

Chapter 2

Information gathering by the
FCA or PRA on its own
initiative

2.1 Application and purpose

Application

- 2.1.1 **R** The application of this chapter is the same as the application of *Principle 11* (Relations with regulators).
- 2.1.2 **G** ■ PRIN 3 (Rules about application) specifies to whom, to what and where *Principle 11* applies.
- 2.1.2A **G** *CBTL firms* are subject to a duty to deal with the *FCA* in an open and co-operative manner under article 18(1)(d) of the *MCD Order*. ■ SUP 2.3 applies to *CBTL firms* in relation to complying with that duty as though:
- (1) a reference to *firm* included a reference to a *CBTL firm*;
 - (2) a reference to the *regulatory system* were a reference to the provisions of the *MCD Order*, rules, directions and guidance applicable to *CBTL firms*;
 - (3) a reference to *Principle 11* were a reference to the duty imposed by article 18(1)(d) of the *MCD Order*;
 - (4) a reference to the *appropriate regulator's* functions under the *Act* were a reference to the *FCA's* functions under Part 3 of the *MCD Order*;
 - (5) a reference to ■ SUP 12.5.3G were a reference to ■ SUP 12.5.3AG;
 - (6) a reference to *material outsourcing* were a reference to *outsourcing* services of such importance that weakness, or failure, of the services would cast serious doubt upon the *CBTL firm's* continuing satisfaction of any condition for registration in article 8(2) or 8(3) of the *MCD Order*; and
 - (7) the *rules* were guidance in the same terms but with the word "must" replaced with the word "should".

Purpose

- 2.1.3 **G** Achieving the *regulatory objectives* involves the *FCA* informing itself of developments in *firms* and in markets. The *Act* requires the *FCA* to maintain arrangements for supervising *authorised persons* (section 1L(1)). The *Act* also requires the *FCA* to take certain steps to cooperate with other relevant

bodies and regulators (section 354A). For these purposes, the *FCA* needs to have access to a broad range of information about a *firm's* business.

- 2.1.4 **G** The *FCA* receives the information in **■ SUP 2.1.3 G** through a variety of means, including notifications by *firms* (see **■ SUP 15**) and regular reporting by *firms* (see **■ SUP 16**). This chapter is concerned with the methods of information gathering that the *FCA* may use on its own initiative in the discharge of its functions under the *Act*. This chapter does not deal with the information gathering powers that the *FCA* has under the *Unfair Terms Regulations* and the *CRA*. These are dealt with in *UNFCOG*.
- 2.1.5 **G** Part XI of the *Act* (Information Gathering and Investigations) gives the *FCA* statutory powers, including:
- (1) to require the provision of information (see sections 165 and **■ EG 3**);
 - (2) to require reports from *skilled persons* (see section 166 and **■ SUP 5**);
 - (3) to appoint investigators (see sections 167, 168 and 169 of the *Act* and **■ EG 3**); and
 - (4) to apply for a warrant to enter premises (see section 176 of the *Act* and **■ EG 4**).
- 2.1.6 **G** The *FCA* prefers to discharge its functions by working in an open and cooperative relationship with *firms*. The *FCA* will look to obtain information in the context of that relationship unless it appears that obtaining information in that way will not achieve the necessary results, in which case it will use its statutory powers. The *FCA* has exercised its *rule-making* powers to make *Principle 11* which requires that a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *FCA* appropriately anything relating to the *firm* of which the *FCA* would reasonably expect notice.
- 2.1.7 **G** The *FCA* operates in the context of the *Act* and the general law. The purpose of **■ SUP 2.2** is to explain how certain provisions of the *Act* and the general law are relevant to the *FCA's* methods of information gathering described in **■ SUP 2.3** and **■ SUP 2.4**.
- 2.1.8 **G** The purpose of **■ SUP 2.3** is to amplify *Principle 11* in the context of information gathering by the *FCA* on its own initiative in the discharge of its functions under the *Act*. **■ SUP 2.3** therefore sets out, in *guidance on Principle 11* and in *rules*, how the *FCA* expects *firms* to deal with the *FCA* in that context, including the steps that a *firm* should take with a view to ensuring that certain connected persons should also cooperate with the *FCA*.
- 2.1.9 **G** The purpose of **■ SUP 2.4** is to explain a particular method of information gathering used by the *FCA*, known as "mystery shopping". Information about how a *firm* sells products and services can be very difficult to obtain, and the purpose of this method is to obtain such information from individuals who approach a *firm* in the role of potential retail *consumers* on

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the *FCA's* initiative. The *FCA* may seek information about particular issues or the activities of individual *firms* by means of mystery shopping.

The purpose of applying the provisions set out in ■ SUP 2.1.2AG to *CBTL firms* is to amplify the duty of *CBTL firms* to deal with the *FCA* in an open and co-operative manner under article 18(1)(d) of the *MCD Order*.