

## 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

*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*.

**2.3.4** G 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**

**2.3.5** R (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)).

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

**Suppliers under material outsourcing arrangements**

**2.3.7** R (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*.

- 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).