

Chapter 1

Gathering financial stability information



1.1 Application, purpose and scope

Application

- 1.1.1 **G** ■ FINMAR 1 is relevant to *authorised persons* and *unauthorised persons*, in particular *persons* whose activities are or may be relevant to the stability of one or more aspects of a *relevant financial system*.

Purpose

- 1.1.2 **G** (1) Section 165B(6) (Statement of policy) of the Act requires the FSA to prepare and publish a statement of policy on the *financial stability information power*. The purpose of ■ FINMAR 1.1 is to set out the FSA's statement of policy on the exercise of the *financial stability information power* and the *overseas financial stability information power* contained in sections 165A and 169A of the Act.
- (2) The Treasury has approved this statement of policy in accordance with section 165B(7) of the Act.

- 1.1.3 **G** Determining whether to impose a *financial stability information requirement* involves different considerations from the exercise of other FSA powers. The *guidance* in this chapter relates only to the imposition of *financial stability information requirements*.

Scope of the powers

- 1.1.4 **G** The *financial stability information power* and the *overseas financial stability information power* are exercisable in relation to the categories of *person* set out in section 165A(2) of the Act (interpreted in accordance with the rest of that section).

- 1.1.5 **UK** Table: section 165A(2) of the Act

Section 165A of the Act applies to:

- (a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;
- (b) a person who is responsible for the management of a relevant investment fund;
- (c) a person (a "service provider") who provides any service to an authorised person;

Section 165A of the *Act* applies to:

- (d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);
- (e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.

1.1.6

G

The FSA may impose a *financial stability information requirement* on a *person* within the categories set out in ■ FINMAR 1.1.5 UK only to the extent that it considers that the information or document is or might be relevant to the stability of one or more aspects of the *UK financial system*. The *persons* within these categories may include:

- (1) a vehicle for collective investment, whether or not it is regulated, (including vehicles often referred to as "hedge funds" and "structured investment vehicles" or off-balance sheet vehicles used for investment) and its managers;
- (2) a provider of a service to an *authorised person*, such as a software supplier or the provider of a liquidity facility, where the risk to the stability of one or more aspects of the *UK financial system* relates to the provision of the service;
- (3) a large scale proprietary trader or investor who trades large volumes of *financial instruments* that are traded on *UK regulated markets* or *UK MTFs*, for example *overseas* corporate entities; and
- (4) a *person* who manages investments for a single family (whether or not the investments are held within a trust), for example a family office.

1.2 Financial stability information powers

Introduction

1.2.1 **G** The *FSA* has a *regulatory objective* of contributing to the protection and enhancement of *UK* financial stability. Section 250 of the Banking Act 2009 imposes a duty on the *FSA* to collect information that it thinks is, or may be, relevant to the stability of individual financial institutions or to one or more aspects of the *UK financial system*.

1.2.2 **G** Some information relevant to *UK* financial stability will be accessible to the *FSA*:

- (1) through *authorised persons*' regular reports to the *FSA*; or
- (2) from other *UK* or international authorities;
- (3) through information gathered by the *FSA* under other information gathering powers, such as section 165 of the *Act* or section 250(2) of the Banking Act 2009.

1.2.3 **G** The *FSA* may use the *financial stability information power* to gather additional information relevant to *UK* financial stability. The information may relate to the exercise of the *FSA*'s functions, or the *FSA* may collect the information in order to disclose it to another *person* or authority, for example the Bank of England or the Treasury. Information relevant to financial stability may be held by an *authorised person* or by an *unauthorised person*.

1.2.4 **G** When the *FSA* seeks additional information from an *authorised person* or an *unauthorised person* it may not in all cases be necessary to exercise statutory information-gathering powers. However, the *FSA* will use its statutory powers if it believes it is appropriate to do so and, in urgent cases, it may be appropriate for the *FSA* to exercise these powers without delay.

Financial stability information power

1.2.5 **G** The *FSA* may use the *financial stability information power* to require a *person* to provide:

- (1) specified information or documents; or
- (2) information or documents of a specified description;

that the *FSA* considers are or may be relevant to the stability of the *UK financial system*.

[Note: Section 165A of the Act]

Overseas financial stability information power

1.2.6

G

The *FSA* may exercise the *overseas financial stability information power* at the request of an *overseas regulator* to require a *person* to provide:

- (1) specified information or documents; or
- (2) information or documents of a specified description;

that the *FSA* considers are or may be relevant to the stability of a *relevant financial system* operating in the country or territory of the *overseas regulator*.

[Note: Section 169A of the Act]

1.2.7

G

If the *overseas regulator* is a *competent authority* and the request relates to an obligation of the *FSA* under *EU law*, the *FSA* will take into account whether it is necessary to exercise the *overseas financial stability information power* to comply with that obligation.

1.2.8

G

In deciding whether to exercise the *overseas financial stability information power*, the *FSA* may take into account in particular:

- (1) whether corresponding assistance would be given to a *UK regulatory authority* in the country or territory of the *overseas regulator*; and
- (2) whether it is otherwise appropriate in the public interest to give the assistance sought.

1.2.9

G

The *FSA* may decide not to exercise the *overseas financial stability information power* unless the *overseas regulator* undertakes to make such contribution towards the cost to the *FSA* of its exercise as the *FSA* considers appropriate.

1.2.10

G

■ FINMAR 1.2.8 G and ■ FINMAR 1.2.9 G do not apply if the *FSA* considers that it must use the *overseas financial stability information power* to comply with an obligation upon the *FSA* under *EU law*.



1.3 Providing notice before imposing a financial stability information requirement

Giving notice

1.3.1

G

The *FSA* will give a *person* a notice in writing if it proposes to impose a *financial stability information requirement* unless the *FSA* is satisfied that information or documents are required without delay. The notice will include:

- (1) the reasons why the *FSA* proposes to impose the *financial stability information requirement*; and
- (2) the time period in which the *person* may make representations to the *FSA* in respect of the proposal.

Right to make representations

1.3.2

G

The notice referred to in ■ FINMAR 1.3.1 G will specify a reasonable period in which to make representations. In determining the period for representations the *FSA* will take into account:

- (1) the nature, type and number of documents likely to be required;
- (2) the reasons for imposing the requirement;
- (3) whether the *person* is likely to wish to seek legal advice;
- (4) whether the *person* is an *authorised person*;
- (5) any cost implications for the *person*.

1.3.3

G

The *FSA* will generally invite the recipient of a notice to make representations in writing to the address provided in the notice. The *FSA* will consider a request by a *person* to make oral representations and will take into account:

- (1) whether oral representations would be likely to:
 - (a) improve the *FSA*'s understanding of the representations;
 - (b) be more convenient or less costly than written representations; and
 - (c) assist the *FSA* in making a decision more quickly; and

(2) as in other cases, and in accordance with the Disability Discrimination Act 1995, any reason relating to the disability of the person which would mean that they could not otherwise have a fair hearing.

1.3.4 **G** Once the period for making representations has expired the *FSA* will determine within a reasonable period whether to impose the *financial stability information requirement*.

1.3.5 **G** If the *FSA* does not receive any representations during the period specified in the notice it will determine whether to impose the *financial stability information requirement* based on the information available to it.

1.4 Imposing a financial stability information requirement without prior notice

1.4.1 **G** If the *FSA* proposes to impose a *financial stability information requirement* and is satisfied that it is necessary for the information or documents covered by a *financial stability information requirement* to be provided or produced without delay, the *FSA* may impose the *financial stability information requirement* on a *person* without taking the steps described in ■ FINMAR 1.3 (see section 165B (4) of the *Act*).

1.4.2 **G** The *FSA* will determine whether to impose a *financial stability information requirement* without prior notice based on the facts of each case and after taking into account the information before it concerning:

- (1) the nature of the risk to financial stability and whether the risk appears to be increasing rapidly;
- (2) the extent of the risk to financial stability;
- (3) whether it is fair to impose the requirement without notice; and
- (4) whether the information sought may lead to prompt action by the *FSA*.

1.4.3 **G** A *person* who receives a *financial stability information requirement* without prior notice should consider whether to contact the *FSA* concerning the requirement. The *person* should raise any proposal to make representations with the *FSA* at the earliest opportunity.



1.5 Imposing a requirement

Deciding to impose a requirement

- 1.5.1** **G** In deciding whether to impose a *financial stability information requirement* the *FSA* will:
- (1) review the material before it;
 - (2) consider any representations received from the proposed recipient of the requirement; and
 - (3) take into account:
 - (a) the nature and extent of the risks to financial stability;
 - (b) whether the information is more readily available from another source, taking into account the likely time and cost implications of seeking information from that source;
 - (c) whether the information may assist the *FSA* in fulfilling its functions, for example if the information relates to the exercise of the *FSA*'s statutory powers.

- 1.5.2** **G** A decision to impose the *financial stability information requirement* will be taken by a member of *FSA* staff at the appropriate level of seniority.

Scope of the requirement

- 1.5.3** **G** The information and documents specified will be appropriate for each case. They may be defined broadly, for example information relating to a trading strategy and its execution, or in a more limited way, for example a contract documenting a particular trade.

Notice of a financial stability information requirement

- 1.5.4** **G** The *FSA* will give a *person* notice in writing if it decides to impose a *financial stability information requirement*. The notice will describe the information and documents to which the requirement relates and include the *FSA*'s reasons for imposing the requirement.

Requiring documents to be verified or authenticated

1.5.5

G

The *FSA* may, where it is reasonable to do so, require a *person* subject to a *financial stability information requirement* to provide:

- (1) verification of any information; or
- (2) authentication of any document;

that the *person* provides to the *FSA* in accordance with that requirement.

1.5.6

G

When deciding whether to require verification or authentication the *FSA* will take into account the circumstances of each case, including:

- (1) the type of information or documents required and whether there is a particular need for the information to be exactly accurate;
- (2) the likely additional cost to the *person* providing the information or documents;
- (3) the extent to which verification or authentication may improve the quality or reliability of the information or documents; and
- (4) the nature of any previous communications between the person and the *FSA*.

1.5.7

G

The *FSA* may, where it is reasonable to do so, require the information or documents to be verified or authenticated in any manner. Examples of verification or authentication include:

- (1) a signed declaration by an officer or employee of a *body corporate*;
- (2) a declaration by a commissioner for oaths that a copy of a document is a true copy of the original; and
- (3) a declaration by the *person's* accountant or auditor that the information provided appears to be accurate.