

Chapter 2

Information gathering by the FCA or PRA on its own initiative

2.2 Information gathering by the appropriate regulator on its own initiative: background

Link to the statutory information gathering and investigation powers

2.2.1 **G** Breaching *Principle 11*, or the *rules* in this chapter, makes a *firm* liable to regulatory sanctions, including discipline under Part XIV of the *Act* (Disciplinary Measures), and may be relevant to the use of the *appropriate regulator's* other powers, including the statutory information gathering and investigation powers (see further ■ PRIN 1.1.7 G to ■ PRIN 1.1.9 G). But, unlike a breach of a requirement imposed under the statutory powers listed in ■ SUP 2.1.5 G, a breach of *Principle 11* or a *rule*:

- (1) is not a criminal offence; and
- (2) cannot lead to a *person* being treated as if in contempt of court (see section 177 of the *Act* (Offences)).

2.2.2 **G** Neither *Principle 11* nor ■ SUP 2.3.5 R (1) (Access to premises) enable the *appropriate regulator* to force access to premises.

Banking confidentiality and legal privilege

2.2.3 **G** The *FCA* would not normally seek to gather information using the methods described in ■ SUP 2.3 or ■ SUP 2.4 in a situation where the *FCA* could not have obtained it under the powers in Part XI of the *Act* (Information Gathering and Investigations). In particular, the limitations in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the *FCA* would not normally seek such information using the methods described in ■ SUP 2.3 or ■ SUP 2.4; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

Confidentiality of information

2.2.4 **G** When the *FCA* obtains confidential information using the methods of information gathering described in ■ SUP 2.3 or ■ SUP 2.4, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The *FCA* will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

Admissibility of information in proceedings

2.2.5 **G** Information obtained by the *FCA* using the methods described in ■ SUP 2.3 and ■ SUP 2.4 is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.