

Chapter 21

Waiver



21.1 Form of waiver for energy market participants

- 21.1.1** G ■ SUP 21 Annex 1 sets out a form of *waiver* that the *FCA* will be minded to give to *energy market participants* in the exercise of its statutory discretion under sections 138A and 138B of the *Act* to grant a *waiver* of its *rules*.
- 21.1.2** G *Energy market participants* should bear in mind that sections 138A and 138B of the *Act* requires that in order to give a *waiver* of particular *rules*, the *FCA* must be satisfied that:
- (1) compliance with the *rules*, or with the *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
 - (2) the *waiver* would not adversely affect the advancement of any of the *FCA*'s operational objectives.
- 21.1.3** G Accordingly, the *FCA* must be satisfied that the statutory criteria will be met in each case where an *energy market participant* applies for a waiver in the form in ■ SUP 21 Annex 1.
- 21.1.4** G In particular, clause 4 of the form of *waiver* in ■ SUP 21 Annex 1 will not ordinarily be inserted in *waivers* for *energy market participants* that will not, at the time the *waiver* will take effect, clearly satisfy the conditions set out in that clause. For these purposes the *FCA* will take into account the relative proportions of the *energy market participant's* assets and revenues that are referable to the various parts of its business, as well as to any other factor that the *FCA* considers is relevant to an assessment of the prudential risk presented by the *energy market participant*.