

Chapter 10C

FCA senior managers regime
for approved persons in
SMCR firms

10C.12 Conditional and time-limited approvals

Purpose

- 10C.12.1 G
- (1) ■ SUP 10C.12 describes the regime for conditional and time-limited approvals.
 - (2) In particular, ■ SUP 10C.12 sets out the FCA's policies on giving approval under section 59 subject to conditions or for a limited period only, as required by section 63ZD of the Act (Statement of policy relating to conditional approval and variation).
 - (3) (In the case of a *PRA-authorised person*) the policies described in ■ SUP 10C.12 also apply when the FCA is considering whether to give its consent to an application made to the PRA for approval.
 - (4) Material on variations of conditional and time-limited approvals can be found in ■ SUP 10C.13 (Variation of conditional and time-limited approvals).

- 10C.12.2 G
- (1) The power to grant an approval subject to conditions or for a limited period only applies to *senior management functions*.
 - (2) As all FCA controlled functions specified in this chapter are *senior management functions*, this means that this power applies to all FCA controlled functions specified in this chapter.
 - (3) The FCA has (in ■ SUP 10A (FCA Approved Persons in Appointed Representatives)) specified *controlled functions* for SMCR firms that are not *designated senior management functions*.
 - (4) The power to grant an approval subject to conditions or for a limited period does not apply to the *controlled functions* in (3).

Introduction

- 10C.12.3 G
- The FCA may:
- (1) grant an application for approval subject to any conditions that the FCA considers appropriate; and
 - (2) grant the application to give approval only for a limited period.

10C.12.4 **G** The *FCA* may use this power only if it appears to the *FCA* that it is desirable to do so to advance one or more of its *operational objectives*.

10C.12.5 **G** Factors that the *FCA* will take into account include:

- (1) those relating to the *firm* at the time of the application, such as:
 - (a) its size, scale and complexity; and
 - (b) its plans and prospects; and
- (2) those relating to the *candidate* and, in particular, the *candidate's* fitness and properness.

10C.12.6 **G** The *FCA* expects that the most common use of the power to give qualified approvals would be:

- (1) time-limited approvals;
- (2) a time limitation in relation to an ongoing or prospective enforcement investigation;
- (3) a competency-related condition; and
- (4) a role-limited condition.

Time-limited approval

10C.12.7 **G** An example of a time-limited approval is where a *firm* needs to appoint the *candidate* on an interim basis while the *firm* seeks to appoint a permanent *candidate*. The *FCA* may approve the interim appointee on a time-limited basis.

10C.12.8 **G** The *FCA* would not generally impose a time limitation in these circumstances for a period of less than 12 weeks. The *FCA* would expect the *firm* to use the 12-week rule in ■ SUP 10C.3.13R.

10C.12.9 **G** An example of when the *FCA* may approve an individual on a time-limited basis is where, following a sudden or unexpected departure:

- (1) a *firm* needs to fill an *FCA-designated senior management function* vacancy immediately; but
- (2) it is likely to take longer than 12 weeks to recruit a permanent replacement; and
- (3) there is an individual at the *firm* not currently approved to perform the relevant *FCA-designated senior management function* whom the *firm* and the *FCA* think capable of fulfilling the role on an interim, provisional basis but not necessarily on a permanent basis.

10C.12.10 **G** Generally, the *FCA* would not impose a time limitation of this type for longer than 12 to 18 months.

- 10C.12.11** G The *FCA* would consider using this power for a person who is in the running for the long-term appointment.
- 10C.12.12** G
- (1) An example of how the *FCA* could deal with a *person* who is in the running for the long-term appointment is outlined below.
 - (2) The head of compliance resigns unexpectedly from a *firm*. The *firm* wishes to appoint one of the deputies. The *FCA* and the *firm* believe the deputy to be capable of running the *firm's* compliance function on a day-to-day 'business as usual basis' but the deputy has no experience developing a long-term, firm-wide strategy. The *firm* estimates that it could take up to a year to recruit a permanent head of compliance. It also believes that the deputy could be the ideal candidate if the deputy could outline a viable compliance strategy for the *firm*.
 - (3) In this situation, it may be appropriate to approve the deputy as head of compliance subject to a 12-month time limit.
 - (4) Before the end of that period, the deputy would have to prepare a new compliance strategy and the deputy's ability to do so would be taken into account when deciding whether to approve the deputy on a permanent basis.
- 10C.12.13** G In deciding whether a *candidate* is fit and proper, the *FCA* will take into account the role that the *candidate* is going to perform. The standard for a *person* who is appointed on a temporary basis may be different from a *person* appointed on a permanent basis when the *person* with a temporary appointment has a more limited role.
- 10C.12.14** G The *FCA* may impose a condition on the approval, as well as time limitation. For example, in the example in ■ SUP 10C.12.12G, the *FCA* may impose a condition prohibiting the *candidate* from significantly amending the management structure of the department.
- 10C.12.15** G The other main examples of a time-limited approval are:
- (1) an enforcement action time-limited approval (see ■ SUP 10C.12.16G);
 - (2) a time limitation used in conjunction with a competence condition (see ■ SUP 10C.12.26G); and
 - (3) a time limitation in relation to the scale of a role (see ■ SUP 10C.12.35G).
- Enforcement action: time limitation**
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- 10C.12.16** G An enforcement action time-limited approval relates to a case in which there is an enforcement investigation ongoing, or in prospect, the results of which may call into question the *candidate's* fitness and properness, but at the time of application there are no or insufficient grounds to refuse approval. The *candidate* may or may not be a subject of that investigation.

10C.12.17 **G** The *FCA* will generally limit an enforcement action time-limited approval for a period long enough to allow the investigation to be completed so far as relevant to the *candidate*. Imposing a time limitation on approval would allow the *FCA* to look at the situation in more detail after approval, with the benefit of all the facts arising from the investigation.

10C.12.18 **G** The policy on the length of time-limited approvals in **■ SUP 10C.12.8G** does not apply to time limitations of this type.

Competence and related conditions

10C.12.19 **G** The *FCA* may take the view that a *candidate* would meet the fit and proper requirement with an approval subject to either, or both, of the following:

- (1) one or more conditions; and/or
- (2) a time limitation;

who would not have met that requirement without the qualification.

10C.12.20 **G** *Firms* should not see the power to give approval on this basis as an opportunity to put forward sub-standard *candidates* in the knowledge that they are unlikely to gain unconditional approval but may scrape through by way of a qualified approval.

- 10C.12.21 **G**
- (1) The *FCA* is likely only to give a qualified approval on the basis described in **■ SUP 10C.12.19G** in limited circumstances.
 - (2) Generally, the *FCA* would only use this power in place of rejection where the deficiency is in only a relatively small proportion of the required job competencies.
 - (3) Lack of technical knowledge is more likely to be easier to remedy than a problem with personal characteristics.
 - (4) The *FCA* is only likely to give its approval on this basis when the *candidate* has fallen short of the required standard by a reasonably small margin (a 'near miss').

10C.12.22 **G** One example of a conditional approval based on the competence of the *candidate* would be where the *candidate* would have met the fitness and properness standard but for a shortfall in the *candidate's* technical knowledge and the shortfall is in a relatively narrow and specific area.

10C.12.23 **G** The *FCA* does not see this as being a probationary or standalone measure. The competency-related limitation would be time specific and linked to something that the *FCA* would wish to re-examine after the period has expired.

- 10C.12.24 **G**
- (1) When the *FCA* is imposing a competence-related condition where there is a shortfall, approval will only be granted on the condition

that the *candidate* is required to undertake training or receive mentoring to eliminate the shortfall.

(2) See ■ SUP 10C.12.39G (role-limited approval) for an example of a shortfall in competence that is not dealt with by trying to remove it.

10C.12.25 G

(1) An example of where a qualified approval based on competence may be used is for a *candidate* with proven management skills who is new to the role or the industry and requires some new technical knowledge for the new role.

(2) For instance, a *candidate* for the role of a senior manager may have a proven track record as a senior manager but may lack detailed knowledge of a specific area, such as money laundering or of the technical details of prudential capital requirements.

(3) A competence condition would require the *candidate* to undertake training in the area of shortfall after appointment.

10C.12.26 G

(1) A competency-related approval is likely to be linked with a time-limited approval.

(2) Under an approval of this kind, the *candidate* will be required to undertake the necessary training or other remedial measures.

(3) The time for which the approval will last would be set to give the *firm* and the *candidate* a reasonable time to complete the measures.

(4) At the end of the period, the *firm* would need to apply to the *FCA* to appoint the *candidate* on a permanent basis.

10C.12.27 G

The *FCA* would only be likely to consider a qualified approval based on competence if it was sure that the *candidate* could achieve the required level of competence within a specified period, which is unlikely to be more than 12 to 18 months.

10C.12.28 G

(1) The *FCA* may give a conditional approval instead of rejection in cases where the condition does not relate to the *candidate's* abilities.

(2) For example, the *FCA* may consider that the *candidate* is suitable only if the *candidate* refrains from, or ceases undertaking, certain actions and makes the approval conditional on that basis.

(3) The *FCA* may require the *candidate* to go beyond the regulatory requirements in a given area.

10C.12.29 G

(1) An example of ■ SUP 10C.12.28G is where a *firm* wishes to appoint someone as an executive director who has a number of non-executive directorships.

(2) The *FCA* may be concerned about the potential impact of these other commitments on that individual's ability to devote sufficient time to the proposed role with the *firm*.

- (3) In this situation, it might be appropriate to attach a condition to the individual's approval requiring that person to resign from some of their non-executive directorships.

Role-limited

10C.12.30 **G**

A role-limited approval means:

- (1) a time-limited approval; or
- (2) a condition;

relating to the nature or scope of the *candidate's* role.

10C.12.31 **G**

One example of a role-limited approval relates to the fact that the size, nature, scope and complexity of a *firm's* activities can change over time. An individual may be fit and proper to perform a *senior management function* at a certain *firm* at a point in time but the *FCA* may wish to re-assess that individual if the *firm's* situation changes.

10C.12.32 **G**

It is not *FCA* policy to impose role-limited approvals routinely for all *firms* or for a certain category of *firm*. For example, there is no blanket policy that approval of a *candidate* for a post in a small *firm* would be subject to a qualification based on the *firm* remaining small.

10C.12.33 **G**

Where a *firm* is expanding or transforming its business model or its risk profile and there are identifiable upcoming milestones, the *FCA* may wish to link the duration of a *candidate's* approval to these milestones.

10C.12.34 **G**

If the change is likely to occur in the near future and the details are clear, the *FCA* may consider its approval of the application in the light of this proposed change.

10C.12.35 **G**

- (1) Very often it will be uncertain whether a change in circumstances will happen at all, the details may not yet be known or the timing may be uncertain.
- (2) In that case, the *FCA* may, subject to (3), make its judgement based on the *candidate's* proposed role, without taking into account the possible change. This reflects the fact that the judgement of whether a *candidate* is fit and proper takes into account the role that they are actually going to play.
- (3) However, to reflect the possible change, the *FCA* would give a time-limited approval that would come to an end on the occurrence of the milestone.
- (4) The *firm* could then apply for a new and possibly unqualified approval.

10C.12.36 **G** An example under **■** SUP 10C.12.35G is as follows.

(1) In this example:

(a) an individual is to perform an *FCA-designated senior management function* in an unlisted *firm* which currently operates only in the UK; and

the *firm* is planning a listing and a string of acquisitions which are projected to treble the size of its balance sheet and give it a global footprint over the next three years, but the *candidate* has never worked for an institution as large or as complex.

(2) In this situation:

(a) it may be appropriate to limit the *candidate's* approval to a specified period. If the projected time for completing the transactions is three years, the approval would be for three years; or

(b) it may be appropriate to draft the time limitation by reference to the milestone. For example, the approval might be expressed to come to an end at the point at which the *firm's* balance sheet exceeds a certain size.

10C.12.37 **G** The policy on the length of time-limited approvals in **■** SUP 10C.12.8G does not apply to time limitations of this type.

10C.12.38 **G** Another way of dealing with a *firm* that plans to reorganise itself but has not made a firm decision to do so or worked out the details, is to make the approval subject to the condition that the nature or scope of the *candidate's* role should not change. The *firm* could apply for the condition to be removed once the plans are ready to be carried out.

10C.12.39 **G** (1) Another example of a limited-role approval is where:

(a) a *candidate* is not competent to carry out all the functions that are capable of falling within the *FCA-designated senior management function* for which approval is sought; but

(b) the *candidate* will be fit to carry out most of them; and

(c) the *firm* has adequate arrangements to deal with the other aspects.

(2) In such circumstances, the condition would be that the *candidate* does not get involved in the aspects of the role for which that *candidate* is not competent, as specified in the condition.

Condition not based on fitness

10C.12.40 **G** The power to impose a conditional or time-limited approval:

does not depend on the *candidate* being unfit without that condition or limit; and

need not be related to the *candidate's* ability to do the job properly (see **■** SUP 10C.12.28G).

10C.12.41 **G** One example of a conditional approval when the *candidate* is fit and proper and able to do the job is to support supervisory action in relation to the *firm*. So, if a *firm* is running a remedial programme, it may be a condition of the *candidate's* approval that the *candidate* takes responsibility for aspects of that programme.

10C.12.42 **G** Although it is not general FCA policy to use the power to give qualified approval as a probationary measure, there may be circumstances where a *firm* wants to appoint a *candidate* to perform an FCA-designated senior management function who, although fit and proper, may, in the role, be responsible for the *firm's* approach to dealing with particularly unusual or severe challenges in the near future. In this situation, it might be appropriate to approve the *candidate* subject to a time limit with a view to reassessing that *candidate* for a permanent position in due course.

10C.12.43 **G** In this scenario, the time-limited approval may be accompanied by a condition requiring the *candidate* to:

- (1) complete an action or deliverable on or before the end of the time limit, eg a requirement on the acting Head of Sales to produce a revised strategy for treating customers fairly within the next six months; and

refrain from taking specific actions or decisions associated with the role until that person receives permanent approval, eg, a requirement not to introduce a new sales channel until they receive permanent approval.

Effects of a breach of condition

10C.12.44 **G** The provisions in:

- (1) section 59 of the Act that say a *firm* should take reasonable care to ensure that no *person* performs a *controlled function* without approval (see ■ SUP 10C.10.3G); and
- (2) section 63A of the Act, under which a *person* performing a *controlled function* without approval may be subject to a penalty (see ■ SUP 10C.10.4G);

apply not only to the performance of an FCA-designated senior management function by someone who has not been approved to perform that function but also to the performance of an FCA-designated senior management function for which the person has been approved in breach of a condition or time limitation.

10C.12.45 **G** Sections 59 and 63A of the Act show that failure to observe a condition does not in itself necessarily invalidate an approval. Instead, both the *firm* and the SMF manager may be subject to a penalty for breach of the Act. Such a failure may also:

- (1) involve a breach of *FCA rules* by the *firm* and a breach by the *SMF manager* of *COCON*; and
- (2) call into question the fitness of the *SMF manager*.

10C.12.46 **G** For example, if an *SMF manager* is subject to a role-limited condition under which the *SMF manager* is not allowed to carry out certain specified aspects of the *FCA-designated senior management function* but the *SMF manager* goes ahead and carries out those aspects, the *SMF manager's* approval does not automatically come to an end. Instead, both the *firm* and the *SMF manager* may be subject to a financial penalty.

10C.12.47 **G** However the *Act* does allow a condition to be drafted in such a way that the approval ends if the condition is not met or is no longer met.