

Chapter 10A

FCA Approved Persons in Appointed Representatives



10A.13

Application for approval and withdrawing an application for approval

When to apply for approval

- 10A.13.1 **G** In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *FCA controlled functions*, a *firm* must take reasonable care to ensure that the candidate does not perform these functions unless he has prior approval from the *FCA*.

Failure to apply for approval

- 10A.13.2 **G** If a *person* performs an *FCA controlled function* without approval it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties), if the *FCA* is satisfied that:
- (1) a *person* ("P") has at any time performed an *FCA controlled function* without approval; and
 - (2) at that time P knew, or could reasonably be expected to have known, that P was performing an *FCA controlled function* without approval;

it may impose a penalty on P of such amount as it considers appropriate.

How to apply for approval

- 10A.13.3 **D** An application by a *firm* for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where **SUP 10A.14.4 D** requires a Form E).

- 10A.13.3A **D** If a *firm* must make an application using Form A, it must use Form A (shortened form) if:

- (1) the *candidate*:
 - (a) has *current approved person approval* to perform:
 - (i) an *FCA controlled function* that is a *significant-influence function*; or
 - (ii) an *FCA-designated senior management function*; or
 - (iii) a *PRA controlled function*; or

(b) has had *current approved person approval* of the type described in (a) within the previous six *months*; and

(2) there have been no matters arising in relation to the fitness and propriety of the *person* to whom the application relates which mean that the information provided to the *FCA* or the *PRA* regarding fitness and propriety in connection with the *current approved person approval* in (1)(a) or (b) may have changed since the application for that *current approved person approval* was made.

10A.13.3B **D** [deleted]

10A.13.4 **G** ■ SUP 10A.16.1 D explains how applications should be submitted.

10A.13.4A **G** [deleted]

Who should make the application?

10A.13.5 **G** (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by:

- (a) the *FCA candidate*; or
- (b) the *appointed representative*.

(2) [deleted]

10A.13.6 **G** Outsourcing arrangements [deleted]

10A.13.7 **G** Where the notification of an *appointed representative* (■ SUP 12.7.1 R) is linked to an application for approval (■ SUP 10A.13 (Applications for approval and withdrawing an application for approval)), any delay in receiving the notification under ■ SUP 12.7.1 R may delay the *FCA*'s approval of the individuals employed by that *appointed representative* who will be performing *FCA controlled functions* for the *firm*.

Processing an application

10A.13.8 **G** The *Act* sets out the time that the *FCA* has to consider an application and come to a decision.

10A.13.9 **G** In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act*, the *FCA* has until the end of whichever of the following periods ends last:

- (1) the period within which an application for that *permission* must be determined; and
- (2) the period of three months from the time it receives a properly completed application.

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- 10A.13.10** **G** In any other case it is the period of three months from the time it receives a properly completed application.
- 10A.13.11** **G** The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see ■ DEPP 2). The *FCA* will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, if an application is incomplete when received, or the *FCA* has knowledge that, or reason to believe that, the information is incomplete, then the processing time will be longer than the published standard response times.
- 10A.13.12** **G** Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the *FCA candidate's* suitability to be approved to undertake an *FCA controlled function* will be called into question. A *person* who provides information to the *FCA* that is false or misleading may commit a criminal offence, and could face prosecution under section 398 of the Act regardless of the status of their application.
- 10A.13.13** **G** If there is a delay in processing the application within the standard response time, the *FCA* will tell the *firm* making the application as soon as this becomes apparent.
- 10A.13.14** **G** Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information about the *FCA candidate*. If it does this, the three-month period in which the *FCA* must determine a completed application:
- (1) will stop on the day the *FCA* requests the information; and
 - (2) will start running again on the day on which the *FCA* finally receives all the requested information.
- 10A.13.15** **G** The *FCA* may grant an application only if it is satisfied that the *FCA candidate* is a fit and proper *person* to perform the *FCA controlled function* stated in the application form. Responsibility lies with the *firm* making the application to satisfy the *FCA* that the *FCA candidate* is fit and proper to perform the *FCA controlled function* applied for.
- 10A.13.16** **G** For further guidance on criteria for assessing whether a *FCA candidate* is fit and proper, see *FIT*.
- 10A.13.17** **G** Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

Decisions on applications

10A.13.18 **G** If the *FCA* proposes to refuse an application in relation to one or more *FCA controlled functions*, it must follow the procedures for issuing *warning* and *decision notices* to all *interested parties*. The requirements relating to warning and decision notices are in ■ DEPP 2.

Withdrawing an application for approval.....

10A.13.19 **R** A *firm* notifying the *FCA* of its withdrawal of an application for approval must notify the *FCA* using Form B (■ SUP 10C Annex 4R).

10A.13.20 **G** Under section 61(5) of the *Act* (Determination of applications), the *firm* may withdraw an application only if it also has the consent of the *candidate* and the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.