

Fit and Proper test for Employees and Senior Personnel sourcebook

Chapter 1

General

1.1 Application and purpose

1.1.1

G *FIT* applies to:

- (1) an *SMCR firm*;
- (2) an applicant for *Part 4A permission* that will be an *SMCR firm* if the application succeeds;
- (3) [deleted]
- (4) an *approved person* performing an *FCA controlled function*;
- (5) a *candidate* for an *FCA controlled function*;
- (6) a *certification employee* performing an *FCA certification function*;
- (7) a *person* whom an *SMCR firm* is proposing to certify to perform an *FCA certification function*; and
- (8) a *board director* as set out in ■ FIT 1.1.2G(1)(e).

1.1.2

G The purpose of *FIT* is to set out and describe the criteria that:

- (1) an *SMCR firm* should consider when:
 - (a) assessing the fitness and propriety of a *candidate* whom the *firm* is proposing to put forward for approval as an *FCA-approved SMF manager*;
 - (b) assessing the continuing fitness and propriety of a *person* approved to perform the function of an *FCA-approved SMF manager*, including for formulating an opinion about whether there are any grounds on which the regulator could withdraw the approval given to that individual to perform that function under section 63(2A) of the Act;
 - (c) assessing the fitness and propriety of a *person* whom the *firm* is proposing to certify to perform an *FCA certification function*;
 - (d) assessing the continuing fitness and propriety of a *person* whom the *firm* has certified to perform an *FCA certification function*; and
 - (e) (in the case an *FCA-authorised person* that is not a *limited scope SMCR firm*) assessing the fitness of a *non-SMF board director*

subject to competence requirements under the competent employees rule, any onshored regulation or any other requirement of the regulatory system.

(2) the FCA will consider when assessing the fitness and propriety of a candidate for a controlled function, including a designated senior management function (see generally ■ SUP 10A and ■ SUP 10C on approved persons), and may consider when assessing the continuing fitness and propriety of approved persons.

1.1.3 G [deleted]

1.1.4 G [deleted]

1.2 Introduction

- 1.2.-1** **G** Under section 60A(1) of the *Act*, before a *firm* may make an application for the *FCA's* approval of a *controlled function* the *firm* must be satisfied that the *person* for whom the application is made is a fit and proper *person* to perform that function.
- 1.2.1** **G** Under section 61(1) of the *Act* (Determination of applications), the *FCA* may grant an application for approval made under section 60 (Applications for approval) of the *Act* only if it is satisfied that the *candidate* is fit and proper to perform the *controlled function* to which the application relates.
- 1.2.1A** **G** Under section 63F of the *Act*, a *firm* may issue a certificate to a person to perform a *certification function* only if it is satisfied that the *person* is a fit and proper *person* to perform that function.
- 1.2.1B** **G** Under sections 60A and 63F of the *Act*, in assessing whether a *person* is a fit and proper person to perform an *FCA designated senior management function* or an *FCA certification function*, a *firm* must have particular regard to whether that *person*:
- (1) has obtained a qualification; or
 - (2) has undergone, or is undergoing, training; or
 - (3) possesses a level of competence; or
 - (4) has the personal characteristics;
- required by general *rules* made by the *FCA*.
- 1.2.1C** **G** The key general *rules* relating to the criteria listed in **■ FIT 1.2.1BG** include:
- (1) in the case of very senior *employees*, **■ SYSC 4.2** (*persons who effectively direct the business*) and **■ SYSC 4.3A.3R** (*management body*);
 - (2) for personnel of *firms* generally, the *competent employees rule*;
 - (3) in relation to retail activities, **■ TC 2.1.1R**, **■ TC 2.1.5BR** and **■ TC 2.1.12R** (*employees' competence*); and
 - (4) for those who are *employees* of insurance firms, **■ SYSC 3.1.6R**.

- 1.2.2 **G** [deleted]
- 1.2.3 **G** [deleted]
- 1.2.3A **G** Under section 63(1) of the Act (Withdrawal of approval), the *FCA* may withdraw an approval under section 59 given by the *FCA* or the *PRA* in relation to the performance by a person of a function if it considers that the *person* is not a fit and proper *person* to perform the function.
- 1.2.3B **G**
- 1.2.4 **G** The Act does not prescribe the matters which the *FCA* should take into account when determining fitness and propriety. However, section 61(2) states that the *FCA* may have regard (among other things) to whether the *candidate or approved person*:
- (1) has obtained a qualification; or
 - (2) has undergone, or is undergoing, training; or
 - (3) possesses a level of competence; or
 - (4) has the personal characteristics;
- required by general rules made by the *FCA*.
- 1.2.4A **G** [deleted]
- 1.2.4B **G** Where the application relates to a function within a *Solvency II firm* and is for an *FCA controlled function* which is also a *Solvency II Directive* 'key function' as defined in the PRA Rulebook: Glossary, then the *FCA* will also have regard to the assessment made by the *firm* as required in article 273 of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014; Rules 2.1 and 2.2 of the PRA Rulebook: Solvency II Firms: Insurance - Fitness and Propriety, and other factors, as set out in *EIOPA Guidelines on system of governance* dated 28 January 2015 (see Guideline 16).
- 1.2.4C **G** [deleted]
- 1.2.5 **G** For as long as the standstill direction referred to in ■ SYSC 27.6.1G, ■ SUP 10A.1.7R and ■ SUP 10C.1.4R is in force, the *guidance* in ■ FIT 1.2.4AG and ■ FIT 1.2.4AG in the version of the *FCA Handbook* that was in force immediately before *IP completion day* is still relevant.

1.3 Assessing fitness and propriety

- 1.3.1** **G** The *FCA* will have regard to a number of factors when assessing the fitness and propriety of a *person* to perform a particular *controlled function*, as more particularly described in ■ FIT 2 (Main assessment criteria).
- 1.3.1A** **G** The *FCA* would expect *firms* that are required to assess the fitness and propriety of *staff being assessed under FIT* to have regard to substantially the same factors as those outlined in ■ FIT 2.
- 1.3.1B** **G** In the *FCA*'s view, the most important considerations will be the *person*'s:
- honesty, integrity and reputation;
 - competence and capability; and
 - financial soundness.
- 1.3.2** **G** In assessing fitness and propriety, the *FCA* 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.
- 1.3.2A** **G** A *firm* assessing the fitness and propriety of *staff being assessed under FIT* should consider:
- (1) the nature, scale and complexity of its business, the nature and range of financial services and activities undertaken in the course of that business; and
 - (2) whether the *candidate* or *person* has the knowledge, skills and experience to perform the specific role that the *candidate* or *person* is intended to perform.
- 1.3.2B** **G** A *firm* is reminded that, in assessing a *candidate* for a position within the *management body* of the *firm*, ■ SYSC 4.3A.3R(3) requires the *firm* to ensure that the *management body*, as a collective, possesses adequate knowledge, skills and experience to understand the *firm*'s activities.
- 1.3.3** **G** The criteria listed in ■ FIT 2.1 to ■ FIT 2.3 are *guidance* and will be applied in general terms when the *FCA* 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. A *firm* assessing the fitness and propriety of *staff being assessed under FIT* should be guided by substantially the same criteria in ■ FIT 2.1 to ■ FIT 2.3 (to the extent applicable to the *firm*), recognising that this is not intended to be a definitive list of matters to be considered.
- 1.3.4** **G** If a matter comes to the *FCA's* attention which suggests that the *person* might not be fit and proper, the *FCA* will take into account how relevant and how important it is. In the same way, if a matter comes to the attention of a *firm* which suggests that any *staff being assessed under FIT* might not be fit and proper, the *firm* should take into account how relevant and how important that matter is.
- 1.3.4A** **G** A *firm* assessing the continuing fitness and propriety of an *approved person* is required to notify the *FCA* under section 63(2A) of the *Act* if it forms the opinion that there are grounds on which the *FCA* could withdraw its approval (see ■ SUP 10C.14.24R). In discharging its obligation to notify the *FCA*, a *firm* should take into account how relevant and how important the matter is that comes to its attention which suggests an *approved person* might not be fit and proper before determining that a notification should be made.
- 1.3.4AA** **G** In relation to a *firm* assessing continuing fitness and propriety of an *approved person* under section 63(2A) of the *Act* during a temporary absence, see the *guidance* at ■ SUP 10C.14.5GG.
- 1.3.4B** **G** A *firm* assessing the continuing fitness and propriety of *staff being assessed under FIT* should assess the role that the individual is actually performing at the time the assessment is done. For this purpose, the assessor(s) should be provided with an up-to-date job description for that individual in advance of the assessment.
- 1.3.5** **G** During the application process for a *controlled function*, the *FCA* 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.

