



Gem Briefing Note 19/2 - January 2019

FCA Mission - Approach to Authorisation

Background

The FCA was created by Parliament with the strategic objective of ensuring that relevant markets function well, and incorporating three underlying specific operational objectives; to protect consumers, enhance market integrity and promote competition. For firms and individuals that apply to be authorised or approved, there is a requirement for them to understand how the FCA will test that they comply with FCA regulation. The FCA has set out its approach to authorisation, and the purpose behind it, with consideration to:

- The legal basis for authorisation and the minimum standards to achieving authorisation
- The difference between authorisation and registration
- How minimum standards to gain authorisation are evaluated, and the support provided
- The options available if authorisation is not granted
- How authorisation promotes effective competition
- How the effectiveness of authorisation decisions are evaluated
- How and why an authorisation would be revoked
- How the FCA are improving their approach and measuring their performance

The approach to authorisation

- *The legal basis for authorisation and the minimum standards to achieving authorisation*

By enacting the Financial Services and Markets Act (FSMA), the UK Parliament has stated that firms wishing to provide specific financial services must be authorised or exempt to do so. Additionally, individuals who hold certain specific functions within authorised firms must also be approved. In both cases a minimum standards level must be achieved, and thereafter maintained, to warrant authorisation. For example, a firm must have in place adequate financial resources for the activities it wishes to undertake, it can meet its liabilities as they fall due, and the firm's controllers are solvent. Following the 2008 financial crisis, it became apparent that a significant contributing factor was related to the conduct of firms. As such, in 2013 Parliament also passed legislation requiring the FCA and PRA to introduce the Senior Manager's and Certification Regime (SM&CR). This aims to place more accountability on named individuals in firms for their conduct and competence, and thus reduce consumer harm and strengthen market integrity. The bedrock of this are five conduct rules: Act with integrity; act with due care, skill and diligence; be open and co-operative with the FCA, PRA and other regulators; pay due regard to the interests of customers and treat them fairly; and, observe proper standards of market conduct. The regime has been rolled out first to the banking sector, and will also be applicable to all solo regulated firms by 9 December 2019.

- *The difference between authorisation and registration*

In comparison to authorised firms, FCA registered firms have limits on the type of financial services they can provide. Mutual Societies and small payment institutions are a couple of examples, if the services they provide don't require authorisation. Appointed Representative (AR) firms are unauthorised but enter into an agreement with an already authorised firm in order to be able to carry out specific regulated activities, which the authorised firm oversees and takes compliance responsibility for. The FCA will assess the ability of the authorised firm to undertake this role.

- *How minimum standards to gain authorisation are evaluated, and the support provided by the FCA*

The driver for having minimum standards is the prevention of harm in financial services from occurring. The FCA use their Threshold Conditions and the Fit and Proper test to determine which firms and individuals meet the minimum

standards for authorisation or approval. For firms, the authorisation conditions include: having a suitable business model; having the capability to be supervised effectively by the FCA, having appropriate resources in the form of people, capital, and systems; having a UK head office; and, having suitability with regards to Schedule 6 of the Financial Services and Markets Act 2000. Additionally, the type of services a firm wants to provide, and the size and nature of its customer base will also be influencing factors. For individuals, the approval conditions include: having honesty, integrity and good reputation; having financial soundness; and, having the competence and capability to carry out the assigned role. The FCA supports applicant firms for authorisation through open communication channels, although they do not provide consultancy type advice. Parliament has put in place statutory deadlines for applications to be approved; for firms, within six months from receipt of the initial application, or 12 months if incomplete, and for individual approvals, within three months.

- *The options available if authorisation is not granted*

Previously, the FCA would work with applicant firms over extended periods to assist them meet the minimum standards. This stance has changed and the FCA will now reject applications that are unlikely to meet the minimum standards within the 12 month statutory deadline for an authorisation decision. If an authorisation or approval is not granted, the decision can be challenged via representation to the Regulatory Decisions Committee (RDC). This is an FCA Board appointed panel that operates separately to the rest of the FCA, and comprises people from a range of business, consumer and industry backgrounds. If the decision of the RDC is still to refuse the application, the applicant may refer the matter to the Upper Tribunal – part of the UK's administrative justice system.

- *How authorisation promotes effective competition*

The promotion of effective competition is one of the FCA's operational objectives. The FCA recognises that regulation can be a barrier to innovative firms and products entering the market, which in turn reduces or weakens competition, causing harm. The FCA has aimed to address this by putting in place clearer information to assist applicant firms prepare for authorisation, and also invested in staff training and industry engagement to ensure FCA personnel understand the range of business models that are presented. There

have also been introduced several services that offer direct support to both regulated and unregulated businesses that will benefit consumers and the market. These include the Innovation Hub, Regulatory Sandbox, the Advice Unit, the New Bank Start-up Unit, the New Insurer Start-up Unit, and the Asset Management Authorisation Hub.

- *How the effectiveness of authorisation decisions are evaluated*

The FCA periodically monitor the number of new firms which trigger supervision or enforcement orders within a year of being authorised, and also look at ways in which they can better engage with firms and individuals that have recently been authorised or approved. When issues are found, an assessment of the actual or potential harm is made to determine the course of action that is taken. Lessons learned are used to improve and evaluate the FCA's approach to authorisation. In addition, the FCA's risk tolerance is periodically reviewed and updated using the inputs from sector views, and their experience with firms at the authorisation stage and once they are authorised. They also undertake some work on firms which applied for authorisation and were either refused, or subsequently withdrew their applications, by giving consideration to the impact these firms would have had if they had been authorised. For example, the number of consumers who would have been affected, many of whom are likely to be vulnerable.

- *How and why an authorisation would be revoked*

Quite simply, the FCA will revoke an authorisation, registration or approval where that firm or individual fails to meet the minimum standards. This could be where basic regulatory obligations can no longer be fulfilled, for example paying regulatory fees or submitting regulatory returns, or where an individual no longer is deemed to be fit and proper, for example where they have been convicted of financial crime. The FCA's key consideration in any revocation exercise is ensuring that the firm safeguards the interests of its customers, with the FCA intervening if this is threatened.

- *How the FCA is improving its approach and measuring its performance*

As previously mentioned, the FCA is obliged by statute to meet certain service standards, although it endeavours to exceed these. A great deal of this is about increasing transparency of information. As such, they are being clearer about the service standards and public commitments to firms, ensuring they are met consistently, reducing the average time taken to allocate and decide cases and

improving the way they ask firms for feedback on the service provided. Performance is measured in several ways. On the FCA website, information is published quarterly on the number of applications received, the number determined and the number in hand. In addition, data on the speed of those decisions and the percentage of applications that were decided within the relevant statutory service standard, and the number of applications that were approved, refused or withdrawn is available. In addition to this, the FCA conducts a quarterly firm feedback survey of all firms who have received an authorisation decision in the previous quarter, in order to track changes in firms' experience over time. The FCA also conducts quality assurance on a sample of firm applications to assess quality of judgements on decisions, measure compliance with each of the public firm commitments, and test cases for adherence to its procedures.

Disclaimer:

This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant publications.

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