

**WAIVER APPLICATION FORM (AMENDMENT) DIRECTION
INSTRUMENT 2003**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000:
- (1) section 148(3) (Modification or waiver of rules);
 - (2) section 250(4) (Modification or waiver of rules);
 - (3) section 250(5) (Modification or waiver of rules); and
 - (4) section 294(2) (Modification or waiver of rules).

Commencement

- B. This instrument comes into force on 13 October 2003.

Amendments to the Supervision Manual

- C. The Supervision Manual is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Waiver Application Form (Amendment) Direction Instrument 2003.

Signed by Carol Sergeant
Managing Director
13 October 2003

Annex

Amendments to the Supervision Manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

SUP 8 Ann 2D (see SUP 8.3.3D)

Application form for a ~~waiver or modification~~

Before completing this ~~application~~ form, you may find it helpful to discuss ~~the~~ your application with your usual supervisory contact, or your usual contact in Corporate Authorisation, at the *FSA*. However, you ~~should~~ must still ensure that all relevant information is included in this ~~application~~ form. If it is not, the determination of your application will be delayed while the FSA seeks answers to further questions from you. Please read the notes in the next section as you complete the form as they explain or give assistance on many of the questions.

<u>WAIVER APPLICATION NUMBER</u>							
Firm details							
1	Name of <i>firm</i> ¹						
2	FSA firm reference no.						
3	Contact point at <i>firm</i>	Name:					
		Position:					
		Address:					
		Telephone number:					
		Fax number:					
		E-mail address:					
		Web address:					
Details of waiver or modification sought							
4	Are you applying for a variation of an existing waiver ? If so, give the Direction reference number. ² <u>What is the name of the <i>approved person</i> responsible for this application?</u>						
5	Handbook reference number of the <i>rule(s)</i> to which this application relates. <u>In brief, what is the nature of your business?</u>						
6	Are you applying for the <i>rule</i> to be waived completely, or for a modification of the <i>rule</i> ? If a modification, provide a draft of the modification sought <u>What type of <i>client</i> would be affected if your application was granted?</u>	<input type="checkbox"/> <u><i>private customer</i></u> <input type="checkbox"/> <u><i>intermediate customer</i></u> <input type="checkbox"/> <u><i>market counterparty</i></u>					
7	Detail any special requirements ³						

Details of research undertaken		
		Details of waiver sought
<u>7</u>	<u>Rule(s) to which this application relates.</u>	
<u>8</u>	<p>Confirm that you have checked the <i>waivers</i> published by the <i>FSA</i> for any precedent. If your application is based on a precedent, give the Direction reference number⁴</p> <p><u>Are you applying for the <i>rule</i> to be <i>waived</i> completely, or for a modification of the <i>rule</i>? If a modification, please provide a draft of the modification sought.</u></p>	<p>I confirm there is/is not a published precedent</p> <p>Published precedent Direction reference number (if applicable):</p>
<u>9</u>	<p>Is your application under section 148, 250 or 294 of the <i>Act</i>, or under regulation 7 of the <i>OEIC Regulations</i>?⁵</p> <p><u>Are you applying for a variation of an existing <i>waiver</i>? If so, give the direction reference number.</u></p>	
<u>10</u>	<p>Confirm that the <i>rule(s)</i> can be waived (not relevant for <i>IPRU</i>)⁶</p> <p><u>Detail any other relevant considerations.</u></p>	Confirmed/not relevant
Details of research undertaken		
<u>11</u>	<p>Explain why, in your view, the waiver or modification requested would not be incompatible with European directives⁷</p> <p><u>Have you checked the <i>waivers</i> published by the <i>FSA</i> for a precedent?</u></p>	<p><input type="checkbox"/> Yes – see Q12</p> <p><input type="checkbox"/> No – please state why you did not think it relevant in this <u>instance</u></p>
<u>12</u>	<p>Give a full and clear explanation of why you want the waiver or modification</p> <p><u>If your application is based on a precedent, please:</u></p> <p><u>(a) give the direction reference number; and</u></p>	

	<p><u>(b) explain why you think this precedent is relevant to your application;</u></p> <p><u>(c) please explain or mark up the differences where relevant.</u></p>	
13	<p>Give a full and clear explanation of why you consider that the statutory tests are satisfied[†] What is the basis of your application?</p>	<p>Your compliance with the <i>rules</i>, or the <i>rules</i> as unmodified, would:</p> <ul style="list-style-type: none"> • be unduly burdensome because: <p>OR</p> <ul style="list-style-type: none"> • not achieve the purpose for which the <i>rules</i> were made because: <p>AND</p> <p>The <i>waiver</i> would not result in undue risk to <i>persons</i> whose interests the <i>rules</i> are intended to protect because:</p> <p>FSMA 148 <input type="checkbox"/> 250 <input type="checkbox"/> 294 <input type="checkbox"/></p> <p><u>OEIC Regulations – Regulation 7</u> <input type="checkbox"/></p>
Publication		
14	<p>Are you content for the <i>waiver</i> to be published? If no, state your reasons.⁹</p> <p><u>Please confirm that you have checked that the <i>rule(s)</i> can be waived.</u></p>	<p><u>Confirmed / not relevant</u></p>
15	<p><u>Please state if you have been able to establish whether the <i>rule</i> to be waived implements a European directive requirement.</u></p> <p><u>Where relevant, please set out any matters that you believe would be relevant to assessing whether the <i>waiver</i> would be compatible with European directives requirements.</u></p>	<p><u>Confirmed/Unable to confirm</u></p>
16	<p><u>If you have sought professional advice on your application please confirm that your adviser regards the basis of the application as justifiable having regard to the statutory tests referred to in Q13.</u></p>	<p><input type="checkbox"/> <u>Confirmed</u></p> <p><input type="checkbox"/> <u>No professional advice sought</u></p>

Reasons why the *waiver* should be given

<p>17</p>	<p><u>Please give a full and clear explanation of why you are applying for the <i>waiver</i>.</u></p>	
<p>18</p>	<p><u>Please give a full and clear explanation of why you consider that the statutory tests are satisfied.</u></p>	<p><u>Your compliance with the <i>rules</i>, or with the <i>rules</i> as unmodified, would:</u></p> <ul style="list-style-type: none">• <u>be unduly burdensome because:</u> <p><u>OR</u></p> <ul style="list-style-type: none">• <u>not achieve the purpose for which the <i>rules</i> were made because:</u>

		<p><u>AND</u></p> <p><u>The waiver would not result in undue risk to persons whose interests the rules are intended to protect because:</u></p>
<u>Publication</u>		
<p><u>19</u></p>	<p>Are you content for the <i>waiver</i> to be published? If no, state your reasons.</p>	

Declaration and signature¹⁰

Warning:

Knowingly or recklessly giving the *FSA* information that is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the ~~Financial Services and Markets Act 2000~~ *Act*). *SUP 15.6.1R* and *SUP 15.6.4R* require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FSA* and to notify the *FSA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FSA*. It should not be assumed that information is known to the *FSA* merely because it is in the public domain or has previously been disclosed to another regulatory body. If there is any doubt about the relevance of information, it should be included.

Declaration and signature

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signature of authorised signatory:

Date:

Name:

Position held:

Declaration and signature if a third party is named

If the waiver ~~or modification~~ will name a third party (for example, a *waiver* disapplying for a named individual the *rule* in *TC* requiring an examination to be passed), the third party ~~should~~ **must** also sign below.

I confirm that the information in this form ~~which~~ that concerns my circumstances is accurate and complete to the best of my knowledge and belief. I also confirm that I am content for the waiver ~~or modification~~ to be published, unless otherwise indicated in box ~~44~~ 19 of this form.

Signature of named third party:

Date:

Name:

Notes on completion

Notes to questions:

~~1~~ Please note that ~~d~~ Defined terms used in the text are shown in italics. Definitions can be found in the Handbook Glossary http://www.fsa.gov.uk/handbook/hbk_glossary.pdf)

Question Number	Notes to Question
1 / 2	If the applicant is not a <i>firm</i> , for example an applicant for a <i>Part IV permission</i> , give its name and indicate that it is not an <i>authorised person</i> . <u>In those cases, there is no need to give the FSA firm reference number in the next question Q2.</u> If the application is submitted by, <u>or on behalf of,</u> more than one <i>firm</i> (for example, by more than one <i>firm</i> in a <i>group</i>), the names of each <i>firm</i> should must be given. All and each <u>All and each</u> FSA firm reference number should be given in <u>response to the next question Q2</u> and if the form is signed, a single individual can sign the form on behalf of each <i>firm</i> if he has authority to do so.

~~2~~ This field needs completing only if you are requesting a variation of a waiver or modification give by the FSA. In those cases, you should take the Direction reference number from the Direction sent to you by the FSA.

4	<u>The FSA may contact the approved person about an application. The approved person may have responsibility for an application for more than one firm provided that he has authority to do so.</u>
8	<u>Your draft modification must show how you propose that the text of the rule(s) should be modified. This must be demonstrated by underlining inserted text and scoring through deleted text.</u>
9	<u>Obtain the direction reference number from the direction sent to you by the FSA.</u>
3 <u>10</u>	<u>For example, do you need an urgent decision, or is there a specific period for which the waiver or modification is required? if your application is time-critical or if the waiver is required for a specific period.</u>
4 <u>11</u>	<u>You can inspect published waivers at http://www.fsa.gov.uk/waivers/published_waivers.html.</u>
5 <u>13</u>	<u>Section 148 of the Act is the power used to give most waivers. Section 250 of the Act and regulation 7 of the OEIC Regulations are relevant only for certain rules in the Collective</u>

	Investment Schemes sourcebook (see <i>SUP</i> 8.2.3G). Section 294 of the <i>Act</i> is relevant only for certain <i>rules</i> in the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (see <i>REC</i> 3.3).
6-14	Schedule 6 (<u>Rules that can be waived</u>) to each sourcebook and manual of the <i>Handbook</i> (other than IPRU) sets out those <i>rules</i> that the <i>FSA</i> has the power to <i>waive</i> under the <i>Act</i> . It does not, however, deal with compatibility with European directives (see <u>notes to Q15 next question</u>). The exception to this is for the <i>IPRU</i> sourcebooks which have no Schedule 6. If you are applying for a <i>waiver</i> of an <i>IPRU rule</i> answer ‘not relevant’ to this question.
715	The <i>FSA</i> cannot give a <i>waiver</i> that would be incompatible with the <i>United Kingdom’s</i> responsibilities under European directives. In many cases, the ‘Purpose’ section of a chapter or section of the <i>Handbook</i> will identify whether the text implements a directive requirement. The <i>FSA</i> only expects a <i>firm</i> to take reasonable steps in answering this question; what is reasonable will depend on the resources of the <i>firm</i> . Suitable answers would explain: <ul style="list-style-type: none"> • the firm is unable to answer this question (with reasons); • the firm is outside the scope of the directive which the rule implements (with reasons); • the rule concerned does not implement a directive requirement; • the modification sought means that the rule would still implement (identified) minimum directive requirements; <p>the (identified) directive requirement incorporates an ability for the FSA, as competent authority, to waive the rule. If a firm is unable to confirm which particular European directive requirement the rule to be waived implements, it should reply ‘unable to confirm’. Where a firm is able to identify a particular European directive requirement implemented by the rule to be waived but considers that the proposed waiver would in any event not breach that requirement it is asked to provide details.</p>
16	<u>Firms should consider whether they should seek advice before submitting an application for a waiver. That advice may be in-house. Whether advice is appropriate will depend on the difficulty or novelty (for example if no precedent exists) of the application and the firm’s size and resources.</u>
17	The <i>FSA</i> expects <i>firms</i> to provide (where applicable): <ul style="list-style-type: none"> • <u>relevant background information about the firm and the context in which it is applying for a waiver;</u> • <u>details of any relevant correspondence with former or other regulators;</u> • <u>details of any relevant correspondence with the FSA;</u> • <u>details of any changes in a:</u> <ul style="list-style-type: none"> • <u>rule;</u> • <u>circumstance; or</u> • <u>market condition</u> <u>that have affected the firm or prompted the application for a waiver;</u> • <u>Details of the anticipated benefits that would or may accrue if the waiver was granted (and if not arguing the ‘unduly burdensome’ argument in Q18, what the estimated impact on the firm and its customers would be if the waiver was not granted);</u> • <u>An explanation as to why the waiver is required.</u> <p><u>This list is not exhaustive. Firms should therefore include any other information that they regard as relevant.</u> <u>Firms should make themselves aware of the information required of them by Q18 and may cross refer to the answers set out there where relevant to avoid duplication.</u></p>
8-18	The <i>FSA</i> cannot give a <i>waiver</i> unless the statutory tests are satisfied. The tests are set out in section 148(4) of the <i>Act</i> , and reproduced in <i>SUP</i> 8.3.1G. The tests under sections 250 and 294 of the <i>Act</i> , and regulation 7 of the <i>OEIC Regulations</i> , are similar. <i>Firms</i> need to be aware that both matters (‘unduly burdensome’ or ‘not achieve the purpose’; and ‘undue risk’) noted require detailed explanation and substantive argument before the application can be processed. Unless there are satisfactory responses to these matters, the <i>waiver</i> application may be rejected, or we may require further information. <u>Firms are reminded to set out only the more pertinent arguments in support of the unduly burdensome or purpose tests.</u>
9 19	See <i>SUP</i> 8.6.7G (Firm’s objection to publication).

~~10 A signature on behalf of the *firm* is not mandatory. In cases where a third party is named, we suggest that *firms* submit the form by e-mail and then forward a hard copy signed by the third party.~~

Declarations and signature

A signature on behalf of the *firm* is not mandatory if the application is sent by e-mail unless a third party is named (see below). If the form is sent in hard copy, it must be signed.

In cases where a third party is named, the third party's signature is mandatory. The *FSA* suggests that *firms* submit the form by e-mail and then forward a hard copy signed by the third party. A single individual can sign the form on behalf of each *firm* (in the case of applications for more than one *firm* in a *group*) if he has authority to do so.

Instructions for submission

When completed, submit this application form in line with *SUP* 15.7.4R to *SUP* 15.7.9G6R. In particular, you may send applications by e-mail (which ~~we~~ the *FSA* prefers) or by post, addressed to your usual supervisory contact or your usual contact in Corporate Authorisation. The address for postal submission is:

(1) The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
(If your usual supervisory contact or usual contact in Corporate Authorisation at the *FSA* is based in London)

(2) The Financial Services Authority
Sutherland House
108-114 Dundas Street
Edinburgh EH3 5DQ

(If your usual supervisory contact at the *FSA* is based in Edinburgh)
