Chapter 3

Use of information gathering and investigation powers

3.3 Reports by skilled persons (section 166)

3.3.1 Under section 166 of the *Act,* the *FCA* has a power to require a *firm* and certain other persons to provide a report by a *skilled person,* or itself to appoint a *skilled person* to produce such a report. The *FCA* may use its section 166 power to require reports by *skilled persons* to support both its supervision and enforcement functions.

3.3.2 The factors the *FCA* will consider when deciding whether to use the section 166 power include:

(1) If the *FCA's* objectives for making further enquiries are predominantly for the purposes of fact finding i.e. gathering historic information or evidence for determining whether enforcement action may be appropriate, the *FCA's* information gathering and investigation powers under sections 167 and 168 of the *Act* are likely to be more effective and more appropriate than the power under section 166.

(2) If the *FCA's* objectives include obtaining expert analysis or recommendations (or both) for, say, the purposes of seeking remedial action, it may be appropriate to use the power under section 166 instead of, or in conjunction with, the *FCA's* other available powers.

3.3.3 Where it exercises this power, the *FCA* will make clear both to the *firm* and to the *skilled person* the nature of the concerns that led the *FCA* to decide to appoint a *skilled person* and the possible uses of the results of the report. But a report the *FCA* commissions for purely diagnostic purposes could identify issues which could lead to the appointment of an investigator and/or enforcement action.

3.3.4 Under section 166A of the *Act,* the *FCA* also has a power to require a *firm* to appoint a *skilled person* to collect or update information, or itself to appoint a *skilled person* to do so, where it considers that the *firm* has failed to provide information required by the *FCA* or update information previously provided to the *FCA.*

3.3.5 ■ Chapter 5 of the *FCA's* Supervision manual (Reports by skilled persons) contains *rules* and guidance that will apply whenever the *FCA* uses the section 166 and 166A powers.