

General Provisions

Chapter 1

FCA approval and
emergencies

1.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See www.fca.org.uk]

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- (1) This chapter applies to every *firm*. ■ GEN 1.3 (Emergency) also applies to an *unauthorised person* to whom a *rule* in the *Handbook* applies.
- (2) For a *UCITS qualifier*, this chapter applies only with respect to the *communication* and *approval* of *financial promotions* to which ■ COBS 4 (Communicating with clients, including financial promotion) applies and to the maintenance of facilities to which ■ COLL 9.4 (Facilities in the United Kingdom) applies.

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■ GEN 1.1.1 R (2) reflects section 266 of the *Act* (Disapplication of rules).



1.2 Referring to approval by the FCA

- 1.2.1 **G** The purpose of ■ GEN 1.2.2AR is to prevent *clients* being misled about the extent to which the FCA has approved a *firm's* affairs.
- 1.2.2 **R** [deleted]
- 1.2.2A **R**
- (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the FCA or another competent authority.
 - (1A) Paragraph (1) does not apply to a *firm* to the extent that it is incompatible with the *United Kingdom's* obligations under article 44(8) of the *MiFID Org Regulation*.
 - (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
 - (a) the *firm* is an *authorised person*;
 - (b) [deleted]
 - (c) the *firm* has *permission* to carry on a specific activity;
 - (d) an *authorisation order* has been made in relation to an *AUT, ACS* or *ICVC*;
 - (e) a *recognised scheme* has that status;
 - (f) the *firm's approved persons* have been approved by the *appropriate regulator* for the purposes of section 59 of the *Act* (Approval for particular arrangements);
 - (g) the *firm* has been given express written approval by the *appropriate regulator* in respect of a specific aspect of the *firm's* affairs.
 - (3) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.
 - (4) [deleted]
- 1.2.3 **G** ■ GEN 1.2.2AR(2)(g) is confined to written approval because of the need for clarity as to the scope of any approval given by the *appropriate regulator*.

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A firm that carries on MiFID, equivalent third country or optional exemption business should have regard to the requirement in article 44(8) of the MiFID Org Regulation which is reproduced at ■ COBS 4.5A.16EU.

1.3 Emergency

1.3.1 **G** The *FCA* recognises that there may be occasions when, because of a particular emergency, a *person* (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules*, an *unauthorised person*) may be unable to comply with a particular *rule* in the *Handbook*. The purpose of **■ GEN 1.3.2 R** is to provide appropriate relief from the consequences of contravention of such a *rule* in those circumstances.

1.3.2 **R**

- (1) If any emergency arises which:
 - (a) makes it impracticable for a *person* to comply with a particular *rule* in the *Handbook*;
 - (b) could not have been avoided by the *person* taking all reasonable steps; and
 - (c) is outside the control of the *person*, its *associates* and agents (and of its and their *employees*);

the *person* will not be in contravention of that *rule* to the extent that, in consequence of the emergency, compliance with that *rule* is impracticable.
- (2) Paragraph (1) applies only for so long as:
 - (a) the consequences of the emergency continue; and
 - (b) the *person* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the *rule*, and to mitigate losses and potential losses to its *clients* (if any).
- (3) The *person* must notify the *FCA* as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.
- (4) A notification under (3) must be given to or addressed and delivered in accordance with **■ SUP 15.7** (Form and method of notification) (whether or not the *person* is a *firm*). If the *person* is not a *firm*, the notification must be given to or addressed for the attention of: Contact Centre, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN (tel: 0300 500 0597).

1.3.2A **R**

- 1.3.3** **G** A *firm* should continue to keep the *FCA* informed of the steps it is taking under ■ GEN 1.3.2 R (3), in order to comply with its obligations under *Principle 11* (Relations with regulators).
- 1.3.4** **G** In the context of ■ GEN 1.3.2 R, an action is not practicable if it involves a *person* going to unreasonable lengths.
- 1.3.5** **G** ■ GEN 1.3.2 R operates on the *FCA's rules*. It does not affect the *FCA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FCA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part 4A permission* based on a failure or potential failure to satisfy the *threshold conditions* (see ■ SUP 7 (Individual requirements) and ■ EG 8 (Variation and cancellation of permission and imposition of requirements on the *FCA's* own initiative and intervention against incoming firms)).