	No	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 <i>firm</i> should be carrying out on its prospective recruits. <i>FIT</i> may be a useful guide to matters that a <i>firm</i> that is not a <i>relevant authorised person</i> should take into account.
(2) A <i>firm</i> assessing the continuing fitness and propriety of an <i>approved person</i>	Yes	No	However, a <i>firm</i> should employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1). <i>FIT</i> may be a useful guide to matters which a <i>firm</i> should take into account if it is not a <i>relevant authorised person</i> .
(3) The FCA assessing the fitness and propriety of a <i>candidate</i> for approval as an <i>approved person</i>	Yes	Yes	
(4) The FCA assessing the con-	Yes	Yes	

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What FIT applies to	Does it apply to <i>relevant authorised persons</i> ?	Does it apply to <i>firms that are not relevant authorised persons</i> ?	Comment
<p>tinuing fitness and propriety of an <i>approved person</i></p>			
<p>(5) A <i>firm</i> assessing the fitness and propriety of a <i>person</i> whom a <i>firm</i> is proposing to certify to perform an <i>FCA specified significant-harm function</i></p>	<p>Yes</p>	<p>No</p>	<p>See the comment on row (2)</p>
<p>(6) A <i>firm</i> assessing the continuing fitness and propriety of a <i>person</i> whom a <i>firm</i> has certified to perform an <i>FCA specified significant-harm function</i></p>	<p>Yes</p>	<p>No</p>	<p>See the comment on row (2)</p>

1.2 Introduction

- 1.2-1** **G** Under section 60A(1) of the *Act*, before a *relevant authorised person* may make an application for the *FCA's* approval of a *designated senior management function*, the *relevant authorised person* 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** **G** 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) 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** **G** Under section 63F of the *Act*, a *relevant authorised person* may issue a certificate to a *person* to perform a *specified significant-harm function* only if it is satisfied that the *person* is a fit and proper *person* to perform that function.
- 1.2.1B** **G** 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 specified significant-harm function*, a *relevant authorised person* 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** **G** 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 *employees of firms* generally, the *competent employees rule*; and
 - (3) in relation to retail activities, ■ TC 2.1.12R (*employees' competence*).

- 1.2.2 **G** [deleted]
- 1.2.3 **G** [deleted]
- 1.2.3A **G** 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.
- 1.2.3B **G**
- 1.2.4 **G** 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*.
- 1.2.4A **G**
- (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*, for example activities related to a *specified benchmark* (see the *benchmark submission function* (CF 40), the *benchmark administration function* (CF 50) , and the *benchmark submission and administration FCA-specified significant-harm functions* (see ■ SYSC 5.2.33R) ; or
 - (b) business outside the scope of the *MiFID business* of an *incoming EEA firm*, for example *insurance mediation 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 relevant authorised person* 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

G 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).

1.3 Assessing fitness and propriety

- 1.3.1** **G** 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** **G** 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** **G** 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** **G** 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** **G** A *relevant authorised person* 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** **G** A *relevant authorised person* 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** **G** 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. A *relevant authorised person* 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** **G** 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 a *relevant authorised person* 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** **G** A *relevant authorised person* 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*, a *relevant authorised person* 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** **G** A *relevant authorised person* 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** **G** 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** **G** 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 2.1.3 G** which may have arisen either in the *United Kingdom* or elsewhere. The *FCA* should be informed of these matters (see **■ SUP 10A.14.17 R** 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 2.1.3 G(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** **G** A *relevant authorised person* 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** **G** In considering the matters in **■ FIT 2.1.1 G**, 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** **G** In considering the reputation of *staff being assessed under* **■ FIT 2.1.1AG** a *relevant authorised person* 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** **G** The matters referred to in **■ FIT 2.1.1 G** to which the *FCA* will have regard, and to which a *relevant authorised person* 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 his 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** **G** In determining a *person's* competence and capability, the *FCA* 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** **G** In determining a *person's* competence and capability to perform an *FCA designated senior management function* or an *FCA-specified significant-harm function*, a *relevant authorised person* 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** **G** 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** **G** The *FCA* would expect a *relevant authorised person* 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

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FCA-specified significant-harm function for which the *person* is, or is to be, employed.

2.3 Financial soundness

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2.3.1 **G** In determining a *person's* financial soundness, the *FCA* will have regard, and a relevant authorised person 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 his creditors, filed for bankruptcy, had a bankruptcy petition served on him, 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 **G** 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 a *relevant authorised person* 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*.

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*.

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*.

