

Chapter 8

Waiver and modification of rules

8.3 Applying for a waiver

Conditions for giving a waiver

- 8.3.1
- G
- Under section 138A(4) of the *Act*, the *appropriate regulator* may not give a *waiver* unless it is satisfied that:
- (1)

compliance by the *firm* 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, in the case of the *PRA*, any of its objectives and, in the case of the *FCA*, any of its operational objectives.

- 8.3.1A
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- Even if the conditions in section 138A(4) of the *Act* are satisfied, the *appropriate regulator* will consider other relevant factors before giving a *waiver*.

Publication of waivers

- 8.3.2
- G
- The *appropriate regulator* is required by section 138B of the *Act* to publish a *waiver* unless it is satisfied that it is inappropriate or unnecessary to do so (see ■ SUP 8.6).
- 8.3.2A
- G
- The *FCA* must consult the *PRA* before publishing or deciding not to publish a *waiver* which relates to:
- (1)

a *PRA-authorised person*; or
- (2)

an *authorised person* who has as a member of its *immediate group* a *PRA-authorised person*;
- unless the *waiver* relates to rules made by the *FCA* under sections 247 or 248 of the *Act*.

Form and method of application

- 8.3.3
- D
- A firm wishing to apply for a *waiver* must complete the application form in ■ SUP 8 Annex 2 D and submit it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (1)

[deleted]

		<div><div>(2) [deleted]</div><div>(3) [deleted]</div><div>(4) [Deleted]</div><div>(5) [Deleted]</div><div>(6) [Deleted]</div><div>(7) [Deleted]</div><div>(a) [Deleted]</div><div>(b) [Deleted]</div></div>
8.3.3A	G	<div><div>(1) The <i>PRA</i>'s preferred method of submission for <i>waiver</i> applications is by e-mail. The <i>FCA</i>'s preferred method of submission for <i>waiver</i> applications is through online submission via the <i>FCA</i>'s website at www.fca.org.uk.</div><div>(2) The form is available on the <i>appropriate regulator's</i> website.</div></div>
8.3.4	G	Before sending in a <i>waiver</i> application, a <i>firm</i> may find it helpful to discuss the application with its appropriate supervisory contact. However, the <i>firm</i> should still ensure that all relevant information is included in the application.
8.3.4A	G	<i>Firms</i> or <i>persons</i> other than <i>PRA-authorised persons</i> should send applications for <i>waivers</i> or applications for variations of <i>waivers</i> to the <i>FCA</i> .
8.3.4B	G	<div><div><i>PRA-authorised persons</i> should send applications for <i>waivers</i> or applications for variations of <i>waivers</i> to:</div><div><div>(1) the <i>FCA</i> in respect of <i>rules</i> in the <i>FCA Handbook</i> applicable to that <i>PRA-authorised person</i>; and</div><div>(2) the <i>PRA</i> in respect of <i>rules</i> in the <i>PRA Handbook</i>.</div></div></div>
8.3.5	G	<div><div>Procedure on receipt of an application</div><div>The <i>appropriate regulator</i> will acknowledge an application promptly and if necessary will seek further information from the <i>firm</i>. The time taken to determine an application will depend on the issues it raises. A <i>firm</i> should make it clear in the application if it needs a decision within a specific time.</div></div>
8.3.5A	G	The <i>appropriate regulator</i> will treat a <i>firm's</i> application for a <i>waiver</i> as withdrawn if it does not hear from the <i>firm</i> within 20 <i>business days</i> of sending a communication which requests or requires a response from the <i>firm</i> . The <i>appropriate regulator</i> will not do this if the <i>firm</i> has made it clear to the <i>appropriate regulator</i> in some other way that it intends to pursue the application.

- 8.3.6** G In some cases, the *appropriate regulator* may give a modification of a *rule* rather than direct that the *rule* is not to apply. The *appropriate regulator* may also impose conditions on a *waiver*, for example additional reporting requirements. A *waiver* may be given for a specified period of time only, after which time it will cease to apply. A *firm* wishing to extend the duration of a *waiver* should follow the procedure in ■ SUP 8.3.3 D. A *waiver* will not apply retrospectively.
- 8.3.7** G If the *appropriate regulator* decides not to give a *waiver*, it will give reasons for the decision.
- 8.3.8** G A *firm* may withdraw its application at any time up to the giving of the *waiver*. In doing so, a *firm* should give the *appropriate regulator* its reasons for withdrawing the application.
- 8.3.9** G If the *appropriate regulator* believes that a particular *waiver* given to a *firm* may have relevance to other *firms*, it may publish general details about the possible availability of the *waiver*. For example, IPRU(INV) 3-80(10)G explains that a *firm* that wishes to use its own internal model to calculate its position risk requirement (PRR) will need to apply for a *waiver* of the relevant *rules*.
- Giving a waiver with consent rather than on an application**.....
- 8.3.10** G Under section 138A(1) of the *Act* the *appropriate regulator* may give a *waiver* with the consent of a *firm*. This power may be used by the *appropriate regulator* in exceptional circumstances where the *appropriate regulator* considers that a *waiver* should apply to a number of *firms* (for example, where a *rule* unmodified may not meet the particular circumstances of a particular category of *firm*). In such cases the *appropriate regulator* will inform the *firms* concerned that the *waiver* is available, either by contacting *firms* individually or by publishing details of the availability of the *waiver* on the *appropriate regulator's* website provided that the *FCA* must comply with ■ SUP 8.3.2A G. The *firms* concerned will not have to make a formal application but will have to give their written consent for the *waiver* to apply.
- Waiver of an evidential provision**.....
- 8.3.11** G An application for a *waiver* of an *evidential provision* will normally be granted only if a breach of the underlying binding *rule* is actionable under section 138D of the *Act*. Individual *guidance* would normally be a more appropriate response (see ■ SUP 9 (Individual Guidance)) if there is no right of action.
- 8.3.12** G An application for a *waiver* of the presumption of compliance created by an *evidential provision* would not normally be granted.
- 8.3.13** G For an application for a *waiver* of the presumption of contravention of a binding *rule*, which is actionable under section 138D of the *Act*, the *appropriate regulator* would normally wish to be satisfied that the *evidential rule* is itself unduly burdensome or does not achieve the purpose of the *rule*.

- 8.3.13A

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In accordance with section 138C(4) of the *Act*, in ■SUP 8.3.11 G to ■SUP 8.3.13 G, a reference to a *rule* does not include a *rule* made under:

(1) section 137O of the *Act*; or

(2) section 192J of the *Act*.

Waiver of a two-way evidential provision

- 8.3.14

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In the case of an application for a *waiver* of a two-way *evidential provision* relating to an actionable binding *rule*, the policy in ■SUP 8.3.12 G would apply to the presumption of compliance and the policy in ■SUP 8.3.13 G would apply to the presumption of contravention. In other words, any modification is likely to be in relation to the second presumption only.