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 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 appropriate regulator

(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 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 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 firm’s possession or control, and provide any facilities which the representatives or appointees may reasonably request;
(3) produce to representatives or appointees of the FCA specified documents, files, tapes, computer data or other material in the firm’s possession or control as reasonably requested;

(4) print information in the firm’s possession or control which is held on computer or on microfilm or otherwise convert it into a readily legible document or any other record which the FCA may reasonably request;

(5) permit representatives or appointees of the FCA to copy documents or other material on the premises of the firm at the firm’s reasonable expense and to remove copies and hold them elsewhere, or provide any copies, as reasonably requested; and

(6) answer truthfully, fully and promptly all questions which are reasonably put to it by representatives or appointees of the FCA.

In complying with Principle 11, the FCA considers that a firm should take reasonable steps to ensure that the following persons act in the manner set out in SUP 2.3.3 G:

(1) its employees, agents and appointed representatives; and

(2) any other members of its group, and their employees and agents.

(See also, in respect of appointed representatives, SUP 12.5.3 G (2)).

Access to premises

(1) A firm must permit representatives of the FCA or persons appointed for the purpose by the FCA to have access, with or without notice, during reasonable business hours to any of its business premises in relation to the discharge of the FCA’s functions under the Act or its obligations under the short selling regulation.

(2) A firm must take reasonable steps to ensure that its agents, suppliers under material outsourcing arrangements and appointed representatives permit such access to their business premises. (See also, in respect of appointed representatives, SUP 12.5.3 G (2)).

The FCA normally expects to give reasonable notice of a visit (See SUP 2.3.2 G).

Suppliers under material outsourcing arrangements

(1) A firm must take reasonable steps to ensure that each of its suppliers under material outsourcing arrangements deals in an open and cooperative way with the FCA in the discharge of its functions under the Act in relation to the firm.

(2) The requirement in (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.
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.

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.

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.

(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

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).

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).