

Supervision

Chapter 9

Individual guidance

9.1 Application and purpose

Application

- 9.1.1 **G** (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) ■ SUP 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 **G** 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 Individual *guidance* will not be published but may at the *FCA's* discretion be converted to general *guidance* and published in the *Handbook*.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 **G** 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 **G** 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*. ■ SUP 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 **G** 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 **G** 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 **G** 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 **G** The *FCA* does not expect to enter into discussions on a 'no-name' basis about the affairs of an individual *person*.

9.2.4A **G** [deleted]

The FCA's response to a reasonable request

9.2.5 **G** 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

9.2.6

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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 **G** 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 **G** 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 G 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 G 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 **G** 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 **G** 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 **G** 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 **G** 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.

