

Chapter 2

Information gathering by the
FCA or PRA on its own
initiative



2.3 Information gathering by the FCA on its own initiative: cooperation by firms

Introduction: Methods of information gathering requiring cooperation

- 2.3.1
- G
- The FCA uses various methods of information gathering on its own initiative which require the cooperation of *firms*:
- (1)

Visits may be made by representatives or appointees of the FCA. These visits may be made on a regular basis, on a sample basis, for special purposes such as theme visits (looking at a particular issue across a range of *firms*), or when the FCA has a particular reason for visiting a *firm*. Appointees of the FCA may include persons who are not FCA staff, but who have been appointed to undertake particular monitoring activities for the FCA (paragraph 6(2) of Schedule 1 to the Act). The FCA needs to have access to a *firm's documents*, personnel and business premises to carry out a visit.
- (2)

The FCA may seek meetings at the FCA's *appropriate regulator's* offices or elsewhere.
- (3)

The FCA may seek information or request *documents* by telephone, at meetings or in writing, including by electronic communication.

- 2.3.2
- G
- The FCA expects to request meetings or access to business premises during reasonable business hours. The FCA also normally expects to be able to give reasonable notice to a *firm* or connected person when it seeks information, *documents*, meetings or access to business premises. On rare occasions, however, the FCA may seek access to premises without notice. The prospect of unannounced visits is intended to encourage *firms* to comply with the requirements and standards under the *regulatory system* at all times.

Access to a firm's documents and personnel

- 2.3.3
- G
- In complying with *Principle 11*, the FCA considers that a *firm* should, in relation to the discharge by the FCA of its functions under the Act:
- (1)

make itself readily available for meetings with representatives or appointees of the FCA as reasonably requested;
- (2)

give representatives or appointees of the FCA reasonable access to any records, files, tapes or computer systems, which are within the

		<p><i>firm's possession or control, and provide any facilities which the representatives or appointees may reasonably request;</i></p> <p>(3) produce to representatives or appointees of the <i>FCA</i> specified <i>documents</i>, files, tapes, computer data or other material in the <i>firm's</i> possession or control as reasonably requested;</p> <p>(4) print information in the <i>firm's</i> possession or control which is held on computer or on microfilm or otherwise convert it into a readily legible <i>document</i> or any other record which the <i>FCA</i> may reasonably request;</p> <p>(5) permit representatives or appointees of the <i>FCA</i> to copy <i>documents</i> or other material on the premises of the <i>firm</i> at the <i>firm's</i> reasonable expense and to remove copies and hold them elsewhere, or provide any copies, as reasonably requested; and</p> <p>(6) answer truthfully, fully and promptly all questions which are reasonably put to it by representatives or appointees of the <i>FCA</i>.</p>
2.3.4	G	<p>In complying with <i>Principle 11</i>, the <i>FCA</i> considers that a <i>firm</i> should take reasonable steps to ensure that the following <i>persons</i> act in the manner set out in ■ SUP 2.3.3 G:</p> <p>(1) its <i>employees</i>, agents and <i>appointed representatives</i>; and</p> <p>(2) any other members of its <i>group</i>, and their <i>employees</i> and agents.</p> <p>(See also, in respect of <i>appointed representatives</i>, ■ SUP 12.5.3 G (2)).</p>
2.3.5	R	<p>Access to premises</p> <p>(1) A <i>firm</i> must permit representatives of the <i>FCA</i> or <i>persons</i> appointed for the purpose by the <i>FCA</i> to have access, with or without notice, during reasonable business hours to any of its business premises in relation to the discharge of the <i>FCA's</i> functions under the <i>Act</i> or its obligations under the <i>short selling regulation</i>.</p> <p>(2) A <i>firm</i> must take reasonable steps to ensure that its agents, suppliers under <i>material outsourcing</i> arrangements and <i>appointed representatives</i> permit such access to their business premises. (See also, in respect of <i>appointed representatives</i>, ■ SUP 12.5.3 G (2)).</p>
2.3.6	G	<p>The <i>FCA</i> normally expects to give reasonable notice of a visit (See ■ SUP 2.3.2 G).</p>
2.3.7	R	<p>Suppliers under material outsourcing arrangements</p> <p>(1) A <i>firm</i> must take reasonable steps to ensure that each of its suppliers under <i>material outsourcing</i> arrangements deals in an open and cooperative way with the <i>FCA</i> in the discharge of its functions under the <i>Act</i> in relation to the <i>firm</i>.</p> <p>(2) The requirement in (1) does not apply to a <i>regulated benchmark administrator</i> where the <i>material outsourcing</i> arrangements relate to</p>

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- the carrying on of the *regulated activity of administering a benchmark*.
- 2.3.8** G The cooperation that a *firm* is expected to procure from such suppliers is similar to that expected of the *firm*, in the light of the *guidance* in ■ SUP 2.3.3 G to ■ SUP 2.3.4 G, but does not extend to matters outside the scope of the *FCA's* functions in relation to the *firm*. ■ SUP 2.3.5 R (2) also requires a *firm* to take reasonable steps regarding access to the premises of such suppliers.
- 2.3.9** G When a *firm* appoints or renews the appointment of a supplier under a *material outsourcing* arrangement, it should satisfy itself that the terms of its contract with the supplier require the supplier to give the *FCA* access to its premises as described in ■ SUP 2.3.5 R (2), and to cooperate with the *FCA* as described in ■ SUP 2.3.7 R. The *FCA* does not consider that the 'reasonable steps' in ■ SUP 2.3.7 R would require a *firm* to seek to change a contract, already in place either when that *rule*: (1) was made by the *FCA* on 21 June 2001; or (2) was designated by the *FCA*, until renewal of the contract.
- 2.3.10** G The *FCA* will normally seek information from the *firm* in the first instance, but reserves the right to seek it from a supplier under a *material outsourcing* arrangement if the *FCA* considers it appropriate.
- 2.3.10A** G (1) ■ SUP 2.3.7R(2) provides that the requirement in ■ SUP 2.3.7R(1) does not apply to a *regulated benchmark administrator* where the *material outsourcing* arrangements relate to the carrying on of the *regulated activity of administering a benchmark*.
- (2) That is because article 10(3)(f) of the *benchmarks regulation* imposes equivalent requirements on *firms* which outsource functions in relation to *administering a benchmark*.
- Information requested on behalf of other regulators**
- 2.3.11** G The *FCA* may ask a *firm* to provide it with information at the request of or on behalf of other regulators to enable them to discharge their functions properly. Those regulators may include *overseas regulators* or the *Takeover Panel*. The *FCA* may also, without notifying a *firm*, pass on to those regulators information which it already has in its possession. The *FCA's* disclosure of information to other regulators is subject to the obligation described in ■ SUP 2.2.4 G (Confidentiality of information).
- 2.3.12A** G In complying with *Principle 11*, the *FCA* considers that a *firm* should cooperate with it in providing information for other regulators. Sections 169 (Investigations etc. in support of overseas regulator) of the *Act* gives the *FCA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ■ DEPP 7 and ■ EG 3).