

Chapter 15

Notifications to the FCA



15.11 Notification of COCON breaches and disciplinary action

Reasons for making a notification to the FCA

- 15.11.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of *approved persons* and certain other *persons* who work for a *firm*.
- 15.11.2 G *COCON* sets out *rules* under section 64A of the *Act* and *guidance* on those *rules* for *SMCR firms*.
- 15.11.3 G [deleted]
- 15.11.4 G Under section 64C of the *Act*, a *firm* must notify the *FCA* if it takes disciplinary action against certain people working for an *SMCR firm* and the reason for this action is a reason specified in *rules* made by the *FCA* (those *rules* are set out in ■ SUP 15.11.6R).
- 15.11.5 G Disciplinary action against a *person* is defined in section 64C of the *Act* as the issuing of a formal written warning, the suspension or dismissal of that *person* or the reduction or recovery of any of such *person's* remuneration.
- 15.11.6 R If a reason for taking disciplinary action as referred to in section 64C of the *Act* (Requirement for authorised persons to notify regulator of disciplinary action) is any action, failure to act or circumstance that amounts to a breach of *COCON*, then the *SMCR firm* is required to notify the *FCA* of the disciplinary action.
- 15.11.6A G The effect of section 64C of the *Act* and ■ SUP 15.11.6R is that the reporting obligation in section 64C of the *Act* and in this section:
 - (1) only applies to *SMCR firms*; and
 - (2) only covers *persons* who are subject to *COCON* (who are called *conduct rules staff* in the *FCA Handbook*) rather than to the whole workforce of an *SMCR firm*.
- 15.11.7 G A *firm* should make a separate notification about a *person* under section 64C of the *Act* where:

- (1) it has made a notification to the *FCA* about the *person* pursuant to ■ SUP 15.3.11R(1)(a) because of a breach of *COCON*; and
- (2) it subsequently takes disciplinary action against the *person* for the action, failure to act, or circumstance, that amounted to a breach of *COCON*.

15.11.8 **G** If, after a *firm* has made a notification for a *person* (A) pursuant to section 64C of the *Act*, it becomes aware of facts or matters which cause it to change its view that A has breached *COCON*, or cause it to determine that A has breached a provision of *COCON* other than the provision to which the notification related, the *firm* should inform the *FCA* of those facts and matters and its revised conclusion in line with a *firm's* obligation to comply with *Principle 11*, ■ SUP 15.6.4R and, if applicable, ■ SUP 10C or ■ SUP 15.11.13R(4).

- 15.11.9 **G**
- (1) If a *firm* takes disciplinary action as a result of a conduct breach (see ■ SUP 15.11.6R) against an *employee* but the *employee* has appealed or plans to appeal, the *firm* should still report the disciplinary action under section 64C of the *Act* but should include the appeal in the notification.
 - (2) The *firm* should update the *FCA* on the outcome of any appeal.

15.11.10 **G** [deleted]

15.11.11 **G** In relation to any *conduct rules staff*, the *FCA* does not expect a *firm* to notify it pursuant to section 64C of the *Act* if the breach of *COCON* occurred before the application of *COCON* to that *firm*.

Timing and form of notifications: SMF managers

15.11.12 **G** Where a *firm* is required to notify the *FCA* pursuant to section 64C of the *Act* and that notification relates to an *SMF manager*, ■ SUP 10C sets out how and when the notification must be made, and the relevant *notification rules* in ■ SUP 10C apply.

Timing and form of notifications: conduct rules staff other than SMF managers

- 15.11.13 **R**
- (1) A *firm* must make any notifications required pursuant to section 64C of the *Act* relating to *conduct rules staff* other than *SMF managers* in accordance with ■ SUP 15.11.13R to ■ SUP 15.11.15R.
 - (2) That notification must be made annually.
 - (3) Each notification must:
 - (a) cover;
 - (i) (in the case of a *firm* falling within ■ SYSC 23 Annex 1 6.7R (credit firms with limited permission)) its annual financial reporting period ending on its *accounting reference date*; or

- (ii) (for any other *firm*) the 12 *month* period ending on the last day of August; and
- (b) be submitted to the FCA:
 - (i) within two months of the end of the reporting period in (a)(i) or (a)(ii); or
 - (ii) (if the end of the submission period in (b)(i) falls on a *day* which is not a *business day*) so as to be received no later than the first *business day* after the end of that submission period.
- (4) ■ SUP 15.6.4R and ■ SUP 15.6.5R (updates to a notification that is or has become incorrect) apply to a notification under this *rule* but the *firm* must include the update or correction in the next notification it is due to make under this *rule* rather than in the time and manner otherwise required for notifications under those *rules*.
- (5) If a *firm* (other than a *credit union*) has nothing to report under section 64C of the *Act* and nothing to report under ■ SUP 15.11.13R(4) for a particular reporting period, it must notify the FCA of that fact in accordance with ■ SUP 15.11.13R to ■ SUP 15.11.14R.
- (6) (3)(a)(i) applies whether or not the *firm* is a *limited scope SMCR firm*.

15.11.13A G ■ SUP 15.11.8G and ■ SUP 15.11.9G(2) give examples of when a notification should be updated under ■ SUP 15.11.13R(4).

- 15.11.14 R
- (1) A *firm* other than a *credit union* must make each notification pursuant to ■ SUP 15.11.13R (notifications about section 64C of the *Act* relating to *conduct rules staff* other than *SMF managers*) by submitting it online through the FCA's website using the electronic system made available by the FCA for this purpose.
 - (2) A *firm* must use the version of Form H (named REP008 – Notification of Disciplinary Action) made available on the electronic system referred to in (1), which is based on the version found in ■ SUP 15 Annex 7R.
 - (3) If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, ■ SUP 15.11.15R applies until such time as the facilities for online submission are restored.

- 15.11.14A G
- (1) If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that:
 - (a) online submission is unavailable; and
 - (b) the alternative methods of submission in ■ SUP 15.11.15R apply.
 - (2) Where ■ SUP 15.11.14R(3) applies to a *firm*, ■ GEN 1.3.2R (Emergency) does not apply.

15.11.15 R A *credit union* must make each notification pursuant to ■ SUP 15.11.13R (notifications about section 64C of the *Act* relating to *conduct rules staff*

other than *SMF managers*) in accordance with the *rules and guidance* in ■ SUP 15.7, using Form H as set out in ■ SUP 15 Annex 7R.

15.11.15A R

- (1) If a *firm* to which ■ SUP 15.11.14R applies fails to submit a completed notification under ■ SUP 15.11.13R by the date on which it is due, in accordance with ■ SUP 15.11.13R, the *firm* must pay an administrative fee of £250.
- (2) The administrative fee in (1) does not apply if the *firm* is unable to submit a report in electronic format within the time required because of a systems failure of the kind described in ■ SUP 15.11.14R(3).

General guidance on notifications of rule breaches and disciplinary action

15.11.16 G

[deleted]

15.11.17 G

The obligation to notify pursuant to section 64C of the *Act* or to update or correct a notification under ■ SUP 15.11.13R(4) does not replace or limit a *firm's* obligation to comply with *Principle 11*.

15.11.18 G

When considering whether to make a notification pursuant to section 64C of the *Act*, a *firm* should also consider whether a notification should be made under any *notification rules*, including, without limitation, any *notification rules* that require a notification to be made to the *PRA*.

15.11.19 G

The obligations to make a notification pursuant to section 64C of the *Act* apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

15.11.20 G

Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.