

**THE FIT AND PROPER TEST FOR APPROVED PERSONS INSTRUMENT 2001**

- A. The Financial Services Authority gives the guidance in the Annex to this instrument (“FIT”) in the exercise of the power listed in Schedule 4 to FIT (Powers exercised).
- B. This instrument shall come into force at the beginning of the first day on which section 40 of the Financial Services and Markets Act 2000 (Application for permission) comes into force for any purpose.
- C. This instrument may be cited as the Fit and Proper Test for Approved Persons Instrument 2001.
- D. The Annex to this instrument (including its Schedules) may be cited as the Fit and Proper Test for Approved Persons (or FIT).

By order of the Board  
21 June 2001

# ANNEX



# The Fit and Proper test for Approved Persons



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### Transitional provisions

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- 1 There are no transitional provisions in FIT. However, GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.

# Chapter 1

## General



## 1.1 Application and purpose

### 1.1.1

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FIT applies to:

- (1) a *firm*;
- (2) an applicant for *Part IV permission*;
- (3) and *EEA firm*, a *Treaty firm* or a *UCITS qualifier* that wishes to establish a *branch* into the *United Kingdom* using *EEA rights*, *Treaty rights* or *UCITS directive rights* (see ■ SUP 10.1.12 G and ■ SUP 10.1.13 R), or apply for a *top-up permission* (see ■ SUP 10.1.14 R);
- (4) an *approved person*; and
- (5) a *candidate*.

### 1.1.2

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The purpose of *FIT* is to set out and describe the criteria that the *FSA* will consider when assessing the fitness and propriety of a *candidate* for a *controlled function* (see generally ■ SUP 10 on *approved persons*). The criteria are also relevant in assessing the continuing fitness and propriety of *approved persons*. The criteria that the *FSA* will consider in relation to an *authorised person* are described in *COND*.

## 1.2 Introduction

- 1.2.1** G<sub>/1</sub> Under section 61(1) of the *Act* (Determination of applications), the *FSA* may grant an application for approval made under section 60 (Applications for approval) only if it is satisfied that the *candidate* is fit and proper to perform the *controlled function* to which the application relates.
- 1.2.2** G<sub>/1</sub> The method of applying for *approved person* status is set out in ■ AUTH 6 and ■ SUP 10.
- 1.2.3** G<sub>/1</sub> Under section 63(1) of the *Act* (Withdrawal of approval), the *FSA* may withdraw its approval if it considers that the *person* in respect of whom the approval was given is not fit and proper to perform the *controlled function* to which the approval relates.
- 1.2.4** G<sub>/1</sub> The *Act* does not prescribe the matters which the *FSA* should take into account when determining fitness and propriety. However, section 61(2) states that the *FSA* may have regard (among other things) to whether the *candidate* or *approved person* is competent to carry out a *controlled function*.



## 1.3 Assessing fitness and propriety

- 1.3.1** G<sub>/1</sub> The *FSA* will have regard to a number of factors when assessing the fitness and propriety of a *person* to perform a particular *controlled function*. The most important considerations will be the *person's*:
- (1) honesty, integrity and reputation;
  - (2) competence and capability; and
  - (3) financial soundness.
- 1.3.2** G<sub>/1</sub> In assessing fitness and propriety, the *FSA* will also take account of the activities of the *firm* for which the *controlled function* is or is to be performed, the *permission* held by that *firm* and the markets within which it operates.
- 1.3.3** G<sub>/1</sub> The criteria listed in ■ FIT 2.1 to ■ FIT 2.3 are *guidance* and will be applied in general terms when the *FSA* is determining a *person's* fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.
- 1.3.4** G<sub>/1</sub> If a matter comes to the *FSA's* attention which suggests that the *person* might not be fit and proper, the *FSA* will take into account how relevant and how important it is.
- 1.3.5** G<sub>/1</sub> During the application process, the *FSA* may discuss the assessment of the *candidate's* fitness and propriety informally with the *firm* making the application and may retain any notes of those discussions.

## Chapter 2

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# Main assessment criteria

## 2.1 Honesty, integrity and reputation

- 2.1.1** G<sub>/1</sub> In determining a *person's* honesty, integrity and reputation, the *FSA* will have regard to matters including, but not limited to, those set out in ■ FIT 2.1.3 G which may have arisen either in the *United Kingdom* or elsewhere. The *FSA* should be informed of these matters (see ■ SUP 10.13.16 R), but will consider the circumstances only where relevant to the requirements and standards of the *regulatory system*.
- 2.1.2** G<sub>/1</sub> In considering the matters in ■ FIT 2.1.1 G, the *FSA* will look at whether the *person's* reputation might have an adverse impact upon the *firm* for which the *controlled function* is or is to be performed and at the *person's* responsibilities.
- 2.1.3** G<sub>/1</sub> The matters referred to in ■ FIT 2.1.1 G to which the *FSA* will have regard include, but are not limited to:
- (1) whether the *person* has been convicted of any criminal offence; this may include, where relevant, any spent convictions under the Rehabilitation of Offenders Act 1974; particular consideration will be given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection;
  - (2) whether the *person* has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a *body corporate*;
  - (3) whether the *person* has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the *FSA*, by other regulatory authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies;
  - (4) whether the *person* is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;
  - (5) whether the *person* has contravened any of the requirements and standards of the *regulatory system* or the equivalent standards or requirements of other regulatory authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies;
  - (6) whether the *person* has been the subject of any justified complaint relating to *regulated activities*;
  - (7) whether the *person* has been involved with a *company*, *partnership* or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration,

- authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;
- (8) whether, as a result of the removal of the relevant licence, registration or other authority, the *person* has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;
  - (9) whether the *person* has been a *director*, *partner*, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the *person* has been connected with that organisation or within one year of that connection;
  - (10) whether the *person*, or any business with which the *person* has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately;
  - (11) whether the *person* has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;
  - (12) whether the *person* has ever been disqualified from acting as a *director* or disqualified from acting in any managerial capacity;
  - (13) whether, in the past, the *person* has been candid and truthful in all his dealings with any *regulatory body* and whether the *person* demonstrates a readiness and willingness to comply with the requirements and standards of the *regulatory system* and with other legal, regulatory and professional requirements and standards.

## 2.2 Competence and capability

### 2.2.1

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In determining a *person's* competence and capability, the *FSA* will have regard to matters including but not limited to:

- (1) whether the *person* satisfies the relevant requirements of the *FSA's* Training and Competence sourcebook (*TC*) in relation to the *controlled function* the *person* performs or is intended to perform;
- (2) whether the *person* has demonstrated by experience and training that the *person* is able, or will be able if approved, to perform the *controlled function*.

### 2.2.2

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A *person* may have been convicted of, or dismissed or suspended from employment for, drug or alcohol abuses or other abusive acts. This will be considered only in relation to a *person's* continuing ability to perform the particular *controlled function* for which the *person* is or is to be employed.

## 2.3 Financial soundness

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In determining a *person's* financial soundness, the *FSA* will have regard to any factors including, but not limited to:

- (1) whether the *person* has been the subject of any judgment debt or award, in the *United Kingdom* or elsewhere, that remains outstanding or was not satisfied within a reasonable period;
- (2) whether, in the *United Kingdom* or elsewhere, the *person* has made any arrangements with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of these.

### 2.3.2

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The *FSA* will not normally require the *candidate* to supply a statement of assets or liabilities. The fact that a *person* may be of limited financial means will not, in itself, affect his suitability to perform a *controlled function*.

## Handbook Modules

### Schedule1 Record keeping requirements

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- 1 There are no record keeping requirements in FIT.

## Handbook Modules

### Schedule2 Notification requirements

#### G

- 1 There are no notification requirements in FIT.



## Handbook Modules

### Schedule3 Fees and other required payments

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- 1 There are no requirements for fees or other payments in FIT.

## Handbook Modules

### Schedule4 Powers exercised

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- 1 The following power in the Act has been exercised by the FSA to give guidance in FIT:  
Section 157(1) (Guidance).

## Handbook Modules

### Schedule5 Rights of action for damages

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- 1 There are no rules in FIT.

## Handbook Modules

### Schedule6 Rules that can be waived

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- 1 There are no rules in FIT.

## **The Fit and Proper Test for Approved Persons**

### **Derivations**

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There is no table of derivations for *FIT*.

## **The Fit and Proper Test for Approved Persons Destinations**

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There is no table of destinations for *FIT*.