

Chapter 10C

FCA senior managers regime
for approved persons in
SMCR firms



10C.13 Variation of conditional and time-limited approvals

Purpose

- 10C.13.1 **G** This section deals with variation of a conditional approval at the:
- (1) request of the *firm*; and
 - (2) initiative of the *FCA*.
- 10C.13.2 **G**
- (1) In particular, this section sets out the *FCA*'s policies about varying conditional approvals at the request of a *firm*, as required by section 63ZD of the *Act* (Statement of policy relating to conditional approval and variation).
 - (2) This section does not deal with the *FCA*'s policies on varying a condition on its own initiative. ■ DEPP 8 deals with that. However this section gives a short description of the *FCA*'s powers to impose such variations.

Variation of a conditional approval at the request of the firm: general description

- 10C.13.3 **G** A *firm* may apply to the *FCA* to change a conditional or time-limited approval. The changes for which a *firm* may apply are:
- (1) a variation of the condition;
 - (2) removal of the condition;
 - (3) the imposition of a new condition; or
 - (4) where the approval is time-limited:
 - (a) varying the time limit; or
 - (b) removing the time limit.
- 10C.13.4 **G**
- (1) If the *firm* applying for a change described in ■ SUP 10C.13.3G is a *PRA- authorised person*, there are requirements about whether it should apply to the *FCA* or the *PRA*. Paragraphs (2) to (3) summarise these requirements.

- (2) If the *firm* is applying for the imposition of a new condition, the *firm* should apply to the *FCA* if the approval to which the application relates was given by the *FCA*.
- (2A) If a *firm* is applying for a change of the type described in ■ SUP 10C.13.3G(1) or ■ SUP 10C.13.3G(2), the *firm* should (subject to (2C)) apply to the *FCA* if the *FCA* imposed that condition, even if the approval was given by the *PRA*.
- (2B) If a *firm* is applying for a change of the type described in ■ SUP 10C.13.3G(4), the *firm* should (subject to (2C)) apply to the *FCA* if the *FCA* imposed that time limit, even if the approval was given by the *PRA*.
- (2C) Where the time limit or condition has been varied before and the *FCA* was the last to vary it, the *firm* should apply to the *FCA*. This applies whether the variation was made on the application of the *firm* or on the initiative of the *FCA* or the *PRA*.
- (3) In other cases, the application should be to the *PRA*.

10C.13.5 **G** The right to apply for a variation does not include the right to apply for a time limitation where the current approval has effect for an unlimited period.

10C.13.5A **G** The procedures described in this section for the variation of an approval at the request of a *firm* do not apply where the condition or time limit has effect by virtue of section 66 of the *Act* (Disciplinary powers).

Variation of a conditional approval at the request of the firm: process

10C.13.6 **D** An application by a *firm* to the *FCA* under section 63ZA of the *Act* (Variation of senior manager's approval at request of authorised persons) must be made by using Form I (■ SUP 10C Annex 8D).

- 10C.13.7 **G**
 - (1) An application under ■ SUP 10C.13.6D should be accompanied by a *statement of responsibilities* for the *approved person* concerned.
 - (2) See ■ SUP 10C.11 (Statements of responsibilities) for more details.

10C.13.8 **G** ■ SUP 10C.15 (Forms and other documents and how to submit them to the *FCA*) explains how applications to vary a conditional approval should be submitted.

10C.13.9 **G** The *FCA* has until the end of the period of three months from the time it receives a properly completed application to consider the application and come to a decision.

10C.13.10 **G** The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see ■ DEPP 2).

10C.13.11 **G** The *FCA* may refuse an application if it appears to the *FCA* that it is desirable to do so to advance one or more of its *operational objectives*.

10C.13.12 **G** Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information. 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.

10C.13.13 **G** Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

10C.13.14 **G** If the *FCA* proposes to refuse an application, it must follow the procedures for issuing *warning notices* and *decision notices* to all *interested parties*. The requirements relating to warning and decision notices are in ■ **DEPP 2**.

10C.13.15 **R** A *firm* notifying the *FCA* of its withdrawal of an application for variation of an approval must use Form B (■ **SUP 10C Annex 4R**).

10C.13.16 **G** ■ **SUP 10C.15** (Forms and other documents and how to submit them to the *FCA*) explains how notifications of withdrawal of an application should be submitted.

10C.13.17 **G** Under section 61(5) of the *Act* (Determination of applications), as applied by section 63ZA(8) of the *Act* (Variation of senior manager's approval at request of authorised person), the *firm* may withdraw an application only if it also has the consent of:

- (1) the *approved person*; and
- (2) the person by whom the *approved person* is employed if this is not the *firm* making the application.

Variation of a conditional approval at the request of the firm: policy

10C.13.18 **G** The *FCA's* policy on approving or refusing a request for a variation is the same as it is for imposing conditions on approval (see ■ **SUP 10C.12** (Conditional and time-limited approvals)).

10C.13.19 **G**

- (1) An example of a situation in which the *FCA* would consider varying a condition would be a competency-related condition which required a training course to be completed (see, in particular, ■ **SUP 10C.12.24G** for this type of condition).
- (2) If the *firm* later concludes that a different course would be better, the *firm* may apply for a variation of the condition.

10C.13.20 **G** Another example of a situation in which the *FCA* would consider varying a condition would be a condition relating to a remedial programme (see ■ SUP 10C.12.41G). If the remedial programme is changed, it may be appropriate to change the condition.

10C.13.21 **G**

- (1) Other examples of where the *FCA* may agree to removing a condition are where:
 - (a) the *approved person's* role has changed so that the reason for the condition originally being imposed no longer applies; or
 - (b) new information has come to light that removes any doubt about the *approved person's* competence so a condition is no longer necessary.
- (2) For example, the *FCA* may agree to removing a condition about the scope of the *approved person's* role of the type described in ■ SUP 10C.12.39G.

10C.13.22 **G** See ■ SUP 10C.12.38G for another example of a case where the *FCA* may agree to removing a condition (condition imposed pending reorganisation).

Variation of a conditional approval: action at the initiative of the FCA

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10C.13.23 **G** Under section 63ZB of the *Act* (Variation of senior manager's approval on initiative of regulator), the *FCA* may vary an approval given by the *FCA* or the *PRA* for the performance of a *designated senior management function* if the *FCA* considers that it is desirable to do so to advance one or more of its *operational objectives*.

10C.13.24 **G** The *FCA* may vary an approval by:

- imposing a condition;
- (2) varying a condition;
- (3) removing a condition;
- (4) limiting the period for which the approval is to have effect; or
- (5) removing or varying a time limit on an approval.

10C.13.25 **G** More information about the *FCA's* powers to vary a condition on its own initiative, including its policy on using these powers, can be found in ■ DEPP 8.