Chapter 8

Waiver and modification of rules
8.3 Applying for a waiver

Conditions for giving a waiver

8.3.1 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 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, such as whether the waiver would be compatible with European law, including relevant EC Directives.

Publication of waivers

8.3.2 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 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 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]
(2) [deleted]

(3) [deleted]

(4) [Deleted]

(5) [Deleted]

(6) [Deleted]

(7) [Deleted]

(a) [Deleted]

(b) [Deleted]

8.3.3A (1) The PRA’s preferred method of submission for waiver applications is by e-mail. The FCA’s preferred method of submission for waiver applications is through online submission via the FCA’s website at www.fca.org.uk

(2) The form is available on the appropriate regulator’s website.

8.3.4 Before sending in a waiver application, a firm may find it helpful to discuss the application with its appropriate supervisory contact. However, the firm should still ensure that all relevant information is included in the application.

8.3.4A Firms or persons other than PRA-authorised persons should send applications for waivers or applications for variations of waivers to the FCA.

8.3.4B PRA-authorised persons should send applications for waivers or applications for variations of waivers to:

(1) the FCA in respect of rules in the FCA Handbook applicable to that PRA-authorised person; and

(2) the PRA in respect of rules in the PRA Handbook.

Procedure on receipt of an application

8.3.5 The appropriate regulator will acknowledge an application promptly and if necessary will seek further information from the firm. The time taken to determine an application will depend on the issues it raises. A firm should make it clear in the application if it needs a decision within a specific time.

8.3.5A The appropriate regulator will treat a firm's application for a waiver as withdrawn if it does not hear from the firm within 20 business days of sending a communication which requests or requires a response from the firm. The appropriate regulator will not do this if the firm has made it clear to the appropriate regulator in some other way that it intends to pursue the application.
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.

If the appropriate regulator decides not to give a waiver, it will give reasons for the decision.

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.

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.

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.

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.

An application for a waiver of the presumption of compliance created by an evidential provision would not normally be granted.

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.
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

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.