

Chapter 7

Periodical publications, news
services and broadcasts:
applications for certification



7.6 Applications for a certificate

Pre-application contact

- 7.6.1 G A person considering applying for a certificate should, before sending in any application, contact the Perimeter Enquiries Team of the FCA (email: firm.queries@fca.org.uk , Tel 0800 111 6768) to discuss whether a certificate may be appropriate.

Form of application

- 7.6.2 G
- (1) An application should be made by the proprietor of the relevant publication or service using the appropriate form, accessible from our website (see Forms/ Perimeter Guidance manual forms and Certificate A, Certificate B and Certificate C). The form asks for general information about the applicant and gives *guidance* notes on completion and other details of how the FCA can help.
 - (2) An applicant will be asked to state his own view of the principal purpose of the publication or service. This should include an explanation why the applicant believes that he qualifies for the exclusion and why he believes that a certificate may be called for.
 - (3) The applicant will be asked to define the extent of the publication or service for which he is seeking a certificate.
 - (4) The applicant will be asked to supply material to demonstrate the content of the publication or service or, in the case of a new publication or service, its proposed content. For an existing publication or service, past samples should be supplied in the form most appropriate to the medium for which certification is sought. The samples should be chosen on the basis that they are representative of the publication or service as a whole and as it appears from time to time. The applicant will be asked to justify the selection of the particular samples as being representative. For a new publication or service, samples of proposed content should be supplied. These should be as comprehensive as possible.
 - (5) The applicant will be asked to supply material to demonstrate that the principal purpose is not liable to change over the foreseeable future. This may, for example, include business plans, a statement of editorial policy and marketing literature.
 - (6) The application must be accompanied by the application fee (see ■ PERG 7.6.5 G).

Requests for further information

- 7.6.3** **G** After an application is sent in, the *FCA* may, on occasion, need to obtain additional information from the applicant or elsewhere to enable it to process the application.

Time for processing applications

- 7.6.4** **G** The *Act* does not specify a time limit for processing the application but the *FCA* intends to deal with an application as quickly as possible. The more complete and relevant the information provided by an applicant, the more quickly a decision can be expected. But on occasion it may be necessary to allow time in which the *FCA* can monitor the content of the service. This might happen where, for example, a service is in a form that makes record keeping difficult (such as a large website with a number of hypertext links).

Application Fee

- 7.6.5** **G** The fee for an application for a certificate under article 54 of the *Regulated Activities Order* is £2,000.

The FSA's approach to considering applications

- 7.6.6** **G** The *FCA* will consider any application for a certificate on its merits.
- 7.6.7** **G** Before it gives a certificate, the *FCA* must be satisfied that the principal purpose of the publication or service is neither of the purposes referred to in the exclusion (see ■ PERG 7.4.5 G). If there is insufficient evidence, a certificate cannot be given.
- 7.6.8** **G** The *FCA* will form an overall view as to the purpose (or purposes) underlying the publication or service. It will then determine whether the principal purpose is neither of those referred to in article 54 of the *Regulated Activities Order*. Because the possible range of subject matter covered by different publications or services is very wide it is not possible to apply standard tests. The *FCA* will form a judgment as to the overall impression created by the publication or service. For example, the proportion of advice, compared with other material in the publication or service, will be relevant in determining the principal purpose of the publication or service. But this will not necessarily be conclusive one way or the other. The purpose of a publication or service may still be to give advice even if only a small proportion of the space is devoted to advice as such. This might happen if, for example, a publication were marketed primarily on the basis that it contains advice on *investments*.
- 7.6.9** **G** In reaching a view, the *FCA* will take into account both editorial and promotional material in the publication or service. It will also have regard to the stated purpose of the publication or service and to any other material relevant to its purpose.
- 7.6.10** **G** Other factors relevant to an assessment of purpose or content of the publication or service may vary depending on the nature of the publication or service. For example, if a service is provided by a website, consideration of

the content of the publication or service will take account of hypertext links and other features such as e-mail addresses, bulletin boards and chat rooms.

Grant of application

7.6.11 **G** If the *FCA* decides to grant the application it will issue a certificate. The certificate will normally be granted for an indefinite period. It will state what it is that the *FCA* considers constitutes the periodical or service in relation to which the *FCA* is satisfied that the exclusion in article 54 of the *Regulated Activities Order* applies. In many cases this will be self-evident. But it may sometimes be necessary to include further details in the certificate indicating what the certificate covers. For example, in the case of a large website, a distinct publication or service may form part of the website. In such a case a certificate may be given for that part only.

Refusal of application

7.6.12 **G** An application may be refused on the grounds that the *FCA* is not satisfied that the principal purpose of the publication or service is neither of those mentioned in article 54(1)(a) or (b) of the *Regulated Activities Order* (see ■ PERG 7.4.5 G). An application may also be refused on the grounds that the *FCA* considers that the vehicle through which advice is to be given is not a newspaper, journal, magazine or other periodical publication, a regularly updated news or information service or a service consisting of the broadcast or transmission of television or radio programmes. Where an application is refused, the *FCA* will issue a notice which will give a statement of the reasons for the refusal in that case. If the application is refused, the applicant, if he is an *unauthorised person*, will need to consider whether it is appropriate to continue to publish the periodical or provide the service without *authorisation* or exemption.