Supervision

Chapter 9

Individual guidance
9.1 Application and purpose

Application

9.1.1 (1) This chapter applies to:

(a) every firm;
(b) persons that are subject to the requirements of the Part 6 rules; and
(c) persons generally.

(2) Section 9.3 (Giving individual guidance to a firm on the FCA’s own initiative) is, however, only relevant to a firm.

Purpose

9.1.2 Individual guidance is guidance that is not given to persons or regulated persons generally or to a class of regulated person. It will normally be given to one particular person, which relates to its own particular circumstances or plans. It may be oral or written. Individual guidance will not be published but may at the FCA’s discretion be converted to general guidance and published in the Handbook. Written individual guidance will often be labelled as such.

9.1.3 A person may need to ask the FCA for individual guidance on how the rules and general guidance in the Handbook, the Act or other regulatory requirements apply in their particular circumstances. This chapter describes how a person may do this. Section 139A of the Act gives the FCA the power to give guidance consisting of such information and advice as it considers appropriate.

9.1.4 The FCA may at times also consider it appropriate to give a firm individual guidance on its own initiative, for example on how it considers a firm should comply with a rule. Section 9.3 describes when and how the FCA will seek to do this.
9.2 Making a request for individual guidance

How to make a request

9.2.1 Requests for individual guidance may be made in writing or orally. Requests for individual guidance in relation to the Part 6 rules should be made in writing other than in circumstances of exceptional urgency or in the case of a request from a sponsor in relation to the provision of a sponsor service. If oral queries raise complex or significant issues, the FCA will normally expect the details of the request to be confirmed in writing. Simple requests for guidance may often be dealt with orally, although it is open to a person to seek a written confirmation from the FCA of oral guidance given by the FCA.

Who to address a request to

9.2.2 A firm and its professional advisers should address requests for individual guidance to the firm’s usual supervisory contact at the FCA, with the exception of requests for guidance on MAR 1 which should be addressed to the specialist team within the Enforcement and Markets Oversight Division. A firm may wish to discuss a request for guidance with the relevant contact before making a written request.

9.2.3 A person who is not a firm should address his request for individual guidance to the appropriate department within the FCA. A person who is unsure of where to address his request may address his enquiry to the FCA, making clear the nature of the request.

Discussions on a no-names basis

9.2.4 The FCA does not expect to enter into discussions on a 'no-name' basis about the affairs of an individual person.

9.2.4A [deleted]

The FCA’s response to a reasonable request

9.2.5 The FCA will aim to respond quickly and fully to reasonable requests. The FCA will give high priority to enquiries about areas of genuine uncertainty or about difficulties in relating established requirements to innovative practices or products. What constitutes a 'reasonable request' is a matter for the FCA. It will depend on the nature of the request and on the resources of the firm or other person making it. The FCA will expect the person to have taken reasonable steps to research and analyse a topic before approaching the FCA.
for individual guidance. The FCA should not be viewed as a first port of call for guidance, except where it is only the FCA that can give the guidance, for example in confirming non-standard reports that it wishes to receive from a firm.

Information required by the FCA

The FCA will always need sufficient information and time before it can properly evaluate the situation and respond to a request. If a request is time-critical, the person or its professional adviser should make this clear. The more notice a person can give the FCA, the more likely it is that the FCA will be able to meet the person’s timetable. However, the time taken to respond will necessarily depend upon the complexity and novelty of the issues involved. In making a request, a person should identify the rule, general guidance, or other matter on which individual guidance is sought, and provide a description of the circumstances relating to the request. The FCA may request further information if it considers that it does not have sufficient information.
9.3 Giving individual guidance to a firm on the FCA’s own initiative

9.3.1 Business and internal control risks vary from firm to firm, according to the nature and complexity of the business. The FCA’s assessment of these risks is reflected in how its rules apply to different categories of firm as well as in the use of its other regulatory tools. One of the tools the FCA has available is to give a firm individual guidance on the application of the requirements or standards under the regulatory system in the firm’s particular circumstances.

9.3.2 The FCA may give individual guidance to a firm on its own initiative if it considers it appropriate to do so. For example:

(1) the FCA may consider that general guidance in the Handbook does not appropriately fit a firm’s particular circumstances (which may be permanent or temporary) and therefore decide to give additional individual guidance to the firm;

(2) some of the FCA’s requirements are expressed in general terms; however, there may be times when the FCA will wish to respond to a firm’s particular circumstances by giving individual guidance on the application of the general requirement in these circumstances;

(3) the FCA may consider that a firm should be given more detailed guidance than that contained in the FCA Handbook; for example, where a firm holds positions in instruments of a non-standard form it may be appropriate to give the firm additional or more detailed guidance on how the FCA considers that it should calculate its financial resources requirement;

(4) in some instances a rule allows a firm to select which requirement, within a range of alternative requirements, a firm should comply with; in many instances, the FCA Handbook gives guidance setting out the circumstances in which compliance with a particular requirement is appropriate; the FCA may sometimes consider it necessary to give additional individual guidance to tell a firm which requirement it considers appropriate;

(5) in relation to the maintenance of adequate financial resources, the FCA may give a firm individual guidance on the amount or type of financial resources the FCA considers appropriate, for example individual capital guidance for IFPRU investment firms or BIPRU firms; further guidance on how and when the FCA may give individual capital guidance on financial resources is contained in the Prudential Standards part of the Handbook:
(a) for a BIPRU firm: GENPRU 1.2 and BIPRU 2.2;
(b) [deleted]
(c) for a securities and futures firm (or other firm required to comply with IPRU(INV) 3): IPRU(INV) 3-79R; and
(d) [deleted]
(e) for an IFPRU investment firm: IFPRU 2.2. and 2.3.

9.3.3 If the FCA intends to give a firm individual guidance on its own initiative, it will normally seek to discuss the issue with the firm and agree suitable individual guidance.

9.3.4 Individual guidance given to a firm on the FCA’s own initiative will normally be given in writing.
9.4 Reliance on individual guidance

Reliance by recipient of individual guidance

9.4.1 If a person acts in accordance with current individual written guidance given to him by the FCA in the circumstances contemplated by that guidance, then the FCA will proceed on the footing that the person has complied with the aspects of the rule or other requirement to which the guidance relates.

9.4.2 The extent to which a person can rely on individual guidance given to him will depend on many factors. These could include, for example, the degree of formality of the original query and the guidance given, and whether all relevant information was submitted with the request. Individual guidance is usually given in relation to a set of particular circumstances which exist when the guidance is given. If the circumstances later change, for example, because of a change in the circumstances of the person or a change in the underlying rule or other requirement, and the premises upon which individual guidance was given no longer apply, the guidance will cease to be effective.

9.4.3 If the circumstances relating to individual guidance change it will be open to a person to ask for further guidance.

Effect on rights of third parties

9.4.4 Rights conferred on third parties (such as a firm’s clients) cannot be affected by guidance given by the FCA. Guidance on rules, the Act or other legislation represents the FCA view, and does not bind the courts, for example in relation to an action for damages brought by a private person for breach of a rule (section 138D of the Act (Actions for damages)) or in relation to enforceability of a contract if the general prohibition is breached (sections 26 and 27 of the Act (Enforceability of agreements)). A person may need to seek his own legal advice.