

Chapter 15

Notifications to the FCA

15.3 General notification requirements

Matters having a serious regulatory impact

- 15.3.1** **R** A *firm* must notify the *FCA* immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:
- (1) the *firm* failing to satisfy one or more of the *threshold conditions*; or
 - (2) any matter which could have a significant adverse impact on the *firm's* reputation; or
 - (3) any matter which could affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*; or
 - (4) any matter in respect of the *firm* which could result in serious financial consequences to the *UK financial system* or to other *firms*.
- 15.3.2** **G** The circumstances which may give rise to any of the events in **■ SUP 15.3.1 R** are wide-ranging and the probability of any matter resulting in such an outcome, and the severity of the outcome, may be difficult to determine. However, the *FCA* expects *firms* to consider properly all potential consequences of events.
- 15.3.3** **G** In determining whether the *FCA* should be notified of an event that may occur in the foreseeable future, a *firm* should consider both the probability of the event happening and the severity of the outcome should it happen.
- 15.3.4** **G** *Guidance* on satisfaction of the *threshold conditions* is given in *COND*.
- 15.3.5** **G** A *firm* making a notification in accordance with **■ SUP 15.3.1 R** should consider the *guidance* in **■ SUP 15.7.2 G** and notify the *FCA* by telephone if appropriate.
- 15.3.7** **G** **Communication with the appropriate regulator in accordance with Principle 11**
- Principle 11* requires a *firm* to deal with its regulators in an open and cooperative way and to disclose to the *FCA* appropriately anything relating to the *firm* of which the *FCA* would reasonably expect notice. *Principle 11*

applies to *unregulated activities* as well as *regulated activities* and takes into account the activities of other members of a *group*.

15.3.7A **G** Although *PRIN* does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*, the *FCA* expects to be given notice of events that are material to the *FCA*'s supervision of that business and so *firms* carrying on that business should have regard to the *guidance* in ■ SUP 15.3.8 G to ■ SUP 15.3.10 G.

15.3.8 **G** Compliance with *Principle 11* includes, but is not limited to, giving the *FCA* notice of:

- (1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *firm's* risk profile or resources, including, but not limited to:
 - (a) setting up a new *undertaking* within a *firm's* group, or a new branch (whether in the *United Kingdom* or overseas); or
 - (b) commencing the provision of cross border services into a new territory; or
 - (c) commencing the provision of a new type of product or service (whether in the *United Kingdom* or overseas); or
 - (d) ceasing to undertake a *regulated activity* or *ancillary activity*, or significantly reducing the scope of such activities; or
 - (e) entering into, or significantly changing, a *material outsourcing arrangement* (a *bank*, a *building society* and a *dormant account fund operator* should also see ■ SYSC 8, and an *insurer* should also see ■ SYSC 13.9 for further details); or
 - (f) a substantial change or a series of changes in the *governing body* of an *overseas firm* (other than an *incoming firm*); or
 - (g) any change to the *firm's* prudential category or sub-category, as used in the Interim Prudential sourcebooks and *SUP* and on which *guidance* is given in ■ SUP App 1; or
 - (h) any proposed change which limits the liability of any of the *members* or *partners* of a *firm* such as a general *partner* becoming a limited *partner* or re-registration as a limited liability *company* of a *company* incorporated with unlimited liability; or
 - (i) in relation to a *dormant account fund operator*, notify the *FCA* when the operator intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities in connection with *operating a dormant account fund* on a continuous and satisfactory basis;
- (2) any significant failure in the *firm's* systems or controls, including those reported to the *firm* by the *firm's* auditor;
- (3) any action which a *firm* proposes to take which would result in a material change in its capital adequacy or solvency, including, but not limited to:
 - (a) any action which would result in a material change in the *firm's* financial resources or financial resources requirement; or

- (b) a material change resulting from the payment of a special or unusual dividend or the repayment of *share* capital or a subordinated loan; or
- (c) for *firms* which are subject to the *rules* on consolidated financial supervision, any proposal under which another *group company* may be considering such an action; or
- (d) significant trading or non-trading losses (whether recognised or unrecognised).

15.3.9 **G** The period of notice given to the *FCA* will depend on the event, although the *FCA* expects a *firm* to discuss relevant matters with it at an early stage, before making any internal or external commitments.

15.3.10 **G** A notification under *Principle 11* may be given orally or in writing (as set out in ■ SUP 15.7.1 R and ■ SUP 15.7.2 G), although the *FCA* may request written confirmation of a matter. However, it is the responsibility of a *firm* to ensure that matters are properly and clearly communicated to the *FCA*. A *firm* should provide a written notification if a matter either is complex or may be such as to make it necessary for the *FCA* to take action. A *firm* should also have regard to *Principle 11* and the *guidance* in ■ SUP 15.7.2 G in respect of providing important information promptly.

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 **R**

(1) A *firm* must notify the *FCA* of:

- (a) a significant breach of a *rule* (which includes a *Principle*, a *Statement of Principle* or a *COCON rule*); or
- (aa) a significant breach of any requirement imposed by the *CCA* or by regulations or an order made under the *CCA* (except if the breach is an offence, in which case (c) applies), but any notification under (aa) is required to be made only to the *FCA*; or
- (b) a breach of any requirement imposed by the *Act* or by regulations or an order made under the *Act* by the Treasury (except if the breach is an offence, in which case (c) applies); or
- (ba) a breach of any requirement imposed by or under either the *MiF/Regulations* or the *DRS Regulations*; or
- (c) the bringing of a prosecution for, or a conviction of, any offence under the *Act* or the *CCA*; or
- (d) a breach of a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; or
- (dA) a breach of a directly applicable provision in the *EU CRR* or any directly applicable regulations made under *CRD* or the *EU CRR*; or
- (e) a breach of any requirement in regulation 4C(3) (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; or
- (ea) a breach of a directly applicable provision in the *auction regulation*; or

- (f) it exceeding (or becoming aware that it will exceed) the limit in ■ BIPRU 10.5.6 R; or
 - (g) a breach of the *AIFMD UK regulation*; or
 - (h) a breach of any directly applicable EU regulation made under *AIFMD*; or
 - (ha) a breach of the *benchmarks regulation* (apart from Annex II to that regulation) or of any directly applicable regulations or requirements made or imposed under the *benchmarks regulation*; or
 - (i) a breach of a directly applicable EU regulation made under the *IDD*;
- by (or as regards (c) against) the *firm* or any of its *directors, officers, employees, approved persons, or appointed representatives*, where applicable, *tied agents*.
- (2) A *firm* must make the notification in (1) immediately it becomes aware, or has information which reasonably suggests, that any of the matters in (1) has occurred, may have occurred or may occur in the foreseeable future.

15.3.11A G ■ SUP 15.3.11 R (1)(e) relates to the standard requirement in the *permission* of those *firms* which fall outside *MiFID* because of the Treasury's implementation of Article 3 of *MiFID*. *Guidance* on how the Treasury has exercised the Article 3 exemption for the *United Kingdom* is given in Q48 and the following questions and answers in ■ PERG 13.5 (Exemptions from MiFID).

15.3.12 G In ■ SUP 15.3.11 R(1)(a) or (1)(aa), significance should be determined having regard to potential financial losses to *customers* or to the *firm*, frequency of the breach, implications for the *firm's* systems and controls and if there were delays in identifying or rectifying the breach.

15.3.13 G In assessing whether an event that may occur in the foreseeable future should be notified to the *FCA* a *firm* should consider the *guidance* in ■ SUP 15.3.3 G.

15.3.14 G A notification under ■ SUP 15.3.11 R should include:

- (1) information about any circumstances relevant to the breach or offence;
- (2) identification of the *rule* or requirement or offence; and
- (3) information about any steps which a *firm* or other *person* has taken or intends to take to rectify or remedy the breach or prevent any future potential occurrence.

15.3.14A G (1) Some matters that need to be notified under ■ SUP 15.3.11R may also have to be notified under ■ SUP 10A.14 (Changes to an FCA-approved person's details).

- (2) However, there is no need to make the same notification twice.
- (3) Any notification required under both ■ SUP 10C.14 and ■ SUP 15.3.11R should be made in accordance with ■ SUP 10C.14, which requires notification using Forms C or D.
- (4) ■ SUP 10C.14 only applies to *SMCR firms*. ■ SUP 10A.14 applies similar, but less extensive, obligations to firms that are not *SMCR firms*. Paragraphs (2) and (3) apply to those notifications as well. Such notifications should however be made under ■ SUP 10A.14.

15.3.14B G

- (1) Some matters that need to be notified under ■ SUP 15.3.11R may also have to be notified under ■ SUP 15.11 (Notification of COCON breaches and disciplinary action).
- (2) If the same thing has to be notified under ■ SUP 15.11 and ■ SUP 15.3.11R, a *firm* should make separate notifications under both. This is because:
 - (a) notification under ■ SUP 15.11 is annual and notification under ■ SUP 15.3.11R is immediate; and
 - (b) the details of what has to be notified under those requirements are different.

Civil, criminal or disciplinary proceedings against a firm.....

15.3.15 R

A *firm* must notify the FCA immediately if:

- (1) civil proceedings are brought against the *firm* and the amount of the claim is significant in relation to the *firm's* financial resources or its reputation; or
- (2) any action is brought against the *firm* under section 71 of the Act (Actions for damages) or section 138D (Actions for damages); or
- (3) disciplinary measures or sanctions have been imposed on the *firm* by any statutory or regulatory authority, competition authority, professional organisation or trade body (other than the FCA or the *firm* becomes aware that one of those bodies has started an investigation into its affairs; or
- (4) the *firm* is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion; or
- (5) it is an *OPS firm*, which is a trustee, and is removed as trustee by a court order.

15.3.16 G

A notification under ■ SUP 15.3.15 R should include details of the matter and an estimate of the likely financial consequences, if any.

Fraud, errors and other irregularities.....

15.3.17 R

A *firm* must notify the FCA immediately if one of the following events arises and the event is significant:

- (1) it becomes aware that an *employee* may have committed a fraud against one of its *customers*; or
- (2) it becomes aware that a *person*, whether or not employed by it, may have committed a fraud against it; or
- (3) it considers that any *person*, whether or not employed by it, is acting with intent to commit a fraud against it; or
- (4) it identifies irregularities in its accounting or other records, whether or not there is evidence of fraud; or
- (5) it suspects that one of its *employees* may be guilty of serious misconduct concerning his honesty or integrity and which is connected with the *firm's regulated activities* or *ancillary activities*.

15.3.18 **G** In determining whether a matter is significant, a *firm* should have regard to:

- (1) the size of any monetary loss or potential monetary loss to itself or its *customers* (either in terms of a single incident or group of similar or related incidents);
- (2) the risk of reputational loss to the *firm*; and
- (3) whether the incident or a pattern of incidents reflects weaknesses in the *firm's internal controls*.

15.3.19 **G** The notifications under **■ SUP 15.3.17 R** are required as the *FCA* needs to be aware of the types of fraudulent and irregular activity which are being attempted or undertaken, and to act, if necessary, to prevent effects on *consumers* or other *firms*. A notification under **■ SUP 15.7.3 G** should provide all relevant and significant details of the incident or suspected incident of which the *firm* is aware.

15.3.20 **G** In addition, the *firm* may have suffered significant financial losses as a result of the incident, or may suffer reputational loss, and the *FCA* will wish to consider this and whether the incident suggests weaknesses in the *firm's internal controls*.

Insolvency, bankruptcy and winding up

15.3.21 **R** A *firm* must notify the *FCA* immediately of any of the following events:

- (1) the calling of a meeting to consider a resolution for winding up the *firm*; or
- (2) an application to dissolve the *firm* or to strike it off the Register of Companies; or
- (3) the presentation of a petition for the winding up of the *firm*; or
- (4) the making of, or any proposals for the making of, a composition or arrangement with any one or more of its creditors; or

- (5) an application for the appointment of an administrator or trustee in bankruptcy to the *firm*; or
- (6) the appointment of a receiver to the *firm* (whether an administrative receiver or a receiver appointed over particular property); or
- (7) an application for an interim order against the *firm* under section 252 of the Insolvency Act 1986 (or, in Northern Ireland, section 227 of the Insolvency (Northern Ireland) Order 1989); or
- (8) if the *firm* is a *sole trader*:
 - (a) an application for a sequestration order on the *firm*; or
 - (b) the presentation of a petition for bankruptcy; or
- (9) anything equivalent to (1) to (8) above occurring in respect of the *firm* in a jurisdiction outside the *United Kingdom*.

Lloyd's of London

15.3.22

D

■ SUP 15.3.23 D to ■ SUP 15.3.25 D are given in relation to the exercise of the powers of the *Society* and of the *Council* generally, with a view to achieving the objective of enabling the *FCA* to:

- (1) comply with its general duty under section 314 of the *Act* (Regulators' general duty);
- (2) determine whether *underwriting agents*, or *approved persons* acting for them or on their behalf, are complying with the requirements imposed on them by or under the *Act*;
- (3) enforce the provisions of the *Act*, or requirements made under the *Act*, by enabling the *FCA* to consider, where appropriate, whether it should use its powers, for example, to:
 - (a) vary or cancel the *permission* of an *underwriting agent*, under section 55J of the *Act* (Variation or cancellation on initiative of regulator);
 - (b) withdraw approval from an *approved person* acting for or on behalf of an *underwriting agent*, under section 63 of the *Act* (Withdrawal of approval) (see ■ EG 9);
 - (c) prohibit an individual acting for or on behalf of an *underwriting agent* from involvement in *regulated activities*, under section 56 of the *Act* (Prohibition orders) (see ■ EG 9);
 - (d) require an *underwriting agent* to make restitution, under section 384 of the *Act* (Power of FCA or PRA to require restitution) (see ■ EG 11);
 - (e) discipline an *underwriting agent*, or an *approved person* acting for it or on its behalf, for a breach of a requirement made under the *Act*, including the *Principles*, *Statements of Principle* and *rules* (see ■ DEPP 6 and ■ EG 7);
 - (f) apply to court for an *injunction*, restitution order or *insolvency order* (see ■ EG 10, ■ EG 11 and ■ EG 13); and
 - (g) prosecute any criminal offence that the *FCA* has power to prosecute under the *Act* (see ■ EG 12).

15

15.3.23 **D** The *Society* must immediately inform the *FCA* in writing if it becomes aware that any matter likely to be of material concern to the *FCA* may have arisen in relation to:

- (1) the *regulated activities* for which the *Society* has *permission*; or
- (2) *underwriting agents*; or
- (3) *approved persons* or individuals acting for or on behalf of *underwriting agents*.

15.3.24 **D** The *Society* must inform the *FCA* if it commences investigations or disciplinary proceedings relating to apparent breaches:

- (1) of the *Act* or requirements made under the *Act*, including the *threshold conditions* or the *Principles* or other *rules*, by an *underwriting agent*; or
- (2) of the *Statements of Principle* by an individual or other *person* who carries out *controlled functions* for or on behalf of an *underwriting agent*.

15.3.25 **D** The *Society* must inform the *FCA* if it commences investigations or disciplinary proceedings which do not fall within the scope of ■ SUP 15.3.24 D but which:

- (1) involve an *underwriting agent*, or an *approved person* who carries out *controlled functions* for it or on its behalf; or
- (2) may indicate that an individual acting for or on behalf of an *underwriting agent* may not be a fit and proper *person* to perform functions in relation to *regulated activities*.

UK AIFMs

15.3.26 **R** A *full-scope UK AIFM* must notify the *FCA* before implementing any material changes to the conditions under which it was granted *permission* to *manage an AIF*, in particular to the information it provided in its application for that *permission*.

[Note: article 10(1) of *AIFMD*]

15.3.27 **G** Changes that the *FCA* would expect to be notified of under ■ SUP 15.3.26 R include:

- (1) an *AIFM* being appointed to manage another *AIF*;
- (2) the appointment of a different *depository* for an *AIF* the *AIFM* manages; and
- (3) the appointment of any new *senior personnel* if the *AIFM* is not required to apply for the *FCA*'s approval for that appointment under section 59 of the *Act*.

- 15.3.27A** **R** A *full-scope UK AIFM* must notify the *FCA* of material changes under **■ SUP 15.3.26 R** in the following manner:
- (1) for the management of a new *AIF* or a new investment compartment of an *AIF*, by using the form in **■ SUP 15 Annex 6A R**;
 - (2) for changes of *senior personnel* whose appointment is not required to be approved by the *FCA* under section 59 of the *Act*, by using the form in **■ SUP 15 Annex 6B R**; and
 - (3) for all other material changes, by using the form in **■ SUP 15 Annex 6C R**.
- 15.3.28** **R** Where a *small authorised UK AIFM* no longer meets the conditions in regulation 9 (meaning of "small AIFM") of the *AIFMD UK regulation* it must:
- (1) immediately notify the *FCA* using the form in **■ SUP 15 Annex 6D R**; and
 - (2) within 30 calendar days, apply to the *FCA* for a variation of its *permission* to become a *full-scope UK AIFM*.
- [Note: article 3(3) second and third paragraphs of *AIFMD*]
- 15.3.29** **R**
- (1) A *small authorised UK AIFM* must notify the *FCA* before it starts to manage a new *AIF* or a new investment compartment of an *AIF* using the form in **■ SUP 15 Annex 6A R**.
 - (2) (1) does not apply where:
 - (a) the management of the new *AIF* or investment compartment would result in the *AIFM* exceeding the relevant threshold of assets under management so that it will no longer meet the conditions in regulation 9 (meaning of "small AIFM") of the *AIFMD UK regulation* (see **■ SUP 15.3.28 R**); or
 - (b) the *AIF* is a *EuSEF* or *EuVECA* (see **■ SUP 15.3.31 G**).
- 15.3.30** **D**
- (1) A *small registered UK AIFM* must notify the *FCA* of changes in the following manner:
 - (a) for the management of a new *AIF* or a new investment compartment of an *AIF*, by using the form in **■ SUP 15 Annex 6A R**;
 - (b) (a) does not apply where:
 - (i) the management of the new *AIF* or investment compartment would result in the *AIFM* exceeding the relevant threshold of assets under management so that it will no longer meet the conditions in regulation 9 (meaning of "small AIFM") of the *AIFMD UK regulation* (see (2)); or
 - (ii) the *AIF* is a *EuSEF* or *EuVECA* (see **■ SUP 15.3.31 G**);
 - (2) if it no longer meets the conditions in regulation 9 (meaning of "small AIFM") of the *AIFMD UK regulation*, by using the form in **■ SUP 15 Annex 6D R**; and

- (3) if it ceases to meet the conditions for registration in regulation 15(1) (small registered AIFMs ceasing to meet the requirements for registration), by using the form in ■ SUP 15 Annex 6E D.

15.3.31 **G** A *EuSEF manager* or a *EuVECA manager* should notify the FCA of the following changes in the following manner:

- (1) for changes to *senior personnel*, by using the form in ■ SUP 15 Annex 6B R; and
- (2) for changes to the jurisdiction in which its *EuSEF* or *EuVECA* is marketed or to *market* a new *EuSEF* or *EuVECA*, by using the form in ■ SUP 15 Annex 6F G

Competition law infringements

15.3.32 **R**

- (1) A *firm* must notify the FCA if it has or may have committed a significant infringement of any applicable competition law.
- (2) A *firm* must make the notification as soon as it becomes aware, or has information which reasonably suggests, that a significant infringement has, or may have, occurred.
- (3) (a) A *firm* must make the notification in writing unless (3)(b) applies.
 (b) A *firm* may make the notification orally where it has made or will make an oral application for leniency or immunity covering the same subject matter to any competition authority.

15.3.33 **G** A notification under ■ SUP 15.3.32R should include:

- (1) information about any circumstances relevant to the infringement or possible infringement;
- (2) identification of the relevant law; and
- (3) information about any steps which the *firm* or other *person* has taken or intends to take to rectify or remedy the infringement or prevent any future potential occurrence.

15.3.34 **G** In determining whether a matter is significant, a *firm* should have regard to the actual or potential effect on competition, any customer detriment, and the duration of any infringement and implications for the *firm's* systems and controls.

15.3.35 **G**

- (1) Where a *firm* notifies the FCA under ■ SUP 15.3.32R, the *firm* should not infer or assume that any lack of (or delay in) a response, objection or enforcement activity by the FCA or any other competition authority means that the agreement or conduct:
 - (a) does not infringe competition law; or
 - (b) is, or will be, immune from enforcement.

-
- (2) Notification under ■ SUP 15.3.32R is not sufficient to constitute an application for leniency or immunity from penalty in any subsequent investigation under Chapter 1 of the Competition Act 1998 or article 101 of the *Treaty*.