

Fit and Proper test for Employees and Senior Personnel sourcebook

Chapter 1

General

1.1 Application and purpose

1.1.1

G *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*;
and
- (7) a *person* whom an *SMCR firm* is proposing to certify to perform an *FCA certification function*.

1.1.2

G 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*; and
 - (d) assessing the continuing fitness and propriety of a *person* whom the *firm* has certified to perform an *FCA certification 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>SMCR firms</i> ?	Does it apply to <i>firms</i> that are not <i>SMCR firms</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 <i>FCA's</i> 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 an <i>SMCR firm</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 an <i>SMCR firm</i> .
(3) The <i>FCA</i> assessing the fitness and propriety of a <i>candidate</i> for approval as an <i>approved person</i>	Yes	Yes	
(4) The <i>FCA</i> assessing the continuing fitness and propriety of	Yes	Yes	

1

What FIT applies to	Does it apply to SMCR firms?	Does it apply to firms that are not SMCR firms?	Comment
<p><i>an approved person</i></p> <p>(5) A firm assessing the fitness and propriety of a <i>person</i> whom a firm is proposing to certify to perform an <i>FCA certification function</i></p>	Yes	No	<p><i>FCA certification functions do not apply to a firm that is not an SMCR firm.</i></p> <p>However, see the comment on row (2).</p>
<p>(6) A firm assessing the continuing fitness and propriety of a <i>person</i> whom a firm has certified to perform an <i>FCA certification function</i></p>	Yes	No	<p><i>FCA certification functions do not apply to a firm that is not an SMCR firm.</i></p> <p>However, see the comment on row (2).</p>

1.2 Introduction

- 1.2.-1** **G** 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** **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) 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** **G** 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** **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 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** **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 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.

- 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*; 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

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).

1.2.4C

G

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** **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** 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** **G** 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** **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. 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** **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 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** **G** 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** **G** 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** **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.

