

ACCESS TO CRIMINAL RECORDS INSTRUMENT 2003

Powers Exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- 1) section 60 (Applications for approval);
 - 2) section 156 (General supplementary powers);
 - 3) section 157(1) (Guidance); and
 - 4) section 182 (Notification).

Commencement

- B. This instrument comes into force on 1 February 2004.

Amendments to Fit and Proper test for Approved Persons

- C. FIT is amended in accordance with Annex A to this instrument.

Amendments to the Supervision manual

- D. SUP is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Access to Criminal Records Instrument 2003.

By Order of the Board
18 December 2003

Annex A

Amendments to the Fit and Proper test for Approved Persons

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

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2.1 **Honesty, integrity and reputation**

2.1.1G In determining a *person's* honesty, integrity and reputation, the *FSA* will have regard to matters including, but not limited to, those set out in *FIT* 2.1.3G which may have arisen either in the *United Kingdom* or elsewhere. The *FSA* should be informed of these matters (see *SUP* 10.13.16R), but will consider the circumstances only where relevant to the requirements and standards of the *regulatory system*. For example, under *FIT* 2.1.3G (1), conviction for a criminal offence will not automatically mean an application will be rejected. The *FSA* treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted *person*, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

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2.1.3 G The matters referred to in *FIT* 2.1.1G to which the *FSA* will have regard include, but are not limited to:

- (1) whether the *person* has been convicted of any criminal offence; this ~~may~~ must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order); particular consideration will be given to offences of dishonesty, fraud, financial crime ~~or other offences under legislation~~ or an offence whether or not in the *United Kingdom* relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, ~~companies~~, insolvency, consumer credit, insurance and, consumer protection, money laundering, market manipulation or insider dealing;

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Annex B

Amendments to the Supervision manual

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

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Sup 10 Annex 1G: Frequently asked questions

SUP 1 Table:

	Question	Answer
	Requirements of the Regime	
...		
	Submitting an Application	
...		
11.	What checks must a <i>firm</i> make on a <i>candidate</i> before submitting an application for approval from the <i>FSA</i> ?	The <i>FSA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>candidates</i> . Note also the requirements of <i>ENF</i> 8.12.2G and <i>TC</i> 2.2.1R.
11A	<u>Should these checks include a check of criminal records?</u>	<u>It is for senior management to decide what checks should be made. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the <i>FSA</i> and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about <i>candidates</i> for <i>approved person</i> status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons regime)).</u> <u>Note also the provisions of <i>ENF</i> 8.12.2G (Publication) and <i>TC</i> 2.2.1R (Recruitment).</u>
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SUP 10 Annex 4
Approved Person regime forms

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Form A

Application to perform controlled functions under the approved persons regime

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Notes for Form A

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SECTION 5 – FITNESS AND PROPRIETY

Answer the question by ticking the relevant ‘yes’ or ‘no’ box. If the answer to any of the questions is ‘yes’, give complete details in section 6 and attach relevant supporting documentation.

5.01 to 5.02: It is for senior management to decide what checks should be made. Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order) the FSA and the industry have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about candidates for *approved person* status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons regime.))

5.03 to 5.06: ...

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Fitness and propriety

Section 5

5.01a Has the *candidate* ever been convicted of any offence involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, perverting the course of justice and intimidation of witnesses or jurors), serious tax offences, or other dishonesty or an offence (whether or not in the *United Kingdom*) relating to *companies, building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection, money laundering, market manipulations or insider dealing?* (~~Convictions spent under the Rehabilitation of Offenders Act 1974 must be included~~) (Spent convictions for relevant offences should be disclosed in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order))

YES NO

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SUP 11 Annex 5

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Controllers Form B

Information in respect of directors, partners and individuals

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Notes for Controllers Form B

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SECTION 3 – FITNESS AND PROPRIETY

Answer the question by ticking the relevant ‘yes’ or ‘no’ box. If the answer to any of the questions is ‘yes’, give complete details in section 5 and attach relevant supporting documentation.

3.01 to 3.02: It is for senior management to decide what checks should be made. *Firms* should be aware that records available to the Criminal Records Bureau can be checked through the Bureau. Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order) the *FSA* and the industry have a right to access the records of certain spent, as well as unspent, criminal convictions for employment purposes about *candidates for approved person* status (see Question 5.01a (Application to perform controlled functions under the *approved persons* regime))

3.03 to 3.06 ...

...

Fitness and propriety

Section 3

3.01a Has the individual ever been convicted of any offence involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, perverting the course of justice and intimidation of witnesses or jurors), serious tax offences, or other dishonesty or an offence (whether or not in the *United Kingdom*) relating to *companies, building societies, industrial and provident societies, credit unions, friendly societies,* insurance, banking or other financial services, insolvency, consumer credit or consumer protection, *money laundering,* market manipulations or *insider dealing?* (~~Convictions spent under the Rehabilitation of Offenders Act 1974 must be included~~)(Spent convictions for relevant offences should be disclosed in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended (see Articles 3 and 4 of the Order))

YES <input type="checkbox"/>	NO <input type="checkbox"/>
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