

Chapter 7

Statement of policy on interviews conducted on behalf of overseas and EEA regulators

7.2 Interviews

Appointment of investigator and confidentiality of information

7.2.1 **G** Under section 169(1)(b) and section 131FA of the Act, the FCA may appoint an investigator to investigate any matter at the request of an *overseas regulator or EEA regulator*. The powers of the investigator appointed by the FCA (referred to here as the 'FCA's investigator') include the power to require persons to attend at a specified time and place and answer questions (the compulsory interview power).

7.2.2 **G** Where the FCA appoints an investigator in response to a request from an *overseas regulator or EEA regulator* it may, under section 169(7) or section 131FA of the Act, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The FCA may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an *overseas regulator or EEA regulator* as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the Act.

7.2.3 **G** Part XXIII of the Act contains restrictions on the disclosure of confidential information. The restrictions are subject to exceptions contained in regulations made by the Treasury under section 349.

Policy on use of investigative powers

7.2.4 **G** The FCA's policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators and EEA regulators*, is set out in the FCA's Enforcement Guide (EG).

Use of direction powers

7.2.5 **G** The FCA may need to consider whether to use its direction power at two stages of an investigation:

- (1) at the same time that it considers the request from the *overseas regulator or EEA regulator* to appoint investigators;
- (2) after it has appointed investigators, either at the request of the *overseas regulator or EEA regulator* or on the recommendation of the investigators.

7.2.6 **G** Before making a direction under section 169(7) or section 131FA the *FCA* will discuss and determine with the *overseas regulator* or *EEA regulator* how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the *FCA* will at this stage determine the extent to which the representative of the *overseas regulator* or *EEA regulator* will be able to participate in the interview. The *overseas regulator* or *EEA regulator* will be notified of this determination on the issuing of the direction.

7.2.7 **G** The direction will contain the identity of the representative of the *overseas regulator* or *EEA regulator* that is permitted to attend any interview and the role that he will play in the interview. If the *FCA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

Conduct of interview

7.2.8 **G** In circumstances where an interview is to be conducted as part of the investigation, the *FCA*'s investigator will have conduct of the interview. In general, the *FCA*'s investigators will be employees of the *FCA*, but in appropriate cases the *FCA* may appoint *persons* who are not its employees. In those cases, the *FCA* may choose to require that an *FCA* employee is present at the interview and may choose to appoint that *person* as an investigator.

7.2.9 **G** The *FCA*'s investigator will act on behalf of the *FCA* and under its control. He may be instructed to permit the representative of the *overseas regulator* or *EEA regulator* to assist in the preparation of the interview. Where the *FCA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in ■ DEPP 7.2.6 G.

7.2.10 **G** If the direction does permit the representative of an *overseas regulator* or *EEA regulator* to attend the interview and ask the interviewee questions, the *FCA*'s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

- (1) The *FCA*'s investigator instigates and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. The *FCA*'s investigator will always ask preliminary questions, such as those establishing the identity of the interviewee.
- (2) The *FCA*'s investigator determines the duration of the interview and when, if at all, there should be any breaks in the course of it.
- (3) The *FCA*'s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* or *EEA regulator* was either present or not present.

(4) Where the *FCA's* investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* or *EEA regulator* as to the conduct of the interview and the contents of this statement of policy.

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The *FCA* will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* or *EEA regulator*. Whether or not the interviewee is the *person* under investigation, the *FCA's* investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* or *EEA regulator* is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the *FCA* believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

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The interviewee will normally be given a copy of the direction issued under section 169(7) or section 131FA in advance of the interview unless to do so would be likely to result in the investigation being frustrated. The interviewee will also be provided with a copy of this statement of policy.

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The *FCA's* investigator will determine the venue and timing of the interview. The interviewee will be notified of the venue and timing of the interview in advance and in writing.

7.2.14

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When the *FCA's* investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* or *EEA regulator*. It will also state that in criminal proceedings or proceedings for *market abuse* the *FCA* will not use as evidence against the interviewee any information obtained under compulsion during the interview.

7.2.15

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The *FCA's* investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the *documents* before the interview takes place. Where the *overseas regulator* or *EEA regulator* wishes to ask questions about *documents* during the interview and the *FCA's* investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the *FCA's* investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.

7.2.16

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When the *FCA's* investigator has exercised the compulsory interview power, the *FCA's* investigator will require the *person* attending the interview to

answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator* or *EEA regulator*. The interviewee will also be required to answer these questions. The *FCA's* investigator may intervene at any stage during questioning by the representative of the *overseas regulator* or *EEA regulator*.

Language

7.2.17

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Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* or *EEA regulator* then the translation costs will normally be met by the *overseas regulator* or *EEA regulator*. Where interviews are being conducted in pursuance of an *EU* law obligation these costs will be met by the *FCA*. In any event, the meeting of costs in relation to translators and, where applicable, the translation of *documents* will always be agreed in advance with the *overseas regulator* or *EEA regulator*.

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Tape-recording

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All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the *FCA's* investigator. Costs will be addressed similarly to that set out in the preceding paragraph. The *FCA* will not provide the *overseas regulator* or *EEA regulator* with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

Representation

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The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the *FCA*. The presence at the interview of a representative of the *overseas regulator* or *EEA regulator* may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator's jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the *FCA* reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at a suitable venue.

7.2.20

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In relation to the publication of investigations by *overseas regulators* or *EEA regulators*, the *FCA* will pursue a policy similar to the policy that relates to its own investigations.