

Chapter 5

Reports by skilled persons

5.1 Application and purpose

Application

- 5.1.1** **R** (1) This chapter applies to every *firm*.
- (2) The *rules*, and the *guidance on rules* in ■ SUP 5.5 (Duties of firms), do not apply to a *UCITS qualifier*.
- 5.1.1A** **R** In respect of the *FCA's power* in section 166 of the *Act* (Reports by skilled persons), reference to a *firm* in ■ SUP 5.5.1 R, ■ SUP 5.5.5 R and ■ SUP 5.5.9 R includes a *recognised investment exchange*.
- 5.1.1B** **G** In respect of the *FCA's power* in section 166 of the *Act* (Reports by skilled persons), the *guidance* in this chapter applies to a *recognised investment exchange* in the same way as it applies to a *firm*.
- 5.1.1C** **D** ■ SUP 5.5.1R and ■ SUP 5.5.5R apply to *CBTL firms* in relation to their *CBTL business* as if a reference to *firm* in these *rules* were a reference to a *CBTL firm* and a reference to section 166 of the *Act* were a reference to section 166 of the *Act*, as applied by article 23(2)(b) of the *MCD Order*.
- 5.1.1D** **G** ■ SUP 5.5.1R and ■ SUP 5.5.5R apply to former *CBTL firms* in relation to their *CBTL business* as guidance and as if:
- (1) a reference to *firm* in those *rules* were a reference to a *CBTL firm*;
 - (2) section 166 of the *Act* were a reference to section 166 of the *Act* as applied by article 23(2)(b) of the *MCD Order*; and
 - (3) the word “must” were replaced by the word “should”.
- 5.1.1E** **G** The *guidance* in ■ SUP 5.2.1G, ■ SUP 5.3, ■ SUP 5.4 (except ■ SUP 5.4.1AG), and ■ SUP 5.5 (except ■ SUP 5.5.10G and ■ SUP 5.5.11G) applies to *CBTL firms* and former *CBTL firms* in relation to their *CBTL business* as if:
- (1) a reference to *firm* in that *guidance* included a *CBTL firm*;
 - (2) a reference to a section of the *Act* were a reference to that section as applied by article 23 of the *MCD Order* if applicable; and

- (3) a reference to the *FCA's* functions under the *Act* were a reference to the *FCA's* functions under Part 3 of the *MCD Order*.

5.1.2

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This chapter (other than the *rules*, and *guidance on rules*, in ■ SUP 5.5 (Duties of firms)) is also relevant to certain unauthorised *persons* within the scope of section 166 of the *Act* (Reports by skilled persons) (see ■ SUP 5.2.1 G).

5.1.2A

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- (1) This chapter also applies, as guidance, to a *designated bank*, *designated credit reference agency* or a *designated finance platform*:
 - (a) in relation to its activities under the *Small and Medium Sized Business (Credit Information) Regulations* or in relation to its activities under the *Small and Medium Sized Business (Finance Platforms) Regulations*, as the case may be;
 - (b) as if, in relation to the activities in (a), references to “must” in ■ SUP 5 were read as “should”; and
 - (c) where it is not a *firm*, as if it were a *firm*.
- (2) Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 11 of the *Act* which includes the provisions concerning skilled persons in relation to activities of a *designated bank* or a *designated credit reference agency* under those Regulations. Regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* has the same effect in relation to a *designated bank* under those Regulations or a *designated finance platform*.
- (3) In relation to a *designated bank* or a *designated credit reference agency*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Credit Information) Regulations*. In relation to a *designated finance platform* or a *designated bank*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Finance Platforms) Regulations*.
- (4) The application of section 166 by regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* or by regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* does not include the *persons* set out in section 166(11). Therefore, any reference to those persons in this chapter does not apply in relation to a *designated bank*, *designated credit reference agency* or a *designated finance platform*.
- (5) In relation to an appointment under section 166A as applied by the *Small and Medium Sized Business (Credit Information) Regulations* or the *Small and Medium Sized Business (Finance Platforms) Regulations*, any reference in this chapter to a breach of rules concerning collecting and keeping up-to-date information is a reference to contravention of the requirement under regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* or under regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations*, as the case may be.

Purpose

5.1.3

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The purpose of this chapter is to give *guidance* on the FCA's use of the power in section 166 (Reports by skilled persons) and section 166A (Appointment of skilled person to collect and update information) of the Act. The purpose is also to make *rules* requiring a *firm* to give assistance to a *skilled person* and, where a *firm* is required to appoint a *skilled person*, to include certain provisions in its contract with a *skilled person*. These *rules* are designed to ensure that the FCA receives certain information from a *skilled person* and that a *skilled person* receives assistance from a *firm*.