Individual Accountability: Extending the Senior Managers & Certification Regime to all FCA firms

Consultation Paper
CP17/25***

July 2017

How to respond

We are asking for comments on this Consultation Paper by 3 November 2017.

You can send them to us using the form on our website at: www.fca.org.uk/cp17-25-response-form.

Or in writing to:
Governance & Professionalism Policy
Strategy & Competition
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Email:
cp17-25@fca.org.uk

How to navigate this document onscreen

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1 Executive summary

1.1 We are proposing changes to how people working in financial services are regulated.

1.2 This affects almost every firm that we regulate, from very small firms and those with limited permissions (including sole traders and consumer credit firms), to some of the largest global firms.

1.3 This Consultation Paper sets out how we propose to do this, and asks for your feedback on our proposals. Our proposals for Insurers are not covered in this CP. Please refer to CP17/26 for these.

Who is affected by the changes?

1.4 Almost every firm that offers financial services and is regulated by the FCA will be affected by these changes – in particular any firm that is currently subject to the Approved Persons Regime. It will also affect the people who work in these firms.

1.5 While we already have rules in place for banks, building societies, credit unions and PRA-designated investment firms, we are proposing a few changes that will also affect them.

Why are we doing this?

1.6 We currently regulate people in financial services through the Approved Persons Regime.

1.7 After the financial crisis, Parliament recommended that we develop a new accountability system that was more focused on senior managers and individual responsibility. From these recommendations, we created a new Senior Managers and Certification Regime (the 'SM&CR'). We applied this to banks, building societies, credit unions and PRA-designated investment firms from March 2016, which replaced the Approved Persons Regime for them.

1.8 We are now replacing the Approved Persons Regime with the Senior Managers and Certification Regime in almost all financial services firms, not just banks.

1.9 It is also a key part of our Culture & Governance Priority, and its overarching aim is to reduce harm to consumers. This is achieved by raising the standards of conduct for everyone who works in financial services, and by making senior people in firms more responsible and accountable for their actions.

What do we propose?

1.10 There will be many different types of firms that will be in scope of the SM&CR, so we do not think it is appropriate to take exactly the same approach as we did for banks. While we want to have consistent principles applied across financial services, we also want the new regime to be proportionate and flexible enough to accommodate the different business models and governance structures of firms.

1.11 We propose to use the tools and principles from the banking regime to create consistency across financial services, but tailor them to reflect the different risks, impact and complexity of firms subject to the extension. There are some requirements where we do not have a choice whether or not to apply them because they are set out in legislation. We have highlighted where that is the case.

1.12 We propose applying a baseline of requirements to every firm, known as the 'core regime'. This means that the three main elements of the SM&CR will apply to every firm: the Senior Managers Regime, Certification Regime and Conduct Rules:

- **Senior Managers Regime:**
  - This focuses on the most senior people in the firm. Our rules will define which roles are 'Senior Management Functions' depending on the type of firm involved. Anyone who holds a Senior Management Function needs to be approved by us before they start their role, the same as under the Approved Persons Regime. Firms also need to make sure that Senior Managers are suitable to do their jobs.
  - Every Senior Manager will need to have a document that says what they are responsible and accountable for (a 'Statement of Responsibilities'). Firms need to give us this statement when a senior manager applies to be approved, and whenever there's a major change to their responsibilities. This is a requirement under legislation.
  - Every Senior Manager will also have a 'Duty of Responsibility' – which means if something goes wrong in an area that they are responsible for, we will consider whether they took 'reasonable steps' to stop this from happening. This is also a requirement under legislation.
  - We also propose some new responsibilities that firms will need to give their Senior Managers ('Prescribed Responsibilities'). This won't apply to some firms (such as sole traders or firms with limited permissions, and EEA branches), and more responsibilities will apply to bigger firms.
- **Certification Regime:** This covers people who aren't Senior Managers, but whose jobs mean they can have a big impact on customers, markets or the firm. We will say what these roles are in our rules. We won't approve these people, but firms will need to check and confirm ('certify') that they are suitable to do their job at least once a year. This is a requirement under legislation.
- **Conduct Rules:** These are basic rules that will apply to almost every person who works in financial services. They include things like 'acting with integrity' and 'treating customers fairly'. The Conduct Rules are about improving the behaviour of all staff in financial services firms.

For example, a dentist that has a limited permission to offer credit may only need to have one Senior Manager. On the other hand, a very large asset manager could have up to 17 Senior Management Functions that apply to them.

1.13 We also propose some extra requirements that will only apply to the largest and most complex firms (fewer than 1% of firms regulated by the FCA). For example, these firms will need to have Responsibilities Maps, Handover Procedures, and will need to make sure that there is a Senior Manager responsible for every area of their firm ('Overall Responsibility').

What happens next?

1.14 If you're a firm regulated by the FCA and are currently subject to the Approved Persons Regime, you should read this Consultation Paper, paying particular attention to the sections marked for your type of firm. People who work in these firms may also be interested in how these proposals affect them.

1.15 We want to know what you think of our proposals. Please send us your feedback by 3 November 2017. You can do this using the form on our website, or by writing to the address on page 2.

1.16 We will consider all the feedback we receive and then publish final rules next year.

1.17 Please note that the regime won't come into effect until we publish our final rules and set a date for them to commence.

How should I read this Consultation Paper?

1.18 Most of this Consultation Paper will be relevant to 'solo-regulated firms' – ie those firms that are currently subject to the Approved Persons Regime and not the SM&CR.

1.19 We have marked at the top of each chapter who it is most relevant to, and also highlighted within chapters which sections are most relevant to different types of firms.

1.20 You should read the entire Consultation Paper if you are interested in understanding how the regime applies across solo-regulated firms as a whole.

1.21 Some proposals in this Consultation Paper also affect banks, building societies, credit unions, and PRA-designated investment firms, as well as solo-regulated firms. These are set out in Chapter 10. Chapter 11 is also relevant to these firms.

2 Overview

Introduction

2.1 This Consultation Paper proposes changes to how we regulate people working in financial services. We currently use a system called the Approved Persons Regime and we are proposing to replace this with the new Senior Managers and Certification Regime (SM&CR).

2.2 The aim of the new SM&CR is to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold people to account. As part of this, the SM&CR aims to:

- encourage staff to take personal responsibility for their actions
- improve conduct at all levels
- make sure firms and staff clearly understand and can demonstrate who does what

2.3 For banks, building societies, credit unions, and PRA-designated investment firms, we replaced the Approved Persons Regime with the SM&CR in March 2016. Parliament amended the Financial Services and Markets Act (FSMA) in May 2016 to extend the SM&CR to all firms authorised to provide financial services under FSMA. Accordingly, we now need to consult on how to apply the rules to almost every firm the FCA regulates.

> FSMA is the Financial Services and Markets Act 2000, which is an Act of the Parliament of the United Kingdom. The text of FSMA is available on legislation.gov.uk

2.4 These changes give us new powers to:

- make certain roles 'Senior Managers' – a new type of function where the people doing these jobs need approval from the FCA, and at least once a year firms need to make sure Senior Managers are suitable to do their jobs
- make certain roles 'significant harm functions' under the Certification Regime – we don't approve these people but firms need to make sure they are suitable to carry out their roles, at least once a year
- apply Conduct Rules to almost all employees in financial services firms

2.5 We're separately consulting on how the SM&CR will apply to insurers CP17/26.

Who does this consultation affect?

2.6 This consultation affects all FSMA-authorised firms that we regulate (except insurers, which are covered in a separate consultation). **This means it will be relevant to almost all financial services firms.** It will also affect the people who work for these firms, including all existing Approved Persons.

2.7 This consultation also affects incoming branches of non-UK firms that have permission to carry out any activities we regulate in the UK, as well as people working in those branches. Therefore, this consultation may be of interest to other regulators.

2.8 We are also proposing changes that will affect how the SM&CR applies to UK banks, building societies, credit unions and PRA-designated investment firms (referred to as 'banking firms' throughout this CP). These changes are set out in Chapter 10, and Chaptes 11 is also relevant to these firms.

2.9 This Consultation Paper does not affect individuals and Approved Persons of Appointed Representatives of firms. We will confirm how we intend to approach the SM&CR for Appointed Representatives in a follow-up Consultation Paper. Principal firms, including the Senior Managers of principal firms, remain fully responsible for ensuring that their Appointed Representatives and networks comply with our rules.

Is this of interest to consumers?

2.10 Consumers will be interested in how individual accountability is being improved within firms, and how staff they interact with will be required to comply with new Conduct Rules.

Context

Background

2.11 We currently apply rules to people in firms through the Approved Persons Regime. There are three main parts to the Approved Persons Regime:

- people who perform functions known as 'controlled functions' at both senior and customer-facing levels need to be approved by us before they start their roles
- we apply standards of behaviour (Statements of Principle and a Code of Practice) to people holding controlled functions
- firms need to ensure people performing controlled functions are fit and proper

2.12 In March 2016, we replaced the Approved Persons Regime with the SM&CR for banking firms. This followed recommendations from the Parliamentary Commission on Banking Standards (PCBS), who were tasked with reviewing standards of behaviour in the industry following the financial crisis in 2008. The PCBS said we should have a new accountability framework that was more focused on senior management, and that firms should take more responsibility for making sure their employees are fit and proper. The PCBS also emphasised that there needed to be better standards of conduct at all levels in banking firms.

2.13 Parliament subsequently amended FSMA to extend the SM&CR for all FSMA-authorised firms. There are approximately 47,000 such firms.

Aims of the SM&CR

2.14 The SM&CR is a key part of our priority of Culture & Governance at firms set out in our 2017/18 Business Plan. Culture is the product of a number of different drivers within firms and is shaped by many influences that drive the behaviour of everyone in an organisation. The 'tone from the top', the effectiveness of management and governance and incentive structures all contribute to the overall culture of a firm.

2.15 Firms' senior managers have a crucial role in demonstrating that they are accountable and responsible for their part in delivering effective governance. This includes taking personal responsibility, being accountable for their decisions and exercising rigorous oversight of the business areas they lead. We want all firms to develop a 'culture of accountability' at all levels and for senior individuals to be fully accountable for defined business activities and material risks.

2.16 The main purpose of the SM&CR, which will apply on a legal entity basis, isn't to change how firms organise themselves or to force firms to hire people to fill specific functions. How firms structure themselves is up to them, and is driven by factors such as size, best practice, as well as requirements in law and regulations. The SM&CR will clarify and reinforce whatever governance structures firms choose to have in place. .

2.17 Firms' senior managers have a crucial role in demonstrating that they are accountable and responsible for their part in delivering effective governance. This includes taking personal responsibility and being accountable for their decisions and exercising rigorous oversight of the business areas they lead. We want all firms to develop a 'culture of accountability' at all levels and for senior individuals to be fully accountable for defined business activities and material risks.

2.18 This should, over time, result in improved culture and governance in the industry, and help to reduce consumer harm. It should also promote public confidence that firms have the right people in the right roles, working in the interests of consumers and markets.

Our approach to designing the SM&CR

2.19 There are many types of firms that will now be under the SM&CR. This ranges from global firms such as large asset managers, to firms with only one person where financial services are ancillary to their core activities.

2.20 Because of these differences, we don't think it's appropriate to take exactly the same approach as we did for banks. While we want to have consistent principles across financial services, we also want the new regime to be proportionate and flexible enough to accommodate the different business models and governance structures of firms. We also want the regime to be as simple as practicable for firms to understand and implement, and for us to regulate.

2.21 With this in mind, we've tailored the principles and tools used for the banking regime to fit the different risks, impact and complexity of firms affected by the extension of the SM&CR.

Summary of our proposals

2.22 We propose:

- applying a standard set of requirements to all FCA solo-regulated firms known as the 'core regime' for the SM&CR
- having extra requirements for a small number (fewer than 1%) of solo-regulated firms whose size, complexity and potential impact on consumers warrant more attention – these additions are called the 'enhanced regime'
- applying a reduced set of requirements for a group of firms we are defining as 'Limited Scope'

Core vs. Enhanced
All core requirements will apply to **all solo-regulated firms**, except for Limited Scope Firms.

Enhancements will only apply to a small number of **solo-regulated** firms.

Use the diagram on Page 14 to determine which type of firm you are.

2.23 Firms that are regulated by both the FCA and PRA have to comply with both regulators' rules. Banking firms are already covered by the SM&CR, but we are proposing a few changes that will affect them (see Chapter 10). How the SM&CR will be applied to insurers is explained in CP17/26.

2.24 Our proposals for UK branches of overseas firms are slightly different and are separately explained in Chapter 9.

Our proposed Senior Managers Regime for all firms

2.25 The most senior people who perform key roles in firms will continue to need our approval before starting their roles.

2.26 Every Senior Manager will need to have a Statement of Responsibilities that clearly says what they are responsible and accountable for.

2.27 Our Handbook will set out which roles are 'Senior Management Functions'. The people who perform them are 'Senior Managers'. We propose the following Senior Management Functions for all firms (except Limited Scope Firms):

Governing functions
- SMF9 – Chair
- SMF1 – Chief Executive

- SMF3 – Executive Director
- SMF27 – Partner

Required functions

- SMF16 – Compliance Oversight
- SMF17 – Money Laundering Reporting Officer (MLRO)

2.28 Many firms won't need to apply all of these Senior Management Functions (this is the same as under the Approved Persons Regime). So, for example, a limited permission consumer credit firm will only have one applicable Senior Management Function and a sole trader won't need to apply any 'governing functions' (such as the Chief Executive). Firms where fewer functions apply are called 'Limited Scope Firms'. More functions will apply to 'enhanced' regime firms; please refer to 2.38 and Chapter 8.

2.29 There are also specific responsibilities that firms will need to give to their Senior Managers (known as Prescribed Responsibilities). This is to make sure there is a Senior Manager accountable for the SM&CR and key conduct and prudential risks.

Our proposed Certification Regime

2.30 The Certification Regime will apply to employees who aren't Senior Managers, but whose role means it is possible for them to cause significant harm to the firm or its customers. We call these 'Certification Functions' in this document.

2.31 These people don't need to be approved by us, but firms will need to check and confirm ('certify') that they are fit and proper to perform their role at least once a year.

2.32 Our Handbook will set out the roles that are Certification Functions. They are:

- Significant management function
- Proprietary traders
- CASS oversight function
- Functions that are subject to qualification requirements
- Client dealing function
- Algorithmic traders
- Material risk takers
- anyone who supervises or manages anyone performing one of the functions above

Read more on Certification in Chapter 5

Our proposed Conduct Rules

2.33 We are proposing new, high-level standards of behaviour that will apply to almost all employees who do financial services activities in a firm. Some Conduct Rules apply to all employees, while others only apply to Senior Managers.

Read more on Conduct Rules in Chapter 7

2.34 Our proposed Conduct Rules are intended to drive up standards of individual behaviour in financial services. They represent a meaningful change in the standards of conduct we expect from those working in the industry. By applying the Conduct Rules to a broad range of staff we aim to improve individual accountability and awareness of conduct issues across firms.

2.35 FSMA requires firms to train their staff so that they know how the Conduct Rules apply to them. Firms must also notify the FCA when they've taken formal disciplinary action against a person for breaching a Conduct Rule.

Extra requirements for some firms

2.36 Most firms will only need to apply the core requirements of the SM&CR (the 'core regime').

2.37 But there will be some firms (known as 'enhanced firms') that will have extra requirements (the 'enhanced regime').

Read more on extra requirements for 'enhanced firms' in Chapter 8

2.38 We propose using the following criteria to identify enhanced firms:

- firms that are 'significant investment (IFPRU) firms'[1]
- firms that are 'CASS Large firms'[2]
- firms with Assets Under Management of £50 billion or more
- firms with total intermediary regulated business revenue of £35 million or more per annum
- firms with annual regulated revenue generated by consumer credit lending of £100 million or more per annum
- mortgage lenders (that are not banks) with 10,000 or more regulated mortgages outstanding.

2.39 Enhanced firms will need to apply all of the requirements under the core regime, as well as:

- **Additional Senior Management Functions:** There will be additional Senior Management Functions that will need to be approved by us, such as the Chief Operations Function.
- **Additional Prescribed Responsibilities:** There will be more Prescribed Responsibilities that enhanced firms will need to give to their Senior Managers.

1 This is defined in IFPRU 1.2.3
2 This is defined in CASS 1A.2.7

- **Overall Responsibility:** Enhanced firms will need to make sure that there is a Senior Manager with overall responsibility for every area, business activity and management function of the firm.

- **Responsibilities Maps:** Enhanced firms will need to have a single document that sets out the firm's management and governance arrangements.

- **Handover Procedures:** Enhanced firms will need to make sure that a person who is becoming a Senior Manager has all the information and material that they could reasonably expect in order to do their job.

Changes to our Handbook

2.40 As the SM&CR will now apply to a much broader population of firms, we need to make significant changes to the structure and numbering of our Handbook. We have a 'Reader's Guide to the Instrument' in Chapter 11 that explains this in more detail – this is particularly relevant for banking firms who are already subject to our rules.

Equality and diversity considerations

2.41 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. In particular, we have identified the following aspects of the regime with potential equality and diversity implications:

- The proposals will allow more than one person to perform a Senior Management Function or Certification Function at the same firm, accommodating people working under a job-share arrangement. If this was not the case, the proposed rules could be deemed to discriminate indirectly against people who job share, for example due to family obligations.

- The assessment of prospective and current Senior Managers and individuals within the Certification Regime will consider whether they are fit and proper to do their job. For some roles, such as the Chair, this assessment may involve consideration of the person's experience, which can only be acquired with time. This could result in a bias in favour of certain age groups. However, this is the case now and is offset by the requirement to take into account other assessment criteria not directly related to age, such as qualifications.

2.42 Overall, we do not believe that our proposals result in direct discrimination for any of the groups with protected characteristics, ie age, disability, sex, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

2.43 We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome views on these issues.

Next steps

2.44 We want to know what you think of our proposals. Please send us your comments by 3 November 2017.

2.45 Use the form on our website or write to us at the address on page 2.

2.46 We will consider all the feedback and will publish our finalised rules in a Policy Statement next year.

2.47 We will separately consult on the operational aspects of the new regime, including how firms will transition into the regime, and any changes we will need to make to our forms and other parts of our Handbook (the 'technical Consultation Paper'). The same principles of simplicity and proportionality will apply when we consider how to transition firms to the new regime – for example, minimising the need for firms and individuals to apply for new approval as a Senior Manager if they are already an Approved Person.

2.48 We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

3 Guide to the regime

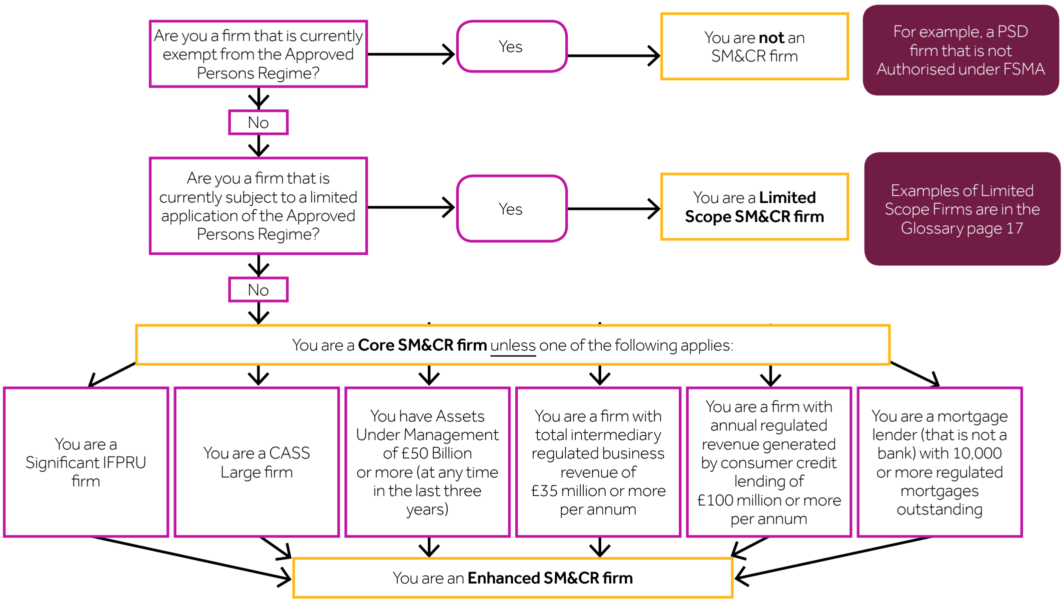
3.1 To help you understand our Consultation Paper, we have provided:

- a Firm Checker – this lets you check what type of firm you are, and whether the 'limited scope', 'core' or the 'enhanced regime' will apply to you (see below)
- a diagram showing the key elements of the regime for all firms (see page 15)
- a Glossary of Terms with a short description of each tool (see page 15)

Firm Checker

3.2 We are proposing to apply different SM&CR requirements to different types of firms.

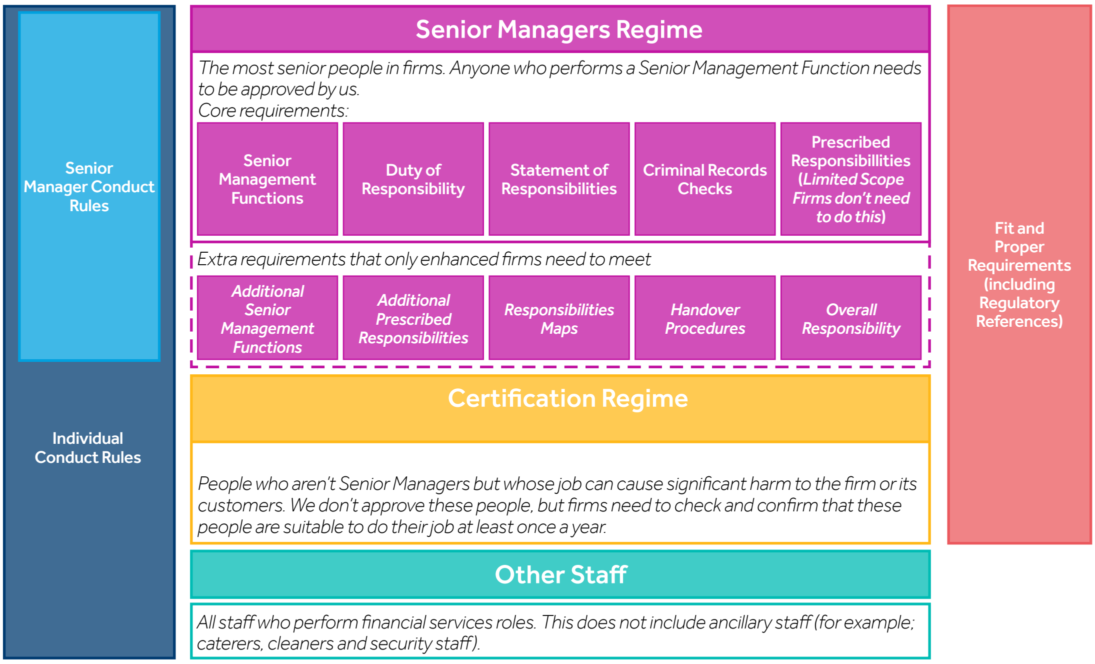
3.3 You will need to read the detail of the relevant firm types and exemptions in our Handbook (and SYSC 23 of the legal instrument), but the flow chart below is a simplified overview to see which type of SM&CR firm your firm is. We deal with incoming branches of firms separately in Chapter 9.



If you are a banking firm:
The SM&CR already applies to you, but the new proposals in Chapter 10 are relevant to you. See page 56.

If you are an insurer:
This Consultation Paper isn't relevant to you – instead you should read CP17/26.

Summary Diagram – The Senior Managers & Certification Regime



Note:
Conduct Rules, the Fit and Proper Requirements and Regulatory References will also apply to **all Non-Executive Directors**, even if they are not a Senior Manager.

Glossary of Terms

Firm type	Description
Limited Scope Firm	Firms that will be subject to fewer requirements than core firms. This covers all firms that currently have a limited application of the Approved Persons Regime, including: • Limited Permission Consumer Credit Firms • sole traders • authorised professional firms whose only regulated activities in are non-mainstream regulated activities • oil market participants • service companies • energy market participants • subsidiaries of local authorities or registered social landlords • insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts • internally managed AIFs
Core Firm	Firms that will have a baseline of SM&CR requirements applied.
Enhanced Firm	A small proportion of solo-regulated firms that will have to apply extra rules.

Tool	Description	Who does it apply to?	Where can I read more?
Ancillary Staff	Employees who are not covered by the Conduct Rules, such as cleaners, receptionists, catering staff and security staff.	All firms	Section 7.14
Certification Function	A function performed by employees who are not Senior Managers but who could pose a risk of 'significant harm' to the firm or its customers. The Certification Functions are defined in our Handbook but we do not approve these people.	All firms	Section 5.6
Certification Regime	The part of the regime that covers Certification Functions.	All firms	Chapter 5
Criminal Records Checks	A requirement on firms to conduct criminal records checks for Senior Managers and Non-Executive Directors (where a fitness requirement applies) as part of checking that they are fit and proper.	All firms	Section 6.8
Duty of Responsibility	Every Senior Manager will have a duty of responsibility as a result of FSMA. This means that if a firm breaks one of our requirements, the Senior Manager responsible for that area could be held accountable if they did not take 'reasonable steps' to prevent or stop the breach.	All firms	Section 4.20
Fit and Proper Requirements	Firms must make sure all Senior Managers and people performing Certification Functions (ie people under the Certification Regime) are fit and proper to perform their role. This must be done on appointment and at least once a year.	All firms	Chapter 6
Handover Procedures	A firm must take all reasonable steps to make sure a new Senior Manager has all the information and materials they need to do their job.	Enhanced Firms only	Section 8.36
Individual Conduct Rules	These are basic standards of behaviour that people performing financial services activities in firms are expected to meet. Firms need to train their staff on the conduct rules and how they apply to them. Firms will need to report breaches of Conduct Rules resulting in disciplinary action to us every year.	All firms	Chapter 7
Other Overall Responsibility Function	A Senior Management Function that applies where a senior executive is the most senior person responsible for an area of the firm's business but they do not perform any other Senior Manager Function.	Enhanced Firms only	Section 8.16
Overall Responsibility	A requirement for every area, activity and management function of the firm to have a Senior Manager with overall responsibility for it.	Enhanced Firms only	Section 8.23
Prescribed Responsibilities	FCA-defined responsibilities that must be allocated to an appropriate Senior Manager.	All firms **except** Limited Scope Firms	Section 4.37 for Core Firms Section 8.19 for Enhanced Firms Section 9.11 for non-EEA branches

Tool	Description	Who does it apply to?	Where can I read more?
Regulatory References	Information that firms need to share with each other when an employee or director moves from one firm to another (for candidates of Senior Managers Functions, Non-Executive Directors and Certification Functions).	All firms	Section 6.12
Responsibilities Maps	A document setting out a firm's governance and management arrangements, and how responsibilities are allocated to individuals within the firm.	Enhanced Firms only	Section 8.33
Senior Management Functions	The roles where the people doing them need to be approved by the FCA. These are defined in our Handbook.	All firms	Section 4.12 for Core Firms Section 4.15 for Limited Scope Firms Section 8.16 for Enhanced Firms Section 9.2 for EEA branches Section 9.9 for non-EEA branches
Senior Manager Conduct Rules	These are additional Conduct Rules that apply to all Senior Managers. Firms need to train Senior Managers so they understand what the Conduct Rules are and how they apply to them. Firms will need to report breaches of all Individual and Senior Manager Conduct Rules by Senior Managers resulting in disciplinary action to us within 7 days.	All firms	Chapter 7
Senior Managers	The people who perform a Senior Management Function. These people need our approval to do their jobs.	All firms	Section 4.12 for Core Firms Section 4.15 for Limited Scope Firms Section 8.16 for Enhanced Firms Section 9.2 for EEA branches Section 9.9 for non-EEA branches
Senior Managers Regime	The part of the regime for Senior Managers. This includes Senior Management Functions, Statement of Responsibilities, Duty of Responsibility, Fit and Proper, Conduct Rules, Prescribed Responsibilities, Regulatory References and criminal records checks. For Enhanced Firms, it also includes Responsibilities Maps, Handover Procedures and Overall Responsibility.	All firms	Chapter 4 for all firms Chapter 8 for Enhanced Firms Chapter 9 for EEA and non-EEA branches
Statement of Responsibilities	A document that every Senior Manager needs to have that sets out what they are responsible and accountable for. This needs to be submitted to us when a Senior Manager is being approved, and be kept up to date.	All firms	Section 4.16

4 Senior Managers Regime

All firms should read this chapter. If you are a Limited Scope Firm, sections 4.14 to 4.15 are most relevant.

Introduction

4.1 This chapter sets out our proposals for the Senior Mangers Regime (SMR). It covers:

- who will be a Senior Manager
- the responsibilities that need to be given to an appropriate Senior Manager (Prescribed Responsibilities)
- what firms and staff will need to do under the SMR

Overview

What is a Senior Management Function

4.2 A Senior Management Function is a new type of controlled function under FSMA. It is defined as 'in relation to the carrying on of a regulated activity by a firm, [a] function [which] will require the person performing it to be responsible for managing one or more aspects of the [firm's] affairs, so far as relating to the activity, and those aspects involve, or might involve, a risk of serious consequences for the [firm], or for business or other interests in the United Kingdom'. .

4.3 We call a person who holds a Senior Management Function a 'Senior Manager'. Senior Managers are the most senior people in a firm with the greatest potential to cause harm or impact upon market integrity.[3]

4.4 The purpose of making a particular function a Senior Management Function is so we know who a firm's most senior decision makers are, and to make sure firms clearly allocate responsibilities to those key decision makers.

4.5 The FCA decides which roles are Senior Management Functions.

3 The regime for Senior Managers in sole traders is slightly different. Because sole traders are individuals that are treated as firms, we propose carrying over the current treatment of sole traders from the Approved Persons Regime so that the individual sole trader themselves will not need approval to perform any of the 'governing functions'. We propose only approving individual sole traders if they are performing 'required functions' (ie the Compliance Oversight Function or Money Laundering Reporting Officer). If a sole trader employs someone who performs a Senior Management Function, they will need to be approved.

Do I have to apply all of the SMFs?
No – like the Approved Persons Regime, someone only needs to be approved if they are performing a role that we are making an SMF.

Impact on firm structure and governance

4.6 When we make a role a Senior Management Function, this doesn't mean a firm needs to reorganise itself or hire new people to fill these specific roles. If you don't have anyone doing these jobs, the functions do not apply. The number and type of Senior Managers a firm has depends on how each firm is organised (this is the same as the Approved Persons Regime). Certain functions are required by other sections of our Handbook so firms should make sure they continue to have people fulfilling these roles where applicable. The SM&CR is not proposing to change this.

4.7 However, later in this chapter we discuss new responsibilities that should be held by individual Senior Managers. When considering the proposed Senior Management Functions, firms should also think about the new responsibilities that we expect to be allocated among them.

4.8 The ultimate decision-making body of a firm is its governing body, acting collectively. Individual accountability under the SM&CR does not cut across or undermine this. Individual Senior Managers have an important part to play in establishing and embedding the right culture and governance within firms, to improve the standard of conduct at all levels.

4.9 Two of the main changes introduced by the SM&CR are that every Senior Manager will need a Statement of Responsibilities, and they will have a duty of responsibility. These are explained in detail below, but the main purpose of these new tools is to clarify who is responsible for what, and reinforce the personal accountability and responsibility of Senior Managers.

4.10 We will consult separately later this year on how someone who is currently an Approved Person will transition to a Senior Manager under the new regime. The same principles of simplicity and proportionality will apply when we consider how to transition firms to the new regime – for example, minimising the need for firms and individuals to apply for new approval as a Senior Manager if they are already an Approved Person.

Who will be a Senior Manager under the core regime?

4.11 We propose a set of 'core' Senior Management Functions that will apply to all firms, except where a specific exception applies (these exceptions are set out in section 4.15). The Senior Management Functions for branches of overseas firms are set out separately in Chapter 9.

Limited Scope Firm?
Section 4.15 is relevant to you.

4.12 We propose the following functions as Senior Management Functions under the core regime. Almost all of these are currently controlled functions under the Approved

Persons Regime. The main difference is that, on the basis of proportionality, we will only approve the Chair instead of approving all Non-Executive Directors. This means there will be some Non-Executive Directors who are currently approved under the Approved Persons Regime but will not need our approval under the SM&CR. These Non-Executive Directors are, however, still subject to our proposed Conduct Rules set out in Chapter 7, as well as the fit and proper and regulatory reference requirements in Chapter 6.[4]

Table 1: Senior Management Functions – Core Regime

Function name	Description
Governing Functions	
SMF1 – Chief Executive	This is the person(s) with responsibility, under the immediate authority of the governing body, for the conduct of the whole of the business (or relevant activities). **Note:** Although the Chief Executive is the most senior member of an executive team, it does not mean that a firm's governing body cannot allocate specific responsibilities to other Senior Managers.
SMF3 – Executive Director	A director of a firm, other than a Non-Executive Director.
SMF27 – Partner	A partner in a firm, other than a limited partner in a partnership registered under the Limited Partnership Act 1907.
Governing Function – Non-Executive	
SMF9 – Chair	The person with responsibility for chairing, and overseeing the performance of the role of, the governing body of the firm.
Required Functions	
SMF16 – Compliance Oversight	This is the person responsible for the compliance function in the firm and reporting to the governing body on this.
SMF17 – Money Laundering Reporting Officer	This is the person who has responsibility for overseeing the firm's compliance with the FCA's rules on systems and controls against money laundering.
SMF29 – Limited Scope Function (*relevant to some Limited Scope Firms only*)	This is currently called the 'Apportionment and Oversight Function' under the Approved Persons Regime. It is the person who deals with the apportionment of responsibilities under SYSC 4.4.3 R and oversees the establishment and maintenance of controls under SYSC 4.1.1 R.

4.13 For 'enhanced' firms, extra SMFs will apply. For more details please see section 8.16.

Tell us what you think:

Q1: **Does the proposed list of Senior Managers in the core regime cover the appropriate roles, ie the most senior decision makers within a firm?**

Q2: **Are there any other roles that the FCA should consider specifying as SMFs? (You may wish to consider the list of proposed Senior Managers under the enhanced regime in section 8.16)**

4 An exception is for Non-Executive Directors at Limited Scope firms, who will not be subject to the fit and proper, criminal records checks and regulatory reference requirements

Q3: Are there any proposed Senior Managers that the FCA should consider excluding from the core regime?

Limited Scope Firms that only need to apply some Senior Management Functions

4.14 We are proposing that 'Limited Scope Firms' will have fewer Senior Management Functions. This mirrors how the Approved Persons Regime applies to these firms at the moment.

4.15 If a firm currently only needs to have some controlled functions approved by us, this will continue under the proposed new regime. These are set out in the table below. As these depend on specific permissions and activities, firms will need to read the detail of these in our Handbook.

Table 2: Senior Management Functions for Limited Scope Firms

Firm type	Senior Management Functions
Limited Permission Consumer Credit firms that have a CF8 under the Approved Persons Regime	• SMF29 – Limited Scope Function (this is the same as the Apportionment and Oversight Function under the Approved Persons Regime)
Sole traders with no employees[5]	• SMF16 – Compliance Oversight
Authorised professional firms whose only regulated activities are non-mainstream regulated activities	• SMF16 – Compliance Oversight • SMF17 – Money Laundering Reporting Officer • SMF29 – Limited Scope Function
Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords	• SMF16 – Compliance Oversight • SMF17 – Money Laundering Reporting Officer • SMF29 – Limited Scope Function
Insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts	• SMF29 – Limited Scope Function

Tell us what you think:

Q4: Do you agree with our approach to Senior Management Functions for Limited Scope Firms? If not, please explain why.

Statement of Responsibilities

4.16 A Statement of Responsibilities is a single document that every Senior Manager will need to have, clearly setting out their role and what they are responsible for. This is required under FSMA.

5 In practice, a sole trader with no employees is only required to have an SMF16 where required by relevant rules. Further core regime Senior Management Functions may apply where a sole trader with employees has a governance body comprising of individuals who perform relevant roles. We believe that this will be rare in practice.

These next sections apply to all firms.

4.17 Firms will need to submit a Statement of Responsibilities to us when applying for a Senior Manager to be approved. They will also need to keep Statements of Responsibilities up to date, and resubmit them to us whenever there's a significant change to a Senior Manager's responsibilities. These are also requirements imposed by FSMA.

4.18 We have guidance in SUP10C of our Handbook setting out examples of what might be a significant change. This includes where a Senior Manager has a Prescribed Responsibility added or removed from their responsibilities, or where there is a change to how responsibilities are shared between Senior Managers.

4.19 We will consult separately later this year on the template for Statements of Responsibilities and the process for submitting them to us.

Duty of responsibility

4.20 Every Senior Manager will have a duty of responsibility as a result of FSMA. This means that if a firm breaks one of our requirements, the Senior Manager responsible for that area could be held accountable if they did not take 'reasonable steps' to prevent or stop the breach.

4.21 The burden of proof lies with the FCA to show that the Senior Manager did not take the steps a person in their position could reasonably be expected to take to avoid the firm's breach occurring.

4.22 When deciding whether to take action against someone based on the duty of responsibility, we will look at all the circumstances of the case, including the seriousness of the breach, the person's position, responsibilities and seniority, and the need to use enforcement powers effectively and proportionately. These criteria are published in the Decision and Procedure and Penalties Manual (DEPP).

4.23 Sometimes it will be appropriate to take action against a Senior Manager, sometimes against a firm, and sometimes against both. These decisions are made on a case-by-case basis, applying the criteria set out in DEPP.

4.24 In bringing enforcement action against Senior Managers – whether under the duty of responsibility, the Conduct Rules or otherwise – we will consider the individual's Statement of Responsibilities when determining the extent of the Senior Manager's responsibilities.

4.25 We have published final guidance on enforcing the duty of responsibility in banking firms in PS17/9. We expect that this guidance will also apply to solo-regulated firms, but will formally consult on this as part of the technical Consultation Paper later this year.

Holding more than one Senior Management Function

4.26 It is possible to hold more than one Senior Management Function – for example, an SMF3 – Executive Director may also hold the SMF17 – Money Laundering Reporting Officer function.

4.27 Where this is the case, the person will need to apply for approval from us for each function (this can be done at the same time and using the same form for both functions). They will only need one Statement of Responsibilities but this must clearly describe all of their responsibilities.

Senior Managers overseas

4.28 There is no territorial limitation on the Senior Managers Regime. This means that the Senior Managers Regime will apply to anyone who performs a Senior Manager role, whether they are based in the UK or overseas.

4.29 The Senior Managers Regime for branches of overseas firms is set out in Chapter 9.

Applying conditions when approving Senior Managers

4.30 FSMA granted the FCA new powers to apply conditions and time limits when approving Senior Managers. However, we can only use these powers if we think it is desirable to do so to advance our objectives.

4.31 FSMA also requires us to publish a Statement of our Policy for these new powers, which is set out in SUP10C of our Handbook.

4.32 We will now be able to:

- approve a Senior Manager, but make this subject to conditions which approve a Senior Manager for a limited time only
- change existing approvals, including imposing, changing or removing conditions or time limits

4.33 An example of where time-limited approval may apply might be where a firm needs to appoint a candidate on an interim basis while seeking a permanent candidate for a particular function.

4.34 Circumstances where the FCA may consider imposing, changing or removing conditions might include examples where approval is linked to required remedial actions to be undertaken by the firm.

Prescribed Responsibilities

4.35 We are proposing six extra responsibilities ('Prescribed Responsibilities') that must be given to Senior Managers and an additional responsibility for Authorised Fund Managers (AFMs) that was described in CP17/18. These responsibilities are to ensure a Senior Manager is accountable for the SM&CR and for key conduct and prudential risks.

Limited Scope Firm? We propose that Prescribed Responsibilities will not apply to you.

What is a Prescribed Responsibility (PR)?

4.36 These are specific responsibilities that we define in our Handbook that a firm must give to a Senior Manager. They are in addition to the inherent responsibilities that are an essential part of a Senior Manager's role.

4.37 Limited Scope Firms will not need to apply the Prescribed Responsibilities, but they will apply to all other firms.

Table 3: Prescribed Responsibilities for core firms

PR	Description
1	Performance by the firm of its obligations under the Senior Managers Regime, including implementation and oversight
2	Performance by the firm of its obligations under the Certification Regime
3	Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
4	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime
5	Responsibility for the firm's compliance with CASS (if applicable)
6	Responsibility for ensuring the governing body is informed of its legal and regulatory obligations[6]
7	Responsibility for an AFM's value for money assessments, independent director representation and acting in investors' best interests[7]

Who the Prescribed Responsibility should be given to

4.38 These responsibilities are new. Firms will need to consider carefully which Senior Manager is the best person to hold each of these Prescribed Responsibilities.

Only one Senior Manager?
If this is the case, all the Prescribed Responsibilities need to be allocated to this person.

4.39 Each Prescribed Responsibility should be given to the Senior Manager who is the most senior person responsible for that issue. They will also need to have sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly.

6 'Enhanced' firms are not required to assign this PR as it is superseded by the additional PRs set out in the table in 8.19.
7 This PR only applies to AFMs. For further detail, please refer to CP17/18 and MS15/2.3 – Asset Management Market Study: Final Report. As we said in those documents, we are formally consulting on the detailed Prescribed Responsibility as part of this CP.

4.40 When allocating Prescribed Responsibilities firms will need to think about whom in practice is the most senior person for an issue. For example, if the person performing the Money Laundering Reporting Officer Senior Management Function is not responsible for all aspects of financial crime and/or reports to a more senior individual with responsibility for financial crime matters, the Prescribed Responsibility for financial crime should be allocated to this person and not the Money Laundering Reporting Officer.

4.41 Similarly, firms should think about how the CASS Prescribed Responsibility interacts with the CASS Oversight function in the Certification Regime. This is explained in section 5.23.

> **My firm doesn't need to comply with CASS – who should the Prescribed Responsibility go to?**
> If there's no requirement on the firm to comply with CASS, you do not need to allocate the Prescribed Responsibility

4.42 Giving a Senior Manager a Prescribed Responsibility will not mean we need to re-approve them. But when a firm moves a Prescribed Responsibility from one Senior Manager to another, the relevant Statements of Responsibilities will need to be updated to reflect these changes. Firms should also ensure they have the necessary skills and capability to carry out the role.

Dividing and sharing a Prescribed Responsibility

4.43 Each Prescribed Responsibility should normally be held by only one person. Firms will only be able to divide or share a Prescribed Responsibility in limited circumstances and where a firm can show that this is appropriate and justifiable.

4.44 If a firm divides or shares a Prescribed Responsibility, they will need to show why this is justified and confirm that this does not leave a gap. For example, it would be justified to share a function or responsibility as part of a job share, where departing and incoming Senior Managers work together temporarily as part of a handover, or where a particular area of a firm is run by two Senior Managers.

4.45 Where responsibilities are shared or divided, this will need to be clearly explained in the relevant Statements of Responsibilities. In general, where responsibilities are shared, each Senior Manager will be jointly accountable for those responsibilities.

Tell us what you think:

Q5: **Do you agree with our proposed list of Prescribed Responsibilities? If not, please explain why.**

Q6: **Do you agree with our proposed Prescribed Responsibility for AFMs as set out in CP17/18? If not, please explain why.**

> **'Dividing'** a responsibility means several Senior Managers have responsibility for separate parts of one Prescribed Responsibility.
>
> **'Sharing'** a responsibility means several Senior Managers are jointly responsible for all of a Prescribed Responsibility.

Outsourcing under the Senior Managers Regime

4.46 Where a firm relies on a third party for the performance of operational functions of the firm, the firm remains fully responsible for all of its obligations under the regulatory system.

4.47 Firms will be required to explain clearly how responsibility for outsourced functions is allocated among its Senior Managers.

4.48 In addition, firms will need to continue complying with our outsourcing requirements, as set out in SYSC 8. This means that while the function (such as information technology) may be outsourced, the responsibilities cannot.

Partnerships under the Senior Managers Regime

4.49 We propose that all partners in a firm will be Senior Managers, which is the same as under the current Approved Persons Regime. This is because a partner is likely to have influence over how the firm is run.

4.50 However, if a partner has no involvement in managing the firm and therefore does not meet the overarching FSMA definition of a Senior Manager, then the partner function will not apply and the partner will not need to be a Senior Manager. This might be the case, for example, where a partner is purely a silent partner, or where a firm has a large number of partners at a junior level who have no involvement in managing the firm or authority to act on behalf of the firm.

4.51 Because individual partners may have different roles and responsibilities, this should be reflected in their Statement of Responsibilities. For example, a responsibility or function might be shared between several partners, in which case this should be recorded in the same way in the Statement of Responsibilities for each of them. If a partner has fewer responsibilities, then their Statement of Responsibilities will be shorter than a partner who has a more executive-type role in the partnership. If a partner performs another Senior Management function – such as the Chief Executive or MLRO – they will need to be approved for both roles.

Recap

What firms need to do under the Senior Managers Regime

If a person will be performing a Senior Management Function, the firm will need to:

- satisfy themselves that the candidate is suitable, or 'fit and proper', to carry out a Senior Management Function
- apply for that person to be approved by the FCA, before they take up their role
- send us a Statement of Responsibilities as part of the application

After a Senior Manager has been approved, the firm will need to:

- update and resubmit Statements of Responsibilities to us whenever there is a significant change to a Senior Manager's responsibilities
- assess that all their Senior Managers are fit and proper to carry out their job at least once a year (see Chapter 6 for more information on fit and proper assessments)

In addition, firms will need to make sure they have appropriately allocated all of the Prescribed Responsibilities to their Senior Managers, unless they are a Limited Scope Firm where Prescribed Responsibilities do not apply.

What Senior Managers need to do

- Anyone who is a Senior Manager will have a 'duty of responsibility'. Senior Managers should understand what this means in the context of their job.
- Senior Managers must ensure that their Statements of Responsibilities are accurate and up to date.
- There are also Conduct Rules that will apply to Senior Managers. We explain these in Chapter 7. Senior Managers will need to understand and comply with the Conduct Rules.

5 Certification Regime

All firms should read this chapter.

Introduction

5.1 This chapter sets out our proposals for the Certification Regime that will apply to all firms. In particular, it sets out:

- which functions will be included under the Certification Regime
- what firms need to do under the Certification Regime

Overview

5.2 The Certification Regime is a new FSMA requirement for all firms.

What is Certification?
This covers people who aren't Senior Managers, but whose jobs mean they can have a big impact on customers, the firm and/or market integrity. We won't approve these people, but firms will need to check and confirm ('certify') at least once a year that these people are suitable to do their job. This is a requirement under legislation.

5.3 It applies to people who perform certain functions, known as Certification Functions, but are not Senior Managers. FSMA defines a Certification Function as 'one that requires the person performing it to be involved in one or more aspects of the firm's affairs, so far as relating to a regulated activity, and those aspects involve, or might involve, a risk of significant harm to the firm or any of its customers'.

5.4 We set out the functions that we consider meet the FSMA definition and list them in our Handbook. Once we decide that a role meets the definition of a Certification Function, a firm needs to make sure that anyone doing that role has been certified. This means the firm must check and confirm that the person is fit and proper to do the job, and issue them with a certificate, to be renewed at least once a year (the 'Certification Regime').

5.5 Some of the staff in scope of the Certification Regime may have been previously approved by us. We will not approve these people any more, as the objective of the Certification Regime is to reinforce that firms, rather than the regulator, are responsible for ensuring their staff are fit and proper. This also means that the people subject to the Certification Regime will not appear on the FCA Register.

Certification Functions

5.6 We propose to make the following roles Certification Functions, building on existing functions in the Approved Persons Regime.

5.7 The Certification Functions only apply where the firm has people in these roles. This means in practice, it is possible that in very small firms there will be no one in the Certification Regime if there is only a handful of senior individuals (who will be Senior Managers) supported by administrative staff. If a sole trader has no employees, then the Certification Regime won't apply to them.

5.8 Please note that the Certification Regime only applies to employees[8] of firms. It does not apply to Non-Executive Directors, for example.

Table 4: Certification Functions

Certification Function	Overview
Significant Management Function (based on current CF29)	These individuals perform functions that would have been Significant Influence Functions under our Approved Persons Regime. These important roles can seriously impact the way the firm conducts its business.
Proprietary traders (also covered by current CF29)	
CASS oversight function (current CF10a)	
Functions subject to qualification requirements	This includes, for example, mortgage advisers, retail investment advisers and pension transfer specialists. The full list is set out in our Training and Competence Sourcebook.
The client dealing function	This function will be expanded from the current CF30 function to apply to any person dealing with clients, including retail and professional clients and eligible counterparties. This will cover people who: • advise on investments (other than a non-investment insurance contract) and perform other related functions, such as dealing and arranging • deal, as principal or agent, and arrange (bring about) deals in investments • act in the capacity of an investment manager and all functions connected with this • act as a bidder's representative

8 The definition in FSMA of an employee includes anyone who personally provides, or is under an obligation to provide, services to the firm in question under an arrangement made between the firm and person providing the services or another person, and is subject to (or to the right of) supervision, direction or control by the firm as to the manner in which those services are provided.

Certification Function	Overview
Anyone who supervises or manages a Certified Function (directly or indirectly), but isn't a Senior Manager	This will ensure that people who supervise certified employees are held to the same standard of accountability. It also ensures a clear chain of accountability between junior certified employees and the Senior Manager ultimately responsible for that area. For example, if a firm employs a customer-facing financial adviser, every manager above them in the same chain of responsibility will have to be certified (until the Senior Manager approved under the SMR is reached).
Material Risk Takers	The concept of material risk takers (also known as Remuneration Code staff) already exists for firms under our remuneration rules (SYSC 19), but they are not currently controlled functions that we approve. Instead, they are a category of staff that all firms under AIFMD, UCITS, IFPRU and BIPRU are required to identify under our remuneration regime. These firms need to consider all types of risk when identifying their material risk takers, including those of a prudential, operational, conduct and reputational nature. All of these material risk takers will be covered by this certification function.
Algorithmic trading	This function includes people with responsibility for: • approving the deployment of a trading algorithm or a material part of one • approving the deployment of a material amendment to a trading algorithm or a material part of one, or the combination of trading algorithms • monitoring or deciding whether or not the use or deployment of a trading algorithm is or remains compliant with the firm's obligations

5.9 There will inevitably be functions in Table 4 that aren't relevant for many firms. For example, proprietary traders might be relevant for investment firms, but are unlikely to be relevant in a consumer credit firm.

Don't have any of these functions?
If these roles don't apply to your firm then you won't have any certified staff. You do not need to apply the Certification Regime.

Significant Management Certification Functions

5.10 We propose that this function applies to someone with 'significant responsibility for a significant business unit'. By this we mean people below Senior Managers who are responsible for business units that, on account of their size, nature or impact, are considered 'significant' by the firm.

5.11 This is the same approach that we took for banking and insurance firms. The intention of the Significant Management Function is to provide broad coverage of a firm's main activities below the Senior Manager layer.

5.12 Firms will need to decide whether a business unit is 'significant'. We've set out factors in our Handbook for firms to consider, including:

- the size and significance of the firm's business in the UK
- the risk profile of the unit
- the unit's use of the firm's capital

- its contribution to the profit and loss account
- the number of employees, Certification Functions or Senior Managers in the unit
- the number of customers in the unit

5.13 A business unit isn't limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can also be an internal support department (for example, human resources, operations or information technology).

5.14 For example, we would expect a complex consumer credit firm with a large collections unit to have someone certified as a Significant Management Function for that unit. Similarly, a mortgages firm may have a significant underwriting unit, in which case the Significant Management Function would apply to the most senior person responsible for that area below Senior Manager.

Tell us what you think:

Q7: **Do you agree with the functions we have proposed making Certification Functions? If not, please explain why.**

Q8: **Are there any other functions that we should make a Certification Function?**

5.15 We also note that there have been some preliminary concerns raised with us about the fact that people performing Certification Functions will not appear on a public register. We invite feedback on these concerns.

Q9: **Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?**

Performing more than one Certification Function

5.16 If someone performs more than one Certification Function, a firm needs to certify that the person is fit and proper to carry out each function. For example, someone might carry out a function requiring a qualification, and also carry out the Significant Management Function. There might be different competencies required for the different functions, so firms need to assess that the person is fit and proper to do each role (but this could be done as part of a single assessment process).

5.17 If a Senior Manager also performs a Certification Function that is closely linked to their role as a Senior Manager, then they will not need to be certified under the Certification Regime (see 5.24 for an example in relation to CASS). However, if they are performing a Certification Function that is very different to what they are doing as a Senior Manager, they will also need to be certified. We expect that this will not be common in practice.

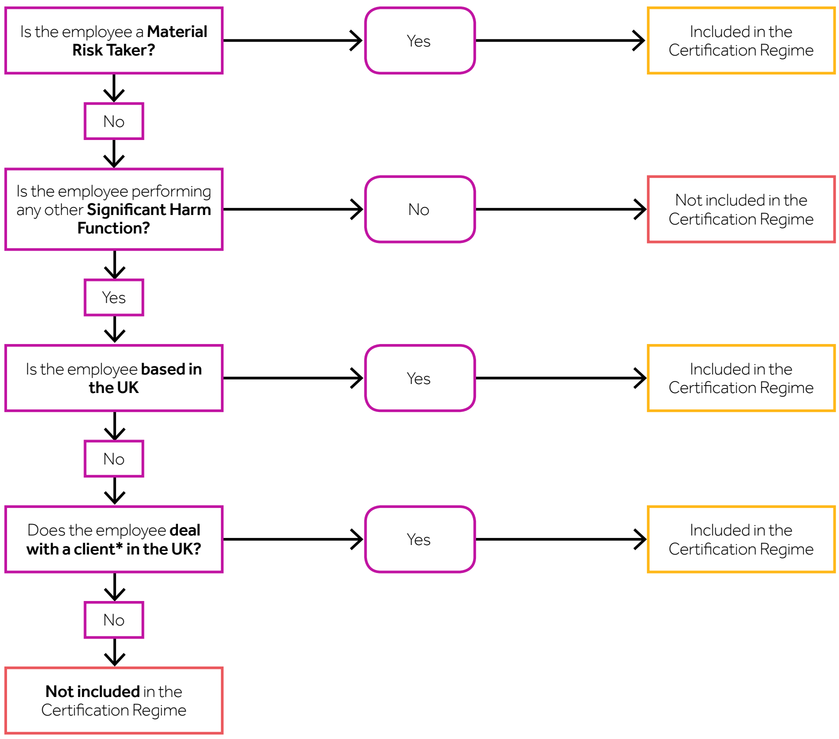
Overseas employees

5.18 For UK firms, the Certification Regime is limited to people performing a Certification Function who are either based in the UK or, if based outside the UK, are dealing (ie have contact with) with UK clients. We call this the territorial limitation.

5.19 This means that if a person based overseas does not deal with UK clients, but would otherwise have been carrying out one of the functions listed in Table 4, the Certification Regime won't apply to them. However, there will still be a Senior Manager who is responsible for the Certification Regime (through the Prescribed Responsibility).

5.20 The exception to this is where an individual is a material risk taker under one of our Remuneration Codes. For these individuals, there is no territorial limitation. This means that if an individual is a material risk taker under one of our Remuneration Codes, the Certification Regime will apply even if they are based overseas and do not deal with a UK client.

5.21 The flow chart below sets this out:



*Client is defined in the FCA Handbook

5.22 In complex global businesses such as asset managers, we recognise that drawing these lines can sometimes be difficult. We welcome specific feedback on this, both in terms of whether the territorial scope is appropriate for your business model and whether any additional guidance or clarification is needed from the FCA.

Tell us what you think:

Q10: **Do you agree with our proposed territorial limitation for the Certification Regime? If not, please explain why.**

How the CASS Oversight Certification Function interacts with the CASS Prescribed Responsibility

5.23 Firms holding client money or client assets are subject to specific requirements (set out in the CASS chapter of our Handbook) and owe particular duties to their clients. The SM&CR reflects and reinforces these requirements.

5.24 In the majority of cases, a Senior Manager must be responsible and accountable for all elements of CASS compliance under the CASS Prescribed Responsibility (as set out in 4.37). A firm can allocate this Prescribed Responsibility to any of the Senior Managers, but this should be the Senior Manager who is the most senior person responsible for this area. In practice this will often be allocated to the Senior Manager doing the Compliance Oversight role; however this does not need to be the case. Once the Prescribed Responsibility has been allocated, it might be the case that this Senior Manager also performs the CASS Oversight Function, which is a Certification Function. In this situation, the person will be a Senior Manager, and there is no need for the firm to also apply the Certification Regime to them.

5.25 However, as the CASS Oversight Function is often operationally focused, the person performing it might not always, in practice, be a Senior Manager. In this case, the person with the CASS Oversight Function will fall under the Certification Regime. They will not therefore need to be approved by us.

5.26 We have taken this approach to give firms flexibility in allocating the CASS responsibilities, recognising that in practice the person who performs the operational CASS Oversight Function (which focuses on detailed aspects of complying with our rules) might not always also be the most senior individual with ultimate responsibility for this activity within a firm – particularly in larger firms.

5.27 Limited Permission Not For Profit Debt Advice Bodies that are CASS Large Debt Management Firms will not have any Senior Managers and cannot therefore allocate the CASS Prescribed Responsibility. The individual(s) at these firms responsible for CASS must still be allocated the CASS Oversight Function under the Certification Regime.

5.28 We will consult on consequential amendments needed to the CASS Sourcebook to reflect the proposals set out in this document in our follow-up Consultation Paper.

Tell us what you think:

Q11: **Do you agree with the approach we have proposed to allocating CASS responsibilities? If not, please explain why.**

Recap

What firms need to do under the Certification Regime

The Certification Regime will make firms more responsible for assessing that their staff are fit and proper to carry out Certification Functions. FCA approval is not required for anyone who performs a Certification Function.

Firms will need to:

- Identify employees who perform a Certification Function.
- Assess whether those employees are fit and proper to perform their role. Firms need to do this assessment at the point of recruitment (or before a person performs a Certification Function) and on an ongoing annual basis (we discuss the fit and proper assessment in more detail in the following chapter).
- Issue a certificate to the employee if the firm is satisfied that they are fit and proper to perform that Certification Function. The certificate needs to:
    - state that the firm is satisfied that the person is a fit and proper person to perform the function the certificate relates to
    - set out what aspect of the firm's affairs the person will be involved in as part of performing their function.
- If the firm completes a fit and proper assessment and then decides not to issue a certificate to someone, the firm must give the person a notice in writing setting out:
    - what steps (if any) the firm proposes to take in relation to the person as a result of the decision
    - the reasons for proposing to these steps.

6 Fit and proper requirements

All firms should read this chapter.

Introduction

6.1 This chapter sets out our proposals for how firms should assess whether Senior Managers, Non-Executive Directors and individuals under the Certification Regime are fit and proper to do their job. In particular, it sets out:

- the fit and proper test
- the evidence we expect firms to gather when making their assessment

Overview

6.2 A key feature of the SM&CR is to reinforce that firms need to take responsibility for their staff being fit and proper to do their jobs. This requirement stems from legislation – FSMA requires firms to make sure anyone performing a Senior Management Function or a Certification Function is fit and proper for their role. In addition to this, we propose to apply this requirement to Non-Executive Directors who are not Senior Managers.

6.3 Once someone is in such a role, firms will need to assess them on an ongoing basis, and at least once a year.

6.4 When assessing candidates for Senior Management and Certification Functions, FSMA requires firms to have regard to any general rules that the FCA has made around the qualifications, training, competence and personal characteristics required by an individual for that role.

6.5 We already have a number of rules about qualifications, training, competence and personal characteristics,[9] and we don't propose to make any new rules at this stage.

6.6 Guidance in the FCA's FIT Handbook sets out the factors we currently consider when assessing people as fit and proper under the Approved Persons Regime. This is also applicable to banking firms when assessing their Senior Managers and certified staff. We propose extending the application of FIT to Senior Managers and certified staff in solo-regulated firms.

9 For example, we have rules around very senior employees in SYSC 4.2 (Persons who effectively direct the business) and SYSC 4.3A.3 (Management body), for employees of firms generally in SYSC 5.1.1 (the 'competent employees rules'), and in relation to retail activities, in TC2.1.12 (Competence for the relevant role).

Tell us what you think:

Q12: **Do you agree with our proposed approach to rules and guidance on the fit and proper test? If not, please explain why.**

Evidence requirements

6.7 We propose requiring new evidence for firms to collect when assessing candidates for Senior Management roles, Certification Functions or Non-Executive Directors (even if they're not a Senior Manager). We explain these requirements below.

Criminal records checks for Senior Managers

6.8 Under the current Approved Persons application process, firms and candidates need to declare if a candidate has a criminal record (including any spent convictions the employer has a legal right to be made aware of). This will continue for Senior Manager applications. However, we also propose requiring firms to undertake a criminal records check as part of each Senior Manager application for approval. This will ensure the information the candidate has given to the firm is accurate and complete. This requirement will also apply to Non-Executive Directors who are not Senior Managers where a fitness requirement already applies to them.

6.9 This means firms will have to register with the Disclosure and Barring Service (DBS), and the equivalent agencies in Scotland and Northern Ireland, who run the checks. Smaller firms may need to use an umbrella organisation as an intermediary.

6.10 We also propose that where a candidate has spent a considerable amount of time working or living outside the UK, firms should consider undertaking an equivalent check with the appropriate overseas regulatory body where available.

6.11 We do not propose mandating criminal record checks for Certification Functions, but firms may choose to conduct these checks for other staff where they are legally allowed to do so – this is for firms to decide.

Tell us what you think:

Q13: **Do you agree with our proposed requirements on criminal record checks? If not, please explain why.**

Regulatory references for Senior Managers and Certification Functions

6.12 In line with the recommendations of the Fair and Effective Markets Review (FEMR), we propose to require firms to request a reference from Senior Management and Certification Function candidates' past employers – known as 'regulatory references'. This will also apply to Non-Executive Directors who aren't Senior Managers.

> **What is a regulatory reference?**
> This is the reference that one firm provides another when an employee moves between firms.

6.13 These references will help firms make better-informed decisions about candidates. These proposals build on existing obligations on firms who currently need to (on receipt of a request for a reference) provide all information relevant to the fit and proper assessment of the hiring firm.

6.14 The proposed new rules mainly require firms to:

- request a reference from all previous employers in the past six years for people applying for Senior Manager, Certification and non-approved Non-Executive Director roles
- share information between firms in a standard template
- disclose certain information going back six years, including details of any disciplinary action taken due to breaches of the Conduct Rules and any findings that the person was not fit and proper
- disclose any other information relevant to assessing whether a candidate is fit and proper (eg, the number of upheld complaints), covering the previous six years (unless it relates to serious misconduct, in which case there is no time limit) – firms will need to use their judgement when considering what is relevant, on a case-by-case basis
- retain records of disciplinary and fit and proper findings going back six years
- not enter into arrangements that conflict with their disclosure obligations (eg non-disclosure agreements)

6.15 In addition, firms will need to update regulatory references where new, significant information comes to light.

6.16 A Senior Manager will be accountable for the firm's regulatory reference obligations, as this is part of Prescribed Responsibilities 1 and 2 in Table 3.

6.17 The new referencing requirements won't change when and how a firm decides to take disciplinary action – this is a matter for firms to decide on, and we're not proposing to impose a duty on firms to investigate alleged misconduct by an employee or ex-employee. Firms won't need to revisit disciplinary action that happened before the referencing requirements come into effect.

6.18 A firm's compliance with the regulatory referencing requirements will need to be consistent with firms' common law duties and other relevant legislation, such as those relating to the rehabilitation of offenders and spent convictions.

Tell us what you think:

Q14: **Do you agree with our proposed requirement of regulatory references? If not, please explain why.**

7 Conduct Rules

All firms should read this chapter.

Introduction

7.1 This chapter sets out our proposals for:

- the scope and content of a new set of enforceable Conduct Rules
- the training and notification requirements linked to the Conduct Rules

Overview

7.2 We currently have Statements of Principle and a Code of Practice for Approved Persons in the APER chapter of our Handbook. This describes the conduct we require of individuals we approve.

7.3 FSMA gave the FCA new powers to write Conduct Rules and apply them to all employees within a firm – not just people we approve. These are a new set of enforceable rules that set basic standards of good personal conduct, against which we can hold people to account.

7.4 We propose replacing the current APER section of the Handbook with Conduct Rules for all firms, to ensure a single standard applies across the market. As the Conduct Rules apply to staff directly, they will help shape the culture, standards and policies of firms as a whole and promote positive behaviours that actively support the FCA's statutory objectives.

7.5 Additionally, the possibility of enforcement should deter people from doing something that could damage the firm or its customers, or undermine the integrity of the financial market.

7.6 Our proposed conduct rules are intended to drive up standards of individual behaviour in financial services. They represent a meaningful change in the standards of conduct we expect from those working in the industry. By applying the conduct rules to a broad range of staff we aim to improve individual accountability and awareness of conduct issues across firms.

Two tiers of the Conduct Rules

7.7 We propose applying two tiers of Conduct Rules to all firms.

7.8 The first is a general set of rules that applies to most employees in a firm (see section 7.14 below for more detail on who these rules apply to). The second tier consists of rules that only apply to Senior Managers.

7.9 The proposed Conduct Rules are drawn from the existing principles under APER and the Principles for Business, and are the same Conduct Rules that we applied to banking firms. As they are high level, we think they are equally relevant and applicable to all individuals in financial services.

Table 5: Conduct Rules in core firms

	First Tier – Individual Conduct Rules
1	You must act with integrity
2	You must act with due care, skill and diligence
3	You must be open and cooperative with the FCA, the PRA and other regulators
4	You must pay due regard to the interests of customers and treat them fairly
5	You must observe proper standards of market conduct
	Second Tier – Senior Manager Conduct Rules
SC1.	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
SC2.	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system
SC3.	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively
SC4.	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

Activities the Conduct Rules apply to

7.10 We propose applying the Conduct Rules to a firm's regulated and unregulated financial services activities (including any related ancillary activities). For example, an activity carried on in connection with a regulated activity.

7.11 This is narrower than our requirements under the banking regime, where the Conduct Rules apply to everything someone does on behalf of a banking firm, whether it's regulated or unregulated or linked to financial services. We think this narrower approach for solo-regulated firms is proportionate because there is less evidence of potential harm to consumers or market integrity.

7.12 However, we have not limited the application of the Conduct Rules to only cover an employee's role in relation to the regulated activities of a firm, as we consider this would be too narrow. In practice, conduct issues that have an impact on our objectives will not be limited to the regulated areas of a firm's business.

Who the Conduct Rules apply to

7.13 We propose to apply the Conduct Rules to:

- all Senior Managers
- all Certified Functions
- all Non-Executive Directors who are not Senior Managers (to whom, in addition to the individual Conduct Rules in Table 5, we propose applying SC4 – the Senior Manager Conduct Rule to 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice')
- all other employees, except ancillary staff (ie people who do not perform a role specific to financial services)

7.14 The list of roles that we consider ancillary and therefore out of scope of the Conduct Rules are set out below (this is an exhaustive list):

- receptionists
- switchboard operators
- postroom staff
- reprographics/printroom staff
- property/facilities management
- events management
- security guards
- invoice processing
- audio-visual technicians
- vending machine staff
- medical staff
- archive records management
- drivers
- Corporate Social Responsibility staff
- data controllers and processors under the Data Protection Act

- cleaners
- catering staff
- personal assistants and secretaries
- Information Technology Support (ie helpdesk)
- Human Resources administrators/processors

7.15 We have proposed applying the Conduct Rules to the majority of employees working in firms, because the FCA's statutory objectives, particularly protecting consumers and market integrity, can potentially be affected by a broad range of staff.

7.16 We consider the Conduct Rules to be an important tool to improve standards of behaviour across all organisations, and not just at the Senior Manager and certification layer.

7.17 We recognise that the Conduct Rules may involve additional costs for firms and welcome feedback on the proportionality of our proposals. However, we have proposed applying the Conduct Rules to the majority of employees working in firms because we believe they are an important tool to achieve cultural change across organisations, and not just at the Senior Manager and Certification level. Firms should be able to demonstrate that they apply the spirit as well as the letter of the Conduct Rules. By this we mean that we expect firms to ensure that their staff understand what the rules mean to them in the context of their particular firm.

Training and notification requirements

7.18 FSMA requires firms to make individuals who are subject to the Conduct Rules aware that this is the case, and train them in how the rules apply to them.

7.19 FSMA also requires firms to notify us when disciplinary action has been taken against a person for any reason specified by us. We propose to require notification of disciplinary action only if that action was because of breaches of the Conduct Rules. For Senior Managers, we propose that firms notify us of this information within seven business days of the firm becoming aware of the matter. For other individuals, we propose the notification is made every year. We will be consulting on the form that will be used to notify us of these breaches and changes to all other forms as part of our technical Consultation Paper later this year.

7.20 The new notification won't change or remove firms' obligations to report concerns about an individual's conduct under existing rules and principles, such as FCA Principle 11.

Tell us what you think:

Q15: Do you agree with our proposal to apply the Conduct Rules to financial services activities?

Q16: **Do you agree with our proposal to apply the Conduct Rules to all employees who perform financial services, with the limited exclusions listed in section 7.14?**

Q17: **If you disagree, please explain why, including (where appropriate) cost implications.**

Q18: **Do you agree with our proposal to link notification requirements for disciplinary action to breaches of the Conduct Rules?**

Q19: **Do you agree with our proposed frequency of Conduct Rules notifications? If not, please explain why.**

Recap

What firms need to do

There are two obligations on firms in relation to the Conduct Rules:

- training staff
- notifying us when there has been disciplinary action taken because of a breach of the Conduct Rules

A firm must also allocate the Prescribed Responsibility for the firm's obligations for Conduct Rules in notifications and training.

What individuals need to do

Where the Conduct Rules apply, people need to be aware of and comply with the rules as part of their job.

8 Additional requirements for enhanced firms

This chapter applies to enhanced firms.

Introduction

8.1 The majority of FCA solo-regulated firms will be subject to the core regime. However, we believe that a small number of solo-regulated firms should be subject to extra requirements.

Not an enhanced firm?
This chapter doesn't apply to you.

8.2 These firms will generally be larger in size or have more complex structures where weaknesses in accountability or governance could cause greater harm to consumers, or impact upon market integrity. We refer to these firms as 'enhanced firms' and the regime as the 'enhanced regime'.

8.3 This chapter sets out:

- how we propose to identify enhanced firms
- the additional rules that will be applied to enhanced firms

Identifying enhanced firms

8.4 We propose using six objective criteria to identify firms that the enhanced regime will apply to. We've proposed these criteria because we believe they are representative of the size and complexity of firms. Where possible, we have used existing definitions from our Handbook.

8.5 Limited Scope Firms and EEA and non-EEA branches will not be moved into the enhanced regime, even if they meet one of the criteria below.

8.6 The criteria and the estimated number of firms affected by each are given in Table 6.

Table 6: Criteria to identify enhanced firms

Criteria for enhanced firms	Approximate number of firms
A firm that is a Significant IFPRU firm	100
A firms that is a CASS Large firm	15
Firms with Assets Under Management of £50 billion or more (at any time in the previous 3 years)	110
Firms with current total intermediary regulated business revenue of £35 million or more per annum[10]	75
Firms with an annual regulated revenue generated by consumer credit lending of £100m or more	25
Mortgage lenders (that are not banks) with 10,000 or more regulated mortgages outstanding	25

8.7 We estimate that there will be around 350 enhanced firms in total (taking into account the overlap of firms that meet more than one of the tests).

8.8 Once a firm meets the relevant criteria, the enhanced regime will apply to them automatically (subject to the transitional period explained below). This means that firms will need to monitor whether and how the criteria apply to them, particularly where they are close to meeting one of the relevant criteria.

8.9 There may be some firms that are large and complex, but do not meet the criteria above. In these instances, we may require a firm to comply with the enhanced regime (for example using the Own Initiative Requirement process); if we think these extra rules will help mitigate the risks posed by the firm. However, this will be done on a case-by-case basis and we don't anticipate that many firms will be required to do this. Similarly, a firm may apply to us for a waiver if they meet one of the criteria but do not think the enhanced regime should apply to them. This is an existing supervisory process.

Tell us what you think:

Q20: **Do you agree with our proposed approach of using the objective criteria set out above to identify firms for the enhanced regime? If not, please explain why and propose alternative approaches.**

Moving between core and enhanced

8.10 We want to give firms stability and to make sure they are not moving between the core and enhanced regime on a regular basis.

Can I voluntarily choose to be in the enhanced regime?
You will need to apply to us for a Voluntary Requirement to do this.

10 Calculated in accordance with the method that must be used to calculate the amount to be recorded in data element 4E (total regulated business revenue) in Section B (Profit and Loss account) of the RMAR. For clarity, this revenue figure does not include consumer credit intermediation.

8.11 If a firm in the enhanced regime stops meeting the criteria (for example, if they stop being a Significant IFPRU firm), we propose that these rules will continue to apply for one year. As well as providing continuity for firms, this should minimise the risk of firms structuring their business to avoid the extra requirements.

8.12 If a firm that is in the core regime develops such that it meets one of the enhanced criteria, we propose allowing the firm six months from the date it meets the criteria to comply with the enhanced requirements.

8.13 The one year period (paragraph 8.11) and the six month period (paragraph 8.12) start from different points depending on the criteria that apply. Please see the draft instrument for the proposed detailed rules for each of the criteria set out in Table 6.

8.14 Paragraphs 8.17 and 8.18 describe how we propose transitioning Senior Managers when firms move from core to enhanced (and vice versa).

Tell us what you think:

Q21: Do you agree with our proposed approach to moving firms between core and enhanced? If not, please explain why.

Senior Management Functions under the enhanced regime

8.15 Recognising that enhanced firms are more likely to have complex structures, we propose to apply six additional Senior Management Functions to enhanced firms to cover specific roles that are more likely to:

- be performed by separate people
- exist in complex businesses

8.16 These are **in addition** to the Senior Management Functions that apply to core firms. These additional functions are set out in Table 7.

Table 7: Additional Senior Management Functions in enhanced firms

Function	Description
SMF2 – Chief Finance Function	These functions will apply **instead of** the broad Systems and Controls Function under the Approved Persons Regime.
SMF4 – Chief Risk Function	
SMF5 – Head of Internal Audit	
SMF14 – Senior Independent Director	The person with particular responsibility for leading the assessment of the Chair's performance.
SMF12 – Chair of the Remuneration Committee	The person with responsibility for chairing, and overseeing the performance of, any committee responsible for the oversight of the design and the implementation of the remuneration policies of a firm.
SMF10 – Chair of the Risk Committee	The person with responsibility for chairing, and overseeing the performance of, any committee responsible for the oversight of the risk management systems, policies and procedures of the firm.
SMF11 – Chair of the Audit Committee	The person with responsibility for chairing, and overseeing the performance of, any committee responsible for the oversight of the internal audit system of the firm.

Function	Description
SMF13 – Chair of the Nominations Committee	If a firm has a nomination committee, this person is the person who chairs that committee.
SMF7 – Group Entity Senior Manager	This is someone who has significant influence on the management or conduct of the affairs of the UK-regulated entity and is employed by, or is an officer of, another member of its group.
SMF24 – Chief Operations Function	The most senior person responsible for managing the internal operations (including HR), systems and technology of a firm.
SMF18 – Other Overall Responsibility	This function applies where a senior executive is the most senior person responsible for an area of the firm's business but they do not perform any other Senior Manager function. Many firms won't need this function as the people ultimately responsible for everything the business does will already be captured by other Senior Manager Functions. However, it gives flexibility and recognises the diversity of business structures in different types of firms. This is discussed in more detail below in the section on 'Overall Responsibility'.

8.17 If a firm moves from core to enhanced, there might be Senior Managers who need new or different approval from us. For example, someone performing a CFO role would need to be approved for the SMF2 Chief Finance Function under the enhanced regime.

8.18 So that firms won't need to re-apply for new approvals where there has been no change in the person's actual role, we propose that firms simply notify us of the relevant applicable enhanced function.

Tell us what you think:

Q22: Do you agree with our proposed Senior Management Functions for enhanced firms?

Q23: Do you agree that this will ensure the most senior people in firms are covered by the Senior Managers Regime, regardless of organisational structure? If not, please explain why.

Prescribed Responsibilities under the enhanced regime

8.19 In addition to the seven core Prescribed Responsibilities set out in Table 3, we propose applying an additional seven Prescribed Responsibilities that must be allocated to Senior Managers in enhanced firms.

Table 8: Additional Prescribed Responsibilities in enhanced firms

8	Compliance with the rules relating to the firm's Responsibilities Map
9	Safeguarding and overseeing the independence and performance of the internal audit function (in accordance with SYSC 6.2)
10	Safeguarding and overseeing the independence and performance of the compliance function (in accordance with SYSC 6.1)

11	Safeguarding and overseeing the independence and performance of the risk function (in accordance with SYSC 7.1.21R and SYSC 7.1.22R)
12	If the firm outsources its internal audit function, taking reasonable steps to ensure that every person involved in the performance of the service is independent from the persons who perform external audit, including: • supervision and management of the work of outsourced internal auditors • management of potential conflicts of interest between the provision of external audit and internal audit services
13	Developing and maintaining the firm's business model
14	Managing the firm's internal stress-tests and ensuring the accuracy and timeliness of information provided to the FCA for the purposes of stress-testing

8.20 The Prescribed Responsibilities above are designed to apply in the same way as the Core Prescribed Responsibilities (described in Chapter 4).

My firm is not required to comply with the SYSC requirements referred to in Prescribed Responsibilities 9, 10 and 11. What should we do?
There's no need to allocate these Prescribed Responsibilities. The proposed SM&CR rules do not require firms to establish these functions.

8.21 We expect that normally a firm will allocate the Prescribed Responsibilities to an Executive Director or Partner, with the exception of responsibilities (9), (10) and (11), which should be allocated, where possible, to a Senior Manager who is a Non-Executive Director of the firm or a partner who does not have management responsibilities. However, as not all firms will have Non-Executive Directors, this may not always be possible. Where this is the case, the Prescribed Responsibility must be allocated to another appropriate Senior Manager.

8.22 The Prescribed Responsibilities cannot be allocated to someone performing the 'Other Overall Responsibility' Senior Management Function. The only exception to this is the Prescribed Responsibility for CASS compliance.

Tell us what you think:

Q24: **Do you agree with our proposals for Prescribed Responsibilities in enhanced firms? If not, please explain why.**

Overall Responsibility

8.23 We propose applying an 'Overall Responsibility' requirement to all enhanced firms. This means that an enhanced firm will need to ensure that every activity, business area and management function has a Senior Manager with overall responsibility for it. This is to prevent unclear allocation of responsibilities that could result in issues falling between the cracks.

8.24 Overall Responsibility means a Senior Manager will have primary and direct responsibility for:

- briefing and reporting to the governing body about their area of responsibility
- putting matters for decision about their area of responsibility to the governing body

Can I just allocate all the activities listed in Annex 1 of SYSC 25 to a Senior Manager?
No. You can use this list as a start point, but some of the activities might not apply to you, and you may need to include other activities not included in the list.

8.25 Having overall responsibility doesn't mean that the person needs to have day-to-day management control of that function – they need to be the most senior person responsible for managing the area overall and be sufficiently senior and credible, and with sufficient resources and authority, to be able to exercise their management and oversight responsibilities effectively.

8.26 The objective of this requirement is not to overlap with the inherent responsibilities of the person(s) responsible, under the immediate authority of the firm's governing body, for the conduct of the whole of a firm's business. This may be the Chief Executive(s), Executive Director(s) or Partner(s) (as applicable). Instead, the intention is to ensure that it is clear who the governing body of a firm has delegated responsibility to for each area of the firm's business. This could be to the Chief Executive or a member of the executive team. The allocation of responsibilities will differ from one firm to another.

8.27 From applying Overall Responsibility under the banking regime, we know that some firms found the Overall Responsibility requirement difficult to understand and implement. So to help firms understand how this requirement works in practice, we've set out below the steps firms might want to consider:

- Firms should consider **what activities, business areas and management functions they have**. Firms may find it useful to refer to Annex 1 of SYSC 25 as a starting prompt to think about how their own business is organised, but this is not mandatory or exhaustive.
- Once a firm has set out each of its activities, business areas and management functions, the next step will be to think about **who has overall responsibility at the most senior level** for each of these.
- The most senior person with Overall Responsibility might be an existing Senior Manager, such as the Chief Executive, an Executive Director or Compliance Oversight. We expect that this will be the case most of the time.
- However, depending on how a firm is organised, the most senior person with Overall Responsibility for an area might not already be a Senior Manager. In this case, this person will need to be approved by us as a Senior Manager under SMF18 – Other Overall Responsibility (explained in section 8.16). We expect that this will be the exception, rather than the rule, but welcome comments on whether this will be the case in practice.

- Where a Senior Manager has Overall Responsibility for an activity, business area or management function, this will need to be clearly set out in their Statement of Responsibilities and reflected in the Responsibilities Map.

What's the difference between the Overall Responsibility requirement and the Other Overall Responsibility Function?
Overall Responsibility is the **requirement on a firm** to make sure every activity, business area and management function has a Senior Manager responsible for it.

The SMF18 – Other Overall Responsibility Function is **an additional Senior Management Function** that firms can use to support this, where needed, on a case-by-case basis.

Activities the Overall Responsibility rule applies to

8.28 The scope of the Overall Responsibility rule is the same as the scope of the Conduct Rules. This means it applies to a firm's regulated and unregulated financial services activities (including any related ancillary activities).[11]

8.29 Under the Overall Responsibility rule, firms must allocate responsibility to a Senior Manager for all activities, business areas and management functions of the whole firm, including those carried out from a branch overseas. This includes all transactions that take place overseas (whether in full or in part).

Dividing or sharing Overall Responsibility

8.30 It's not possible to divide an Overall Responsibility because they are specific to how a firm is structured and the roles of the people running it.

8.31 So while firms may find Annex 1 of SYSC 25 useful when thinking about the areas in their business, they don't need to apply to us for a waiver to 'split' the responsibility between each of the Senior Managers. Firms just need to make sure that each Senior Manager's Statement of Responsibilities sets out what they're responsible for in a clear and accurate way.

8.32 Allocating Overall Responsibility for the same area or activity to two or more Senior Managers is permitted ('sharing'), where this is appropriate.

Tell us what you think:

Q25: Do you agree with our proposal to apply the Overall Responsibility requirement to enhanced firms? If not, please explain why.

11 Under our current rules for overall responsibility that apply to banks, building societies, credit unions and PRA-designated investment firms, this includes the legal function. However, this policy is under review following industry feedback (see Discussion Paper 16/4: Overall responsibility and the legal function).

Responsibilities Maps

8.33 We propose introducing a requirement for enhanced firms to prepare and maintain a 'Responsibilities Map' – a single document that sets out the firm's management and governance arrangements. This includes, for example, how the Prescribed Responsibilities have been allocated, details on who has overall responsibility for the firm's activities, business areas and management functions, details of individuals' and committees' reporting lines, and how any responsibilities are shared or divided between different people.

8.34 Responsibilities Maps are designed to give a collective view of the allocation of responsibilities across a firm, and to ensure that the Senior Managers' Statements of Responsibilities do not leave any gaps. They also help us to identify who to speak to about particular issues and who is accountable if something goes wrong.

What should my map look like?
It depends entirely on the complexity and size of your firm. The map is to provide a single, self-contained overview of your firm's governance, including who is responsible for what – would your map adequately explain your firm to someone who doesn't work for you?

8.35 Annex 1 of SYSC 25 may help large and complex firms think about how their business is organised, but this is not mandatory or exhaustive.

Tell us what you think:

Q26: Do you agree with our proposal to apply Responsibilities Maps to enhanced firms? If not, please explain why.

Handover procedures

8.36 We propose introducing a requirement for enhanced firms to take all reasonable steps to ensure that a person taking a Senior Manager role has all the information and materials they could reasonably expect to have to do their job effectively. One way of doing this could be for the predecessor to prepare a handover note.

8.37 In addition, a firm must have a policy in place explaining how it complies with this requirement, and maintain adequate records of the steps it has taken.

Tell us what you think:

Q27: Do you agree with our proposal to apply handover procedures to enhanced firms? If not, please explain why.

Recap

What firms need to do under the Enhanced Senior Managers Regime

If a person will be performing any of the enhanced Senior Manager functions, the firm will need to:

- satisfy themselves that the person is fit and proper to perform the relevant Senior Management function
- apply for that person to be approved by us
- send us a Statement of Responsibilities with each application

After a Senior Manager has been approved, the firm will need to:

- update and resubmit the Statement of Responsibilities to us whenever there is a significant change to a Senior Manager's responsibilities
- assess that their Senior Managers are fit and proper at least once a year

Firms will need to make sure they have appropriately allocated all of the Enhanced Prescribed Responsibilities to their Senior Managers, and make sure every activity, business area and management function has a Senior Manager responsible for it (overall responsibility).

Firms will also need to prepare and maintain a Responsibilities Map, and ensure they have handover procedures in place.

What Senior Managers need to do

Senior Managers under the enhanced regime will be subject to the same standards and obligations as those under the core regime. These are explained in Chapter 4.

9 Applying the new regime to incoming UK branches

European Economic Area (EEA) and non-European Economic Area (non-EEA) branches should read this chapter.

Introduction

9.1 This chapter sets out our proposals for how the SM&CR will apply to EEA and non-EEA branches. Our proposals are mindful of the different legal structures of incoming branches, the need to maintain a level playing field as far as possible and, for EEA branches, the single market.

Not a branch?
You may wish to skip to next chapter.

Senior Managers in EEA branches

9.2 We propose the following Senior Management Functions for EEA branches. These reflect the executive roles that currently apply under the Approved Persons Regime.

Table 9: Senior Management Functions in EEA branches

Senior Management Functions
SMF21 – EEA Branch Senior Manager
SMF17 – Money Laundering Reporting Officer (MLRO)

9.3 The EEA Branch Senior Manager will cover the individual(s) responsible for the management and conduct of the business of the incoming branch.

9.4 As is the case for UK-authorised firms, there is no territorial limitation for Senior Managers in EEA branches. This means that the Senior Managers Regime will apply to anyone who performs a Senior Manager role, whether they are based in the UK or overseas. In practice, we expect most branches to be able to identify Senior Managers who are primarily based in the UK.

Tell us what you think:

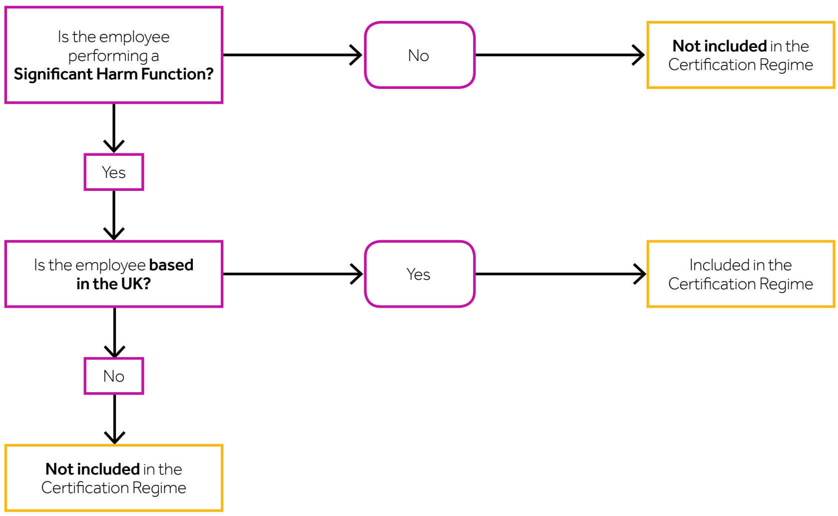
Q28: Do you agree with our proposals for Senior Managers in EEA Branches?

Certification Regime in EEA branches

9.5 We propose applying the Certification Functions set out in Chapter 5 to EEA branches, building on existing functions in the Approved Persons Regime.

9.6 For UK branches, the Certification Regime will be limited to people based in the UK. It will not extend to people based outside of the UK, even if they deal with a UK client.

9.7 This is set out in the diagram below:



Conduct Rules in EEA branches

9.8 The Conduct Rules set out in chapter 7 will apply to all staff of the UK branch (excluding those performing ancillary roles as described in section 7.14). As with the Certification Regime, the Conduct Rules will not apply to other employees based outside the UK. The Conduct Rules apply to the extent they are compatible with the relevant single market directives.

Tell us what you think:

Q29: Do you agree with our proposals on the Certification Regime and Conduct Rules for EEA Branches?

Senior Managers in non-EEA branches

9.9 We propose the following Senior Management Functions under the regime for non-EEA branches.

Table 10: Senior Management Functions in non-EEA branches

Senior Management Functions
SMF19 – Head of Third Country Branch
SMF3 – Executive Director
SMF27 – Partner

Senior Management Functions
SMF16 – Compliance Oversight
SMF17 – Money Laundering Reporting Officer

9.10 We are not proposing to include the additional Senior Management Functions that apply to incoming non-EEA branches of banking firms, such as the SMF18 – Other Overall Responsibility Senior Manager Function. This is because branches are excluded from our enhanced regime, and the Overall Responsibility requirement does not therefore apply.

Prescribed Responsibilities

9.11 We also propose applying the following Prescribed Responsibilities to non-EEA branches. Please note that reference to 'firm' for this purpose means the UK branch and not the overseas legal entity.

Table 11: Prescribed Responsibilities for non-EEA branches

1	Performance by the firm of its obligations under the Senior Managers Regime, including implementation and oversight
2	Performance by the firm of its obligations under the Certification Regime
3	Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
4	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime
5	Responsibility for the firm's compliance with CASS
6	Responsibility for management of the firm's risk management processes in the UK
7	Responsibility for the firm's compliance with the UK regulatory system applicable to the firm
8	Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the firm to the governing body and/or the management body of the firm or, where appropriate, of the parent undertaking or holding company of the firm's group
9	Responsibility for an AFM's value for money assessments, independent director representation and acting in investors' best interests[12]

Tell us what you think:

Q30: Do you agree with our proposals for Senior Managers in non-EEA branches? If you disagree, please explain why.

Q31: Do you agree with our proposals for Prescribed Responsibilities in non-EEA branches? If you disagree, please explain why.

12 This PR only applies to AFMs. For further detail, please refer to CP17/18 and MS15/2.3 – Asset Management Market Study: Final Report. As we said in those documents, we are formally consulting on the detailed Prescribed Responsibility as part of this CP. Please provide any feedback on this point as a response to question 6.

Certification Regime and Conduct Rules in non-EEA branches

9.12 We propose applying the same scope of the Certification Regime and Conduct Rules for both non-EEA and EEA branches.

Tell us what you think:

Q32: **Do you agree with our proposals on the Certification Regime and Conduct Rules for non-EEA Branches?**

10 Changes that affect banking and solo-regulated firms

This chapter affects banks, building societies, credit unions and PRA-designated investment firms ('banking firms') as well as solo-regulated firms. Changes that affect insurers are dealt with in a separate Consultation Paper CP17/26.

New Prescribed Responsibility for Conduct Rules

10.1 We propose introducing a new Prescribed Responsibility so that all firms[13], including banking firms, will need to allocate to a Senior Manager, to make sure the firm trains its staff in the Conduct Rules and complies with the FCA notification requirements (as explained in chapter 7).

Tell us what you think:

Q33: Do you agree with our proposal to introduce a new Prescribed Responsibility for the Conduct Rules that will also apply to banking firms?

The 12-week rule

10.2 Currently, the Approved Persons Regime and the Senior Managers Regime for banking firms allow someone to cover for an Approved Person or a Senior Manager without being approved, where the absence is temporary or reasonably unforeseen, and the appointment is for less than 12 consecutive weeks.

10.3 We propose carrying this rule over to the SM&CR for solo-regulated firms. However, we will extend it so that it also applies to responsibilities under the 'Overall Responsibility' requirement (explained in chapter 8). For example, if the person approved to perform the Chief Operations Function becomes unwell and they're also the person with Overall Responsibility for the complaints handling process, the 12-week rule allows the firm to:

- appoint a person to perform the Chief Operations Function without the new appointment being approved
- reallocate the responsibility for the complaints handling process to the same person, or a different person, without them being approved

13 This prescribed responsibility does not apply to Internally Managed AIFs, as these firms are exempt from the Senior Managers and Certification layers of the regime. The Conduct Rules still apply to relevant individuals at these firms.

Tell us what you think:

Q34: Do you agree with our changes to the 12-week rule? If not, please explain why.

Applying the Partner Senior Management Function to banking firms

10.4 As part of amending the Handbook and extending the Senior Managers Regime to all firms, the SMF27 – Partner Senior Management Function will now apply to banking firms as well.

10.5 Although this will have a technical impact on banking firms, we think the practical impact will be limited – our analysis suggests that no banking firms are currently set up as partnerships. However, if a banking firm is established as a partnership, then the partner function will apply to them.

Tell us what you think:

Q35: Do you agree with our approach to applying the partner function to banking firms? If not, please explain why.

11 Reader's guide to the instrument

11.1 We have drafted our rules and guidance ('the instrument') so that where material applies to firms in different financial sectors, we have kept that material in one place, rather than having separate text for different financial sectors. We also wanted to keep material that only applies to enhanced firms, banking firms and insurers separate from the general requirements that apply to all firms, so that core firms don't have to read material that doesn't apply to them.

11.2 This means that we prepared the draft instrument as follows:

- We have taken the SM&CR material that applies to banking firms at the moment and have amended it so that it applies to all firms.
- The material currently in SYSC 4.5 to 4.9 and 5.2 (Responsibilities Maps, Prescribed Responsibilities, Overall Responsibility, Handover Procedures and the Certification Regime) has been moved to chapters 23 to 27. This is because Chapters 4 and 5 of SYSC only apply to common platform firms and so cannot be used for all firms.
- As the material on Responsibilities Maps, Overall Responsibility and local responsibility and Handover Procedures only applies to a minority of firms, we have separated it out from the rest of the SYSC material.
- In order to avoid creating too many new chapters we have merged sections for UK firms and branches of overseas firms. This means that the material about local responsibility and overall responsibility can now be found together in the same chapter (chapter 27 of SYSC).
- We are proposing to delete SUP 10A and apply SUP 10C to all firms, as most of the material in SUP 10C is applicable to all firms.
- The current version of SUP 10C does not cover some of the Senior Management Functions that apply to solo-regulated firms and insurers. We have amended SUP 10C to include them. We have based part of this material on what is already in SUP 10A, with some amendments to clarify what the existing SUP 10A rules mean.
- We propose revoking APER, so the rules that apply directly to people working in firms will all be in COCON.
- FIT currently deals with fit and proper standards for Approved Persons in solo-regulated firms and insurers, and for Senior Managers and Certification Functions in banking firms. We propose keeping FIT and applying the SM&CR material in it to all firms, removing any material that's no longer relevant.
- SUP 15.11 currently deals with reporting of breaches of COCON by banking firms. We propose to apply that material to all firms.
- As set out in the Overview chapter, this consultation doesn't deal with staff in Appointed Representatives. We will consult on this later, which may involve looking at

some of the material we deleted in the draft instrument. For example, we may need to consider keeping SUP 10A and APER in force for them.

How solo-regulated firms should read the draft instrument

11.3 As explained above, none of the draft instrument text is completely new as we already have rules in place for banking firms. Instead we are amending and adding to existing Handbook text.

11.4 However, as these rules don't currently apply to solo-regulated firms, the text is new in practice. One exception to this is FIT, which currently applies to all firms.

11.5 Our usual practice when amending text in an instrument is to only show amended text. However in this consultation, we are showing the entire text, both amended and unchanged. That means that you can see everything in one place without having to keep looking back at the existing Handbook. The exception to this is COCON – as the majority of the text is unchanged, we have only included the parts where we're proposing changes.

11.6 A reader may find it helpful to approach the instrument as follows:

- ignore the text that has been deleted (ie, the text shown with a line through it)
- read the rest of the text as if it were all new, including both un-amended text and underlined text

How firms already subject to the SM&CR should read the draft instrument

11.7 Although we are not proposing to delete the material currently in SYSC 4.5 to 4.9 and 5.2, we are proposing to renumber and re-order it quite substantially. We have drafted the instrument so that you can see how we have done this:

- There is a list of each current paragraph in the SM&CR parts of chapters 4 and 5 of SYSC showing whether it has been deleted or what its new number is. This is in Annex A of the instrument. We have also included this information near the start of the annex of the instrument that sets out the proposed changes to SYSC.
- Existing text that has been moved, but is otherwise not being amended, is shown as unchanged.
- Where we are amending text that has been moved, we have used mark and overstrike to show changes in the same way as we do with all our other Handbook instruments.
- New text is shown in our normal way (either by underlining or by a note saying that it is new).

- We have included the old SYSC paragraph number underneath the new number so you can easily see where it has come from. We have crossed through the old number so you can see which is the old and which is the new number.

- Our usual practice when amending Handbook text in an instrument is to only show amended text. However in this CP we are showing the entire text, both amended and unchanged so you can see how all the renumbering, reordering, additions and amendments fit together.

11.8 We are not proposing to reorder SYSC 22 (Regulatory References), SUP 10C (Senior Management Functions and Statements of Responsibilities), SUP 15.11 (reporting conduct breaches), COCON and FIT in the same way as we are for chapters 4 and 5 of SYSC. This is how we have included this material:

- We are including the complete text of these parts of the Handbook, including un-amended text.

- We are proposing to renumber a very small part of SUP 10C. We have shown where and how we have done this in the same way as we have for the SYSC changes.

- As most of COCON is untouched, we are showing proposed changes to COCON in the way we normally do for other Handbook instruments. This means we have not included unchanged parts in the draft instrument.

- We have used underlining and overstrike to show changes in the same way as we do with all our other Handbook instruments.

Annex 1
Summary of the cost benefit analysis

Introduction

1. When proposing rules, we must publish a cost benefit analysis (CBA) under Section 138I(2)(a) of FSMA. The CBA must include an analysis and estimate of the costs arising from, and the benefits brought about by, our proposed rules. This chapter summarises the CBA. Firms should also read our full CBA which can be found here www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf.

2. As part of our CBA, we have attempted to calculate:

- the likely costs for firms and the FCA, split into one-off and ongoing
- the illustrative reduction in harm required for the proposed policy to break-even (ie for benefits to balance costs)

3. The benefits and wider indirect effects have not been quantified, as we believe it would be difficult to do so reliably. We have provided a qualitative discussion of these elements instead.

Market failures

4. Our SM&CR proposals seek to address market failures in order to prevent harm from occurring. Whilst we expect firms to identify and rectify problems themselves, we will work with them to help ensure their systems and controls, governance, and culture enable them to comply fully with our rules.

5. There are two areas of harm in particular in markets served by solo-regulated firms and insurers:

- information asymmetry: firms have more information than their regulator(s) and firms' employees have more information than firms' owners (for example, shareholders)
- behavioural biases affecting employees

6. Information asymmetry exists when one party knows more than the other. This can cause problems when the party with more information doesn't act in the interests of the other party. For example, a firm may convince a customer that they need a certain product, when in reality the customer doesn't or another product is a better option for them.

7. Information asymmetry between firms and the regulators arises because the regulator can't monitor all activities and outcomes in financial markets, or detect all misconduct.

8. A similar information asymmetry exists between a firm's employees and its owners. Employees may think they are unlikely to get caught, and so take excessive risks, leading to poor outcomes for the firm. They may also not comply with the firm's rules more generally.

9. Behavioural biases are distortions that impede peoples' ability to make choices that are in their best interests. Biases can cause people to misjudge important facts or to be inconsistent, for example changing their choices for the worse when the same decision is presented in a different way, or imitating their peers even though it is not in their interests. In other words, our normal human thought processes can lead us to make mistakes.

10. The SM&CR is designed to address these failures and improve how markets function. This, in turn, should contribute to our consumer protection objective.

11. The CBA assesses the costs and benefits of the proposed policy compared to how the markets would evolve in the absence of the policy (the 'counterfactual'). We have used the existing Approved Persons Regime (APR) as the counterfactual.

Compliance costs and costs to the FCA

12. There is often a compliance cost for firms in applying regulations. For example, staff may need additional training and supervision, or new IT equipment might be needed to document compliance. Some of these costs only arise when the new requirements are implemented (ie one-off costs), for example due to system changes, while others will be ongoing, for example training for new joiners.

13. To assess these costs we sent questionnaires to 2,017 firms (at legal entity level).[14] We received responses from 190 solo-regulated firms and 37 insurers. Firms reported individual costs incurred against each of the elements of the regime, split into a number of subcategories such as training, organisational restructure and staff monitoring. We have used these 'reported costs' in our CBA.

14. However, we acknowledge that our CBA estimates are subject to a number of uncertainties (see our full CBA for details). Therefore, we have also calculated 'revised estimates' which we believe are a better reflection of the true costs that firms will incur to comply with the proposed policy on a one-off and ongoing basis. We have calculated these by excluding cost categories that are unlikely to be borne in practice.

14 To increase the number of expected responses by insurers, the original sample of 1,740 firms contacted on 28 September 2016 was enlarged by a further sample of 277 insurers on 2 November 2016.

15. Table 12 below presents the revised estimates calculated, and the lower bounds of these estimates. The reported estimates are presented in Annex 1 of our full CBA document.

Table 12: Total one-off and annual ongoing costs for the regime for all solo-regulated firms

Regime	one-off, £m	Ongoing, £m
Limited scope	194.3 – 196.3	65.4 – 81.1
Core	190.5 – 193.1	53.2 – 76.0
Enhanced	162.2 – 162.9	21.5 – 33.5
Total	547.1 – 552.3	140.0 – 190.5

Source: FCA survey of firms (undertaken Q4 2016).

16. In addition, we estimate that the FCA will itself incur an estimated £13.4 million over 4 years as the new regime is developed and implemented. These costs are to cover FCA staff costs (£7.9m), training for FCA staff, communication to industry and consultancy costs (£1.9m) and to develop the IT infrastructure to enable the new regime to function (£3.6m).

17. The total cost to the FCA for the whole SM&CR extension includes the costs of extending the policies to solo-regulated firms and insurers. It is not possible to split out the costs attributable to solo-regulated firms and insurers separately.

Indirect costs and wider impacts

18. Indirect costs result from people changing their behaviour as a result of the policy, rather than as a direct result of complying with the policy itself. For example, placing higher levels of responsibility on Senior Managers may mean some people leave financial services, increasing recruitment costs.

19. Operational efficiency looks at trying to maximise output for a given level of input, ie trying to allocate a firm's resources to produce the highest level of output possible. The overall impact of our SM&CR proposals on operational efficiency is unclear. On the one hand, increasing the monitoring of staff conduct and activity may take resources away from more profitable areas. On the other hand, it could result in better decision making and final products, as there is closer scrutiny and review in the development process.

20. We do not expect a significant net change in competition, although there may be several effects pulling in different directions. Areas where we expect competition may be affected are product innovation, firm entry and exit to the market, and international competitiveness. Product innovation may be delayed due to a lengthier sign-off process (although this could improve the end product), and more risky innovation may be avoided altogether, as Senior Managers seek to reduce the risks they may be held accountable for. However it has been recognised that regulation can also foster innovation. There may be changes to firm entry and exit in markets as the relative cost of the SM&CR will vary according to the size and complexity of firms. Finally, as the SM&CR applies to firms in the UK, domestic firms will face relatively higher costs than foreign firms, reducing their competitiveness. On the other hand, higher standards of conduct and culture may improve the integrity of the market, drawing in foreign investment and business. Importantly, we are unlikely to see a negative effect on competition that is in the interest of consumers if firms that cannot meet basic standards leave the market.

21. We expect some cost increases on firms to pass through to consumers in the form of higher prices. However, some markets will experience lower prices as exploitative behaviour is reduced, competition is improved, and firms improve their standards and compliance.

22. The SMR may lead to higher wages for Senior Managers as they demand more pay for the increased responsibility (and potential liability) that the SMR introduces. For the same reason, it may also be harder to attract and retain Senior Managers in financial services. However, regulatory references and the annual fit and proper checks should reduce the 'recycling' of inappropriate staff, which may result in increased profits for firms and better products for consumers.

23. If the extension of the SM&CR is perceived to be fair and justifiable, firms' compliance may be improved. However, if the regime is perceived as unnecessary or disproportionate, this may reduce firms' engagement with regulation, increasing non-compliance.

Potential benefits

24. A robust individual accountability regime can reinforce acceptable standards of behaviour and be a critical factor for deterring misconduct. Ultimately, its main aim is to drive culture change by making Senior Managers more accountable and by applying basic conduct standards to all financial services staff. There are a number of channels through which we expect the SM&CR to drive the reduction in harm.

25. Firstly, culture and standards will be driven up through increased accountability at the senior level, supported by a new 'duty of responsibility' on Senior Managers, senior Conduct Rules and the Certification Regime. Better culture throughout the firm should improve outcomes for consumers by reducing exploitative behaviour.

26. Secondly, through the application of Conduct Rules, associated reporting requirements and firm-level assessments of staff's suitability, we expect misconduct to be more easily identified. Also, the wider application of our Conduct Rules, combined with other SM&CR tools (for example, Statements of Responsibilities, and Prescribed Responsibilities) will broaden the scope for, and increase the focus and effectiveness of, FCA disciplinary actions, where appropriate. We expect misconduct will more likely be caught and sanctioned, reducing misconduct and so reducing harm to consumers.

27. Thirdly, the Certification Regime and Conduct Rules should encourage more effective competition. By improving compliance and reducing misconduct, we might expect increased competition in the interests of consumers, rather than competition between firms that seek to exploit consumers' information asymmetries or their behaviour. By reducing exploitation, firms acting in the best interests of consumers are more likely to get business, leading to stronger competition and resulting in better, cheaper products for consumers.

28. Fourthly, increased accountability should lead to better decision making within firms. Improved decision making should cut costs and/or lead to better quality products. Customers should experience lower prices and better products/services.

29. Finally, the introduction of conditional approvals, regulatory references and a reduction in the number of people approved by the Regulators should improve staff hiring processes in firms. Firms will also have savings of £4.4m per year from no longer having to gain pre-approval for some roles. This estimate is likely to be an underestimate of the true saving as the majority of firms will require fewer pre-approved roles (eg fewer SMFs) than expected at the time of our survey. This is because we asked firms to cost the full requirements although these only partially apply to the majority of firms.

30. Collectively, we expect our policy proposals to reduce the market failures identified earlier, specifically information asymmetry and behavioural distortions.

Illustration of potential benefits

31. We have not attempted to quantify the benefits because we believe that they cannot be reliably estimated.

32. Instead, we have attempted to quantify the harm that consumers experience from products or services they have bought. Such problems include financial loss (eg from buying a product that does not suit their needs), loss of time and other factors, such as distress.

33. Using data on redress and fines, we have estimated for illustrative purposes the harm from misconduct. The approach we use allows us to provide a basic estimate of harm that actually occurred and therefore of the potential benefits of the proposed policies from a reduction of this harm.

34. We use three sources of data to estimate of the level of harm caused by firms affected by these proposals:

- redress paid to compensate for harm
- costs of handling complaints
- the fines for misconduct imposed by the FCA

Table 13: Estimated unpaid redress, complaints-handling costs and fines (£m) per year, solo-regulated firms

	Redress				Total	
Regime	Lower (Unpaid redress)	Upper (any problem)	Admin. costs	Fines	Lower (Unpaid redress)	Upper (any problem)
All firms	1,461.9	2,118.6	116.9	66.8	1,645.6	2,302.4
Enhanced	84.9	123.1	26.5	50.6	162.1	200.2
Core	1,021.3	1,480.1	59.6	10.0	1,090.9	1,549.7
Limited Scope	355.6	515.4	30.8	6.2	392.7	552.4

FCA analysis. Totals do not add up precisely due to rounding.

Comparison of costs and benefits

35. Finally, we calculated, based on the quantifiable costs, what percentage reduction in harm identified would be needed for the proposed policy packages to break even.

36. We recognise that the costs in this analysis are only an illustrative estimate of harm. However, accepting these limitations, the following analysis demonstrates that the proposals are likely to be proportionate to the scale of the harm in financial services that our proposals seek to address.

37. To create an overall measure of the costs and benefits over a 10-year period, we converted them to 'present values' (PV) and then sum them. The PV reflects that society prefers to receive goods and services sooner rather than later and to defer costs to future generations. That is, costs incurred in the future are valued less than costs incurred immediately.[15]

38. The analysis indicates that a greater than 9%-16% reduction in harm identified would lead to benefits that are larger than the compliance costs for all solo-regulated firms.

Table 14: Reduction in harm needed to break even, solo-reg. firms (by 10-year present value, £m)

Regime	Compliance cost PV, £m	Total estimated harm PV £m*	Required reduction in harm to breakeven*
Solo-reg. firms	1,710.7 – 2,150.7	13,685.9 – 19,148.0	9-16%

FCA analysis. This shows the share of the compliance costs (net of cost savings due to fewer pre-approvals) against the unpaid redress, complaints handling costs and fines using an interest rate of 3.5%. *While the lower bound of the total illustrative harm may underestimate the harm to some extent, the upper bound is a considerable overestimate of the harm.

39. It also appears likely that the additional, non-quantifiable benefits of the proposed policies will outweigh the indirect costs.

40. Overall, we expect the reduction in harm to outweigh the costs of implementing the proposals, and the policy to be net beneficial.

41. We consider the costs incurred for the three changes for banking firms (see Chapter 10) to be of minimal significance and hence we do not publish a CBA according to FSMA 138L (3) (b)).

Tell us what you think:

Q36: **Based on the summary above and the full analysis www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf, do you agree with our approach and methodology for the cost-benefit analysis? If not, please explain why.**

Q37: **Based on the summary above and the full analysis www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf, do you agree with our findings and conclusions for the cost-benefit analysis? If not, please explain why.**

15 We use 3.5%, the discount rate used by HM Treasury for policy appraisal.

Annex 2
List of questions

Q1: Does the proposed list of Senior Managers in the core regime cover the appropriate roles, ie the most senior decision makers within a firm?

Q2: Are there any other roles that the FCA should consider specifying as SMFs? (You may wish to consider the list of proposed Senior Managers under the enhanced regime in section 8.16)

Q3: Are there any proposed Senior Managers that the FCA should consider excluding from the core regime?

Q4: Do you agree with our approach to Senior Management Functions for Limited Scope Firms? If not, please explain why.

Q5: Do you agree with our proposed list of Prescribed Responsibilities? If not, please explain why.

Q6: Do you agree with our proposed Prescribed Responsibility for AFMs as set out in CP17/18? If not, please explain why.

Q7: Do you agree with the functions we have proposed making Certification Functions? If not, please explain why.

Q8: Are there any other functions that we should make a Certification Function?

Q9: Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?

Q10: Do you agree with our proposed territorial limitation for the Certification Regime? If not, please explain why.

Q11: Do you agree with the approach we have proposed to allocating CASS responsibilities? If not, please explain why.

Q12: Do you agree with our proposed approach to rules and guidance on the fit and proper test? If not, please explain why.

Q13: **Do you agree with our proposed requirements on criminal record checks? If not, please explain why.**

Q14: **Do you agree with our proposed requirement of regulatory references? If not, please explain why.**

Q15: **Do you agree with our proposal to apply the Conduct Rules to financial services activities?**

Q16: **Do you agree with our proposal to apply the Conduct Rules to all employees who perform financial services, with the limited exclusions listed in section 7.14?**

Q17: **If you disagree, please explain why, including (where appropriate) cost implications.**

Q18: **Do you agree with our proposal to link notification requirements for disciplinary action to breaches of the Conduct Rules?**

Q19: **Do you agree with our proposed frequency of Conduct Rules notifications? If not, please explain why.**

Q20: **Do you agree with our proposed approach of using the objective criteria set out above to identify firms for the enhanced regime? If not, please explain why and propose alternative approaches.**

Q21: **Do you agree with our proposed approach to moving firms between core and enhanced? If not, please explain why.**

Q22: **Do you agree with our proposed Senior Management Functions for enhanced firms?**

Q23: **Do you agree that this will ensure the most senior people in firms are covered by the Senior Managers Regime, regardless of organisational structure? If not, please explain why.**

Q24: **Do you agree with our proposals for Prescribed Responsibilities in enhanced firms? If not, please explain why.**

Q25: **Do you agree with our proposal to apply the Overall Responsibility requirement to enhanced firms? If not, please explain why.**

Q26: **Do you agree with our proposal to apply Responsibilities Maps to enhanced firms? If not, please explain why.**

Q27: **Do you agree with our proposal to apply handover procedures to enhanced firms? If not, please explain why.**

Q28: **Do you agree with our proposals for Senior Managers in EEA Branches?**

Q29: **Do you agree with our proposals on the Certification Regime and Conduct Rules for EEA Branches?**

Q30: **Do you agree with our proposals for Senior Managers in non-EEA branches? If you disagree, please explain why.**

Q31: **Do you agree with our proposals for Prescribed Responsibilities in non-EEA branches? If you disagree, please explain why.**

Q32: **Do you agree with our proposals on the Certification Regime and Conduct Rules for non-EEA Branches?**

Q33: **Do you agree with our proposal to introduce a new Prescribed Responsibility for the Conduct Rules that will also apply to banking firms?**

Q34: **Do you agree with our changes to the 12-week rule? If not, please explain why.**

Q35: **Do you agree with our approach to applying the partner function to banking firms? If not, please explain why.**

Q36: **Based on the summary above and the full analysis www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf, do you agree with our approach and methodology for the cost-benefit analysis? If not, please explain why. If not, please explain why.**

Q37: **Based on the summary above and the full analysis www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf, do you agree with our findings and conclusions for the cost-benefit analysis? If not, please explain why.**

Annex 3
Compatibility statement

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In developing our proposals, we have had regard to the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government.

5. Treasury's recommendations most relevant to our proposals are the following:

   - The government's economic policy – 'continuing to strengthen the financial system, improving the regulatory framework to reduce risks to the taxpayer and building resilience, so that it can provide finance and financial services to the real economy and realise better outcomes for consumers, supporting sustainable economic growth and encouraging productive investment.'
   - Matters about aspects of the government's economic policy that relate to 'Growth', 'Better outcome for consumers' and 'Competition'.

6. Our proposals are intended to have a positive impact on the behaviour and culture of the firms in question, which should contribute to greater sustainability of any growth in the financial services markets and in the UK economy as a result.

7. Also, one of the main objectives of our proposals is to ensure that Senior Managers are clear about the responsibilities they hold and are held accountable for the performance of these responsibilities. There are also specific standards of conduct that will apply to Senior Managers and financial services staff. Our proposals aim to raise conduct standards and improve culture. Therefore, they intend to have a positive impact on the financial system by improving the regulatory framework to reduce risks and realise better outcomes for consumers.

8. We believe that our proposals do not undermine Treasury's recommendations relating to 'Competition'. We have kept competition in mind when framing how these proposals should be implemented. In particular, we have focussed on whether there is a risk of weakening competitive pressure, disadvantaging smaller firms and potential new entrants. In considering applying the SM&CR to all FSMA authorised firms, we have been mindful of the need to consider the impact on those firms that pose lower risk to our statutory objectives. Therefore, our proposals have been specifically tailored to reflect the different businesses carried out by different persons and allow firms flexibility in how to achieve these.

9. For a detailed assessment of the equality and diversion implications of these proposals, see section 2.41.

The FCA's objectives and regulatory principles: Compatibility statement

10. The proposals set out in this consultation are primarily intended to advance our operational objective of securing an appropriate degree of protection for consumers. They are also relevant to our operational objective of ensuring that the relevant markets function well. They will clarify the lines of responsibility at the top of relevant firms and enhance the regulators' ability to hold senior and other individuals in such firms to account. This should, over time, result in improved governance across financial services.

11. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

12. The proposals set out in this consultation will impact the FCA's existing authorisations, supervision and enforcement processes and systems. The FCA will incur additional short-term costs as the regime is implemented (for example, there will be an increase in staff costs leading up to the implementation date). The FCA will also incur costs in developing the IT infrastructure for the new regime. These costs are set out in the detailed Cost Benefit Analysis.

13. Following the implementation, there is not expected to be any significant change in the level of resources the FCA uses, relative to the costs of regulating the current regime.

The principle that a burden or restriction should be proportionate to the benefits

14. The proposals are intended to result in beneficial changes in behaviour and reduce non-compliance, misconduct, excessive risk taking and un–allocated individual responsibility. Firms are likely to incur both direct and indirect compliance costs, but our Cost-Benefit Analysis shows that these are not excessive, compared to the potential benefits to consumers. We therefore believe that the proposals in this Consultation Paper are proportionate to the benefits.

The desirability of sustainable growth in the UK economy in the medium or long term

15. Our proposals are intended to have a positive impact on the behaviour and culture of the firms in question, which should contribute to greater sustainability of any growth in the market.

The general principle that consumers should take responsibility for their decisions

16. The proposals we have made concern firms' governance arrangements and requirements applying to their staff. These are not matters over which consumers can have any influence, and they simply have to accept the firm they deal with as it is. However, with an improved culture and raising of standards within firms to treat customers fairly and have proper regard to their informational needs, there is implicit support that firms would be better placed to enable consumers to take responsibility for their own decisions.

The responsibilities of senior management

17. One of the main objectives of the proposals contained in this Consultation Paper is to ensure that Senior Managers are clear about the responsibilities they hold and are more effectively held accountable for the performance of these responsibilities. There are also specific standards of conduct that apply to Senior Managers through the Senior Manager Conduct Rules.

The desirability of recognising differences in the nature and objectives of business carried out by different persons, including mutual societies and other kinds of business organisations

18. We believe our proposals do not undermine this principle. In considering applying the SM&CR to all firms, we have been mindful of the need to consider the impact on smaller firms and those with limited permissions.

19. Broadly speaking, we decided that the broad tiers of the regime should apply to all relevant firms – ie the Senior Managers Regime, Certification Regime and Conduct Rules. This is because the risk to consumers in dealing with badly governed smaller firms is the same as with larger firms. Having said that, although our proposals are designed to lead to similar outcomes for consumers, regardless of the firm they deal with, they have been specifically tailored to reflect the different businesses carried out by different persons and allow firms flexibility in how to achieve these. So the Senior Managers Regime is designed to avoid imposing a uniform governance structure on all firms, although all firms will need to demonstrate clear lines of accountability within the governance structure. The Certification Regime also allows firms to identify the functions that can cause significant harm to their business models and consumers. The Code of Conduct is also written at a high level to allow it to reflect the levels of complexity and riskiness of different firms' business.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

20. We will be able to see compliance with the rules either from the information that firms give us (eg under existing requirements in SUP 15, Principle 11 or the new obligation to inform the regulators about disciplinary action arising out of breaches) or by a supervisory visit (eg the operation of the Certification Regime). We do not propose to change our current policy which is that this information is not published, but instead will consider each firm's circumstances on a case by case basis, including as part of any enforcement investigation.

The principle that we should exercise our functions as transparently as possible

21. The FCA has obtained industry feedback during the pre-consultation stage and engaged with relevant external stakeholders. We will continue to actively engage with relevant stakeholders throughout the consultation process.

Duty to have regard to the importance of taking action intended to minimise the extent to which business may be used for financial crime

22. In formulating these proposals, we have regarded the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). Our proposals seek to address financial crime risks through our SMFs (in particular, the Money Laundering Reporting Officer), Prescribed Responsibilities (in particular, the responsibility for financial crime) and Conduct Rules.

Expected effect on mutual societies

23. We do not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

24. Our proposals take account of the FCA's duty to promote effective competition in the interests of consumers. We have kept the competition objective in mind when framing how these proposals should be implemented, with a particular focus on whether there is a risk of weakening competitive pressure, disadvantaging smaller firms and potential new entrants.

Equality and diversity

25. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

The outcome of the assessment in this case is stated in section 2.41 of the Consultation Paper.

Annex 4
Abbreviations used in this paper

AFM	Authorised Fund Manager
AIF	Alternative Investment Fund
AIFMD	Alternative Investment Fund Managers Directive
APER	Statements of Principle and Code of Practice for Approved Persons (Handbook)
APR	Approved Persons Regime
Banking firms	Banks, Building Societies, Credit Unions and PRA-designated Investment Firms
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms (Handbook)
CASS	Client Assets Sourcebook (Handbook)
CBA	Cost Benefit Analysis
COCON	Conduct Rules (Handbook)
CP	Consultation Paper
DBS	Disclosure and Barring Service
DEPP	Decision Procedure and Penalties Manual (Handbook)
EEA	European Economic Area
EU	European Union
FCA	Financial Conduct Authority
FEMR	Fair and Effective Markets Review
FIT	The Fit and Proper Test for Approved Persons (Handbook)
FSMA	Financial Services and Markets Act 2000
IFPRU	Prudential Sourcebook for Investment Firms (Handbook)
IT	Information Technology

MIFID	Markets in Financial Instruments Directive
PCBS	Parliamentary Commission on Banking Standards
PR	Prescribed Responsibility
PRA	Prudential Regulation Authority
PV	Present Values
PV	Present values
RMAR	Retail Mediation Activities Return
SM&CR	Senior Managers and Certification Regime
SMF	Senior Management Function
SMR	Senior Managers Regime
SUP	Supervision Manual (Handbook)
SYSC	Senior Management Arrangements, Systems and Controls (Handbook)
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom

Appendix 1
Draft Handbook text

INDIVIDUAL ACCOUNTABILITY (No 2) INSTRUMENT 2018

Powers exercised

A. The Financial Conduct 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 59 (Approval for particular arrangements);
(2) section 59AB (Specifying functions as controlled functions: transitional provision);
(3) section 60 (Applications for approval);
(4) section 60A (Vetting candidates by authorised persons);
(5) section 61 (Determination of applications);
(6) section 62A (Changes to responsibilities of senior managers);
(7) section 63ZA (Variation of senior manager’s approval at request of authorised person);
(8) section 63ZD (Statement of policy relating to conditional approval and variation);
(9) section 63C (Statement of policy);
(10) section 63E (Certification of employees by authorised persons);
(11) section 63F (Issuing of certificates);
(12) section 64A (Rules of conduct);
(13) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
(14) section 69 (Statement of policy);
(15) section 137A (The FCA’s general rules);
(16) section 137T (General supplementary powers);
(17) section 139A (Power of the FCA to give guidance); and
(18) section 395 (The FCA’s and PRA’s procedures).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*].

Amendments to the Handbook

D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraphs E, F, G and H of this instrument.

E. Amendments to the numbering and location of provisions in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and Chapter 10C of the Supervision Manual (SUP) are set out in the tables in Annex A.

Except as further amended by paragraphs F and G of this instrument, the provisions in column B of the tables in Annex A otherwise remain in full force and effect.

F. Cross references throughout the FCA's Handbook to provisions listed in column A of the tables in Annex A of this instrument are amended accordingly, but only where both the existing and revised cross reference is a reference:

(a) to a chapter;
(b) to an annex;
(c) to a section; or
(d) in a form not including any sub-paragraph numbering or lettering after the letter designating the legal nature of the provision, such as a rule (designated with an "R") or guidance (designated with a "G").

G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below (as amended, where applicable, by paragraphs E and F of this instrument) are amended or, as the case may be, further amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Code of Conduct (COCON)	Annex D
Fit and Proper test for Approved Persons (FIT)	Annex E
Supervision manual (SUP)	Annex F

H. The Statements of Principle and Code of Practice for Approved Persons (APER) module of the FCA's Handbook of rules and guidance is revoked from [*date*].

[*Editor's note*: The second Consultation Paper will consider whether this is to be retained for some purposes]

I. The Fit and Proper test for Approved Persons and Specified significant-harm functions (FIT) module of the FCA's Handbook of rules and guidance is renamed the Fit and Proper test for Employees and Senior Personnel.

Notes

J. In this instrument, the "notes" (indicated by "*Editor's note:*" or "**Note:**") are intended for the convenience of the reader and do not form part of the legislative text.

Citation

K. This instrument may be cited as the Individual Accountability (No 2) Instrument 2018.

By order of the Board
[*date*] 2018

Annex A

Renumbering and deletions in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and the Supervision manual (SUP)

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.5 Management responsibilities maps for UK relevant authorised persons	Deleted
Application	Application and purpose (Section heading for 25.1)
4.5.1R	25.1.1R
4.5.2R	25.1.3R
4.5.3R	25.1.2R
General rule	General rule
4.5.4R	25.2.1R
4.5.5R	25.2.2R
4.5.6G(1) and (2)	25.1.6G(1) and (2)
Specific requirements	Specific requirements
4.5.7R	25.2.3R
4.5.8R	25.2.4R
Guidance about what should be in a management responsibilities map	Guidance about what should be in a management responsibilities map (Section heading for 25.4)
4.5.9G(1)	25.4.1G
4.5.9G(2)	25.4.2G
4.5.10G	25.4.3G
4.5.11G	25.4.4G

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.5.12G(1)	Deleted
4.5.12G(2)	25.4.5G
4.5.12G(3)	25.4.6G
4.5.12G(4)	25.4.7G
4.5.12G(5)	25.4.8G
4.5.12G(6)	25.4.11G
4.5.12G(7)	25.4.9G
4.5.12G(8)	25.4.10G
4.5.12G(9)	25.4.12G
Small firms	Small firms
4.5.13G(1)	25.5.14G(1)
4.5.13G(2)	24.3.5G
Single document	Management responsibilities map should be a single document
4.5.14R	25.5.1R
4.5.15G(1) to (4)	25.5.2G(1) to (4)
4.5.15G(5)	25.5.3G
Purpose of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person)	Purpose of SYSC 25 Annex 1G
4.5.16G(1)	Deleted
4.5.16G(2) and (3)	25.7.2G(1) and (2)
4.5.16G(4)	25.7.4G
4.5.16G(5)	25.7.3G
4.5.17G	25.7.5G

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
Contents of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person)	Contents of SYSC 25 Annex 1G
4.5.18G	25.7.6G
4.5.19G	25.7.7G
4.5.20G	25.7.8G
Records	Management responsibilities maps: Records (Section heading for 25.8)
4.5.21G	25.8.1G
4.5.22G	25.8.2G
4.6 Management responsibilities maps for non-UK relevant authorised persons	Deleted
Application	Deleted
4.6.1R	25.1.4R
4.6.2R	Deleted
4.6.3R	Deleted
4.6.4G	Deleted
Purpose	Deleted
4.6.5G(1)	Deleted
4.6.5G(2)	25.6.3G
General rule for third-country relevant authorised persons	Deleted
4.6.6R	Deleted
4.6.7R	Deleted
4.6.8G	Deleted

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
Specific requirements for third-country relevant authorised persons	Deleted
4.6.9R(1)	Deleted
4.6.9R(2)	25.1.5R
4.6.10R	Deleted
Single document	Deleted
4.6.11R	Deleted
Guidance about management responsibilities maps for a branch maintained by a third-country relevant authorised person	Deleted
4.6.12G	Deleted
4.6.13G	Deleted
4.6.14G	Deleted
Management responsibilities maps for EEA relevant authorised persons: General rule	Deleted
4.6.15R	Deleted
4.6.16R	Deleted
Responsibilities maps for EEA relevant authorised persons: purpose	Deleted
4.6.17G(1)	25.6.2G(1)
4.6.17G(2)	25.6.2G(2)
4.6.17G(3)	25.1.6G(3)
4.6.17G(4)	25.6.2G(4)
Responsibilities maps for EEA relevant authorised persons: detailed requirements	Deleted
4.6.18R	Deleted

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.6.19R	Deleted
Responsibilities maps for EEA relevant authorised persons: leaving out information already supplied	Leaving out information already supplied
4.6.20R	25.6.5R
4.6.21G	25.6.6G
4.6.22G	25.6.7G
4.6.23G	25.6.8G
4.6.24G	25.6.9G
Management responsibilities maps for EEA relevant authorised persons: Single document	Deleted
4.6.25R	Deleted
Management responsibilities maps for EEA relevant authorised persons: guidance about what should be included	Deleted
4.6.26G	25.6.10G
4.6.27G	Deleted
4.6.28G	Deleted
Management responsibilities maps for small branches maintained by non-UK relevant authorised persons	Deleted
4.6.29G	Deleted
4.7 Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities	Deleted
Application	Application (Section heading for SYSC 24.1)
4.7.1R	24.1.1R

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.7.2R	24.1.3R
4.7.3R	24.1.2R
Purpose of this section	Deleted
4.7.4G	Deleted
Allocation of FCA-prescribed senior management responsibilities	Allocation of FCA-prescribed senior management responsibilities
4.7.5R(1)	24.2.1R
4.7.5R(2)	Deleted
4.7.5R(3)	Deleted
4.7.5R(4)	Deleted
4.7.5R(5)	24.2.3R(1)
4.7.5R(6)	24.2.3R(2)
4.7.5R(7)	24.2.4R
4.7.6R	24.2.5R
4.7.7R	24.2.6R
4.7.8R(1)	26.3.1R
4.7.8R(2)	26.4.2R
4.7.8R(3)	26.3.4R
4.7.9G	Deleted
4.7.10G	Deleted
Meaning of overall responsibility	Deleted
4.7.11G	26.7.2G
4.7.12G	26.6.7G
4.7.13G	26.7.4G

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.7.14G	26.7.5G
4.7.15G	Deleted
4.7.16G	Deleted
4.7.17G	Deleted
4.7.18G	26.4.5G
Who functions should be allocated to	Who prescribed responsibilities should be allocated to (Section heading for 24.3)
4.7.19G	Deleted
4.7.20G	Deleted
4.7.21G(1)	Deleted
4.7.21G(2)	26.9.1G
4.7.22G	Deleted
4.7.23G	26.9.4G
4.7.24G(1)	24.3.2G
4.7.24G(2)	24.3.3G(1)
4.7.24G(3)	24.3.1G
4.7.24G(4)	Deleted
4.7.24G(5)	24.3.4G
Dividing and sharing management functions between different people	Dividing and sharing management functions between different people
4.7.25G(1)	24.3.7G
4.7.25G(2)	24.3.8G
4.7.26G	24.3.9G

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.7.27G	24.3.10G
4.7.28G	24.3.11G
4.7.29G	24.3.12G
Allocation of responsibilities and territorial scope	Allocation of responsibilities and territorial scope
4.7.30G	24.3.13G
Group management arrangements and outsourcing	Group management arrangements and outsourcing (Section heading for 26.10)
4.7.31G	26.10.1G
4.7.32G	26.10.3G
4.7.33G	Deleted
4.7.34G	26.10.2G
Link between the senior management regime and this section	Link between designated senior management functions and this chapter
4.7.35G	Deleted
4.7.36G	26.11.1G(1) to (3)
Link between SYSC 4 Annex 1G and this section	Link between SYSC 25 Annex 1G and this chapter
4.7.37G	26.11.2G
4.7.38G	26.11.3G
4.8 Senior management responsibilities for third-country relevant authorised persons: allocation of responsibilities	Deleted
4.8.1R	Deleted
4.8.2R	26.1.5R

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.8.3R	26.1.4R
4.8.4R	26.1.2R
Purpose	Purpose (Section heading for SYSC 26.2)
4.8.5G	26.2.1G
Allocation of FCA-prescribed senior management responsibilities for third-country relevant authorised persons	Deleted
4.8.6R	Deleted
4.8.7R	Deleted
4.8.8G	24.3.14G
4.8.9R	Deleted
Local responsibility for a branch’s activities, business areas and management functions	Deleted
4.8.10R(1) to (3)	26.3.2R(1) to (3)
4.8.10R(4)	26.3.3R
4.8.10R(5)	Deleted
4.8.10R(6)	26.4.3R
4.8.10R(7)	Deleted
4.8.11G(2)	26.6.4G(1)
4.8.11G(3)	26.6.4G(2)
4.8.11G(1), (4), (5) and (6)	Deleted
Meaning of local responsibility: general	Deleted
4.8.12G	26.6.6G
4.8.13G(1)	Deleted

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.8.13G(2)	26.4.4G
4.8.14G	Deleted
Meaning of local responsibility in SYSC 4.8.10R(1): overall responsibility	Deleted
4.8.15G	Deleted
4.8.16G	Deleted
4.8.17G	26.7.3G
4.8.18G	26.7.6G
4.8.19G	Deleted
Meaning of local responsibility in SYSC 4.8.10R(2)	Deleted
4.8.20G(1)	26.8.1G
4.8.20G(3)	26.8.2G
4.8.20G(2) and (4)	Deleted
Who functions should be allocated to	Who functions should be allocated to (Section heading for SYSC 26.9)
4.8.21G	Deleted
4.8.22G	26.9.2G
4.8.23G	Deleted
4.8.24G	Deleted
4.8.25G	Deleted
4.8.26G	26.8.4G
Setting overall strategy for a branch	Branches: Setting overall strategy for a branch
4.8.27G	26.8.3G

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
Not giving too much responsibility to one individual	Not giving too much responsibility to one individual
4.8.28G(1) to (4)	Deleted
4.8.28G(5)	26.9.5G
Group arrangements and outsourcing	Deleted
4.8.29G	Deleted
Allocation of responsibility for transactions	Allocation of responsibility for transactions in branches
4.8.30G	26.5.3G
Application of SYSC 4.7 to branches maintained by third-country relevant authorised persons	Deleted
4.8.31R	Deleted
Link between the senior management regime and this section	Deleted
4.8.32G	Deleted
4.8.33G(1)	Deleted
4.8.33G(2)	26.11.1G(4)
4.8.34G	26.11.1G(5)
Link between SYSC 4 Annex 1G and this section	Deleted
4.8.35G	Deleted
4.9 Handover procedures and material	Handover procedures and material (Section heading for 25.9)
Application	Application
4.9.1R(1)	25.9.1R

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
4.9.1R(2)	25.9.2R
4.9.2R	Deleted
4.9.3R	Deleted
Rules about handover material	Rules about handover material
4.9.4R	25.9.4R
4.9.5R	25.9.5R
4.9.6G	25.9.6G
4.9.7G	25.9.7G
Handover arrangements and certificates	Handover arrangements and certificates
4.9.8G	25.9.8G
Application of this section to other parts of a firm's management	Application of this section to other parts of a firm's management
4.9.9G	25.9.9G
4 Annex 1G The main business activities and functions of a relevant authorised person	25 Annex 1G Examples of the business activities and functions of an SMCR firm
5.2 Certification regime	Senior managers and certification regime: Certification regime (Chapter heading for 27)
Application	Application and purpose (Section heading for 27.1)
5.2.1R	27.1.1R
5.2.2G	27.1.2G
Purpose	Purpose
5.2.3G	27.1.4G
General requirements	Basic requirements

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
5.2.4G	27.2.3G
5.2.5G	27.2.2G
Fitness to act	Fitness to act
5.2.6G	27.2.4G
5.2.7G	27.2.5G
5.2.8G	27.2.6G
5.2.9G	27.2.7G
5.2.10G	27.2.8G
Issuing and renewing certificates	Issuing and renewing certificates
5.2.11G	27.2.9G
5.2.12G	27.2.10G
5.2.13G	27.2.11G
5.2.14G	27.2.12G
5.2.15G	27.2.13G
5.2.16G(1)	27.2.14G(1)
5.2.16G(2)	27.2.14G(4)
5.2.16G(3)	27.2.14G(5)
5.2.17G(1)	27.2.15G(1) and 27.2.15G(2)
5.2.17G(2)	27.2.15G(3)
5.2.17G(3)	27.2.15G(4)
5.2.17AG	27.2.16G
Scope: general requirements	General requirements
5.2.18R	27.6.1R

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
Scope: territorial scope	Deleted
5.2.19R	27.3.1R
5.2.20G	27.3.2G
5.2.20AG	27.3.3G
Scope: employees	Employees
5.2.21G	27.4.1G
5.2.22G	27.4.2G
Scope: effect of PRA requirements	Effect of PRA requirements
5.2.23G	27.4.3G
Scope: exclusions	Exclusions
5.2.24G	27.4.4G
5.2.25R	27.4.5R
5.2.26R	27.4.6R
Scope: emergency appointments	Emergency appointments
5.2.27R	27.5.1R
5.2.28G	27.5.2G
Scope: temporary UK role (the 30-day rule)	Temporary UK role (the 30-day rule)
5.2.28AR	27.5.3R
5.2.28BG	27.5.4G
5.2.28C(1)G	27.5.5G
5.2.28C(2)G	27.5.6G
Scope: FCA-specified significant-harm functions	FCA-specified significant-harm functions
5.2.29R	27.6.2R

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
5.2.30R	27.6.3R
5.2.31G	27.6.4G
CASS oversight function	CASS oversight function
5.2.32R	27.7.1R
5.2.32AR	27.7.2G
Benchmark submission and administration function	Benchmark submission and administration function
5.2.33R	27.7.3R
Proprietary trader function	Proprietary trader function
5.2.34R	27.7.4R
Significant management function	Significant management function
5.2.35R	27.7.5R
5.2.36G	27.7.6G
5.2.37G	27.7.9G
5.2.38G	27.7.10G
Functions requiring qualifications	Functions requiring qualifications
5.2.39R	27.7.11R
5.2.40G	27.7.12G
Managers of certification employees	Managers of certification employees
5.2.41R	27.7.13R
Material risk takers	Material risk takers
5.2.42R	Deleted
5.2.43G	Deleted
Client-dealing function	Client-dealing function

Renumbering of SYSC	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
5.2.44R	27.7.18R
5.2.45R	27.7.19R
5.2.46G	27.7.20G
5.2.47G	27.7.21G
5.2.48G	27.7.22G
Algorithmic trading function	Algorithmic trading function
5.2.49R	27.7.23R
5.2.50R	27.7.24R
5.2.51G	27.7.25G
5.2.52G	27.7.26G
5.2.53G	27.7.27G
5.2.54G	27.7.28G
5.2.55G	27.7.29G
5.2.56G	27.7.30G
5.2.57G	27.7.31G
5 Annex 1G Examples of how the temporary UK role rule in SYSC 5.2.28A (the 30-day rule) works	27 Annex 1G Examples of how the temporary UK role rule in SYSC 5.2.28AR (the 30-day rule) works

Renumbering in SUP 10C	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
Chairman of the nomination committee function (SMF13)	Chairman of the nomination committee function (SMF13)
10C.5.2R	10C.5A.2R

Renumbering in SUP 10C	
(A) **Old heading and numbering**	**(B)** **New heading, numbering and deletions**
10C.5.3G	10C.5A.3G
10C.5.4G	10C.5A.4G
Non-executive directors	Non-executive directors
10C.5.6G	10C.5A.1G

Annex B

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

chairman of the audit committee function	*FCA controlled function* SMF11 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5A.8R.
chairman of the remuneration committee function	*FCA controlled function* SMF12 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5A.10R.
chairman of the risk committee function	*FCA controlled function* SMF10 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5A.6R.
chairman function	*FCA controlled function* SMF9 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5A.5R.
chief finance officer function	*FCA controlled function* SMF2 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.6A.3R.
chief operations function	*FCA controlled function* SMF24 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.6B.1R.
chief risk officer function	*FCA controlled function* SMF4 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.6A.4R.
compliance requirements for SMCR firms	any of the following requirements:
	(a) *SYSC* 3.2.8R (The compliance function);
	(b) *SYSC* 6.1 (Compliance);
	(c) article 22 of the *MiFID Org Regulation* (Compliance);
	(d) article 22 of the *MiFID Org Regulation* (as applied in accordance with *SYSC* 1 Annex 1 2.8AR, *SYSC* 1 Annex 1

	3.2-AR, *SYSC* 1 Annex 1 3.2-BR, *SYSC* 1 Annex 1 3.2CR and *SYSC* 1 Annex 1 3.3R); or (e) article 61 of the *AIFMD level 2 regulation* (Permanent compliance function).
conduct risk oversight (Lloyd's) function	*FCA controlled function* SMF23b in the *table of FCA-designated senior management functions,* described more fully in *SUP* 10C.6.6R.
core SMCR firm	a *firm* identified as a core SMCR firm in the decision tree in *SYSC* 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms)
EEA SMCR dual regulated banking sector firm	an *incoming EEA firm* or *incoming Treaty firm* that meets the following conditions: (a) it has a *branch* in the *United Kingdom*; (b) it does not have *permission for effecting contracts of insurance* or *carrying out contracts of insurance*; and (c) it meets one of the following conditions: (i) it is a *credit institution* which has a *permission* under Part 4A, Schedule 3 or Schedule 4 of the *Act* that includes *accepting deposits*; or (ii) it meets all the following conditions: (A) the institution is an *investment firm*; (B) it has a *permission* under Part 4A, Schedule 3 or Schedule 4 of the *Act* that covers *dealing in investments as principal*; and (C) when carried on by it, that activity is a *PRA-regulated activity*.
EEA core SMCR firm	a *core SMCR firm* that is an *incoming EEA firm* or *incoming Treaty firm*.
EEA SMCR firm	an *SMCR firm* that is an *incoming EEA firm* or *incoming Treaty firm*.
enhanced scope SMCR firm	a *firm* identified as an enhanced scope SMCR firm in the decision tree in *SYSC* 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms).
executive director function	*FCA controlled function* SMF3 in the *table of FCA-designated senior management functions,* described more fully in *SUP*

	10C.5.1R to 10C.5.9R.
group entity senior manager function	*FCA controlled function* SMF7 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5B.1R.
head of internal audit function	*FCA controlled function* SMF5 in the *table of FCA-designated senior management functions,* described more fully in *SUP* 10C.6A.6R.
head of third country branch function	*FCA controlled function* SMF19 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5.15R.
internal audit requirements for SMCR firms	any of the following requirements: (a) *SYSC* 3 (Systems and controls) insofar as it relates to internal audit; (b) *SYSC* 6.2 (Internal audit); (c) article 24 of the *MiFID Org Regulation* (Internal audit); (d) article 24 of the *MiFID Org Regulation* (Internal audit) (as applied in accordance with *SYSC* 1 Annex 1 2.8AR, *SYSC* 1 Annex 1 3.2-AR, *SYSC* 1 Annex 1 3.2-BR, *SYSC* 1 Annex 1 3.2CR and *SYSC* 1 Annex 1 3.3R); or (e) article 62 of the *AIFMD level 2 regulation* (Permanent internal audit function).
limited scope core SMCR firm	a *firm* identified as a limited scope core SMCR firm in the decision tree in *SYSC* 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms).
limited scope function	*FCA controlled function* SMF29 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.6.4R.
non-SMF board director subject to competence requirements	(in relation to a *firm*) a *board director* of the *firm* who meets the following conditions: (a) they are not an *SMF manager* of the *firm*; and (b) the *firm* is required to assess their fitness and propriety under the *competent employee rule*, any directly applicable *EU* legislation or any other requirement of the *regulatory*

	system.
non-UK core SMCR firm	a *core SMCR firm* that is an *overseas firm*.
non-UK SMCR firm	an *SMCR firm* that is an *overseas firm*.
risk control requirements for SMCR firms	any of the following requirements: (a) *SYSC* 3 (Systems and Controls) insofar as it relates to risk controls; (b) *SYSC* 7.1.6R, *SYSC* 7.1.21R and *SYSC* 7.1.22R; (c) *COLL* 6.11 (Risk control and internal reporting); (d) article 23 of the *MiFID Org Regulation* (Risk management); (e) article 23(2) of the *MiFID Org Regulation* (as applied in accordance with *SYSC* 1 Annex 1 2.8AR, *SYSC* 1 Annex 1 3.2-AR, *SYSC* 1 Annex 1 3.2-BR, *SYSC* 1 Annex 1 3.2CR and *SYSC* 1 Annex 1 3.3R); or (f) articles 38 to 45 of the *AIFMD level 2 regulation* (Risk management).
senior independent director function	*FCA controlled function* SMF14 in the *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5A.14R.
SMCR dual regulated banking sector firm	any of the following: (a) a *UK SMCR dual regulated banking sector firm*; (b) an *EEA SMCR dual regulated banking sector firm*; or (c) a *third-country SMCR dual regulated banking sector firm*.
SMCR financial activities	any of the following: (a) *regulated activities*; (b) an activity carried on in connection with a *regulated activity* (whether current, past or contemplated); (c) an activity held out as being for the purposes of a *regulated activity* (whether current, past or contemplated);

	(d) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); or
	(e) activities listed in points 2 to 15 of Annex I to the *CRD* (List of activities subject to mutual recognition).
SMCR firm	a *firm* identified as an SMCR firm in the decision tree in *SYSC* 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms)
table of FCA-designated senior management functions	the table of *FCA-designated senior management functions* in *SUP* 10C.4.3R.
third-country SMCR dual regulated banking sector firm	a non-UK institution other than an *incoming firm* that meets the following conditions:
	(a) it has a *branch* in the *United Kingdom*;
	(b) it is not an institution that has *permission* for *effecting contracts of insurance* or *carrying out contracts of insurance*; and
	(c) it meets one of the following conditions:
	(i) it is a *credit institution* which has a *Part 4A permission* that includes *accepting deposits*; or
	(ii) it meets all the following conditions:
	(A) the institution is an *investment firm*;
	(B) its *Part 4A permission* covers *dealing in investments as principal*; and
	(C) when carried on by it, that activity is a *PRA-regulated activity*.
UK SMCR dual regulated banking sector firm	an institution that meets the following conditions:
	(a) it is incorporated in, or formed under the law of any part of, the *United Kingdom*;
	(b) it does not have *permission* for *effecting contracts of insurance* or *carrying out contracts of insurance*;
	(c) it meets one of the following conditions:

		(i) its *Part 4A permission* includes *accepting deposits*; or
		(ii) it meets all the following conditions:
		(A) the institution is an *investment firm*; and
		(B) its *Part 4A permission* covers *dealing in investments as principal*; and
		(C) when carried on by it, that activity is a *PRA-regulated activity*.
UK core SMCR firm	a *core SMCR firm* that is a *UK domestic firm*.	
UK SMCR firm	(a)	a *UK SMCR dual regulated banking sector firm*; or
	(b)	any other *SMCR firm* that is a *UK domestic firm*.

Amend the following definitions as shown.

certification employee	(as described in more detail in section 63E(1) of the *Act* (Certification of employees by ~~relevant~~ authorised person)) an employee (as defined) of ~~a *relevant*~~ an *authorised person* who has a valid certificate issued by that ~~*relevant*~~ *authorised person*. This definition is not relevant to a *firm* that is not an *SMCR firm.*	
~~*chair*~~ *chairman of the nomination committee function*	~~(1)~~	~~(for a *relevant authorised person*)~~ *FCA controlled function* SMF13 in ~~Part 1 of~~ the ~~table in *SUP* 10C.4.3R (Table of FCA-designated senior management functions for relevant authorised persons)~~ *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.5A.2R~~;~~ .
	~~(2)~~	~~(for certain *Solvency II firms* including a *large non-directive insurer*) the *FCA controlled function* CF2a in Part 2 of the *table of FCA controlled functions*, described more fully in *SUP* 10A.6.15AR.~~
~~*chair*~~ *chairman of the with-profits committee function*	~~(for certain *Solvency II firms*)~~ *FCA controlled function* ~~CF 2b~~ SMF15 in ~~Part 2 of~~ the *table of* ~~*FCA controlled*~~ *FCA-designated senior management functions*, described more fully in ~~*SUP* 10A.6.15BR~~ *SUP* 10C.5A.12R to *SUP* 10C.5A.13R.	
chief executive function	*FCA controlled function* ~~CF3~~ SMF1 in ~~Part 1 and Part 2 of~~ the *table of* ~~*FCA controlled*~~ *FCA-designated senior management functions*, described more fully in ~~*SUP* 10A.6.17R~~ *SUP* 10C.5.12R.	

compliance oversight function	~~(1)~~ ~~(for *relevant authorised persons*)~~ *FCA controlled function* SMF16 in ~~Part 1 of~~ the ~~table in *SUP* 10C.4.3R (Table of FCA controlled functions for relevant authorised persons)~~ <u>*table of FCA-designated senior management functions*</u>, described more fully in *SUP* 10C.6.1R<u>.</u> ~~; and~~ ~~(2)~~ ~~(for other *firms*) *FCA controlled function* CF10 in Parts 1 and 2 of the *table of FCA controlled functions*, described more fully in *SUP* 10A.7.8R.~~
controlled function	a function, relating to the carrying on of a *regulated activity* by a *firm*, which is specified by: (a) either the *FCA* in~~:~~ ~~(i)~~ ~~(for *relevant authorised persons*)~~ the ~~tables in *SUP* 10C.4.3R (Table of FCA controlled functions for relevant authorised persons)~~ <u>*table of FCA-designated senior management functions*</u>; or ~~(ii)~~ ~~(for other *firms*) the *table of FCA controlled functions*; or~~ (b) the *PRA* in: (i) (for ~~*relevant authorised persons*~~ <u>CRR firms, credit unions and third country CRR firms (as defined in the *PRA Rulebook*)</u>) the part of the ~~*PRA's* rulebook~~ <u>*PRA Rulebook*</u> titled 'Senior Management Functions'~~, which specifies *controlled functions*)~~; <u>or</u> (ii) (for *Solvency II firms* including *large non-directive insurers*, and for *small non-directive insurers*) the Senior Insurance Management Functions parts of the *PRA* ~~Rulebook:~~ <u>*Rulebook*</u> applicable to Solvency II Firms and Non-Solvency II Firms; ~~or~~ ~~(iii)~~ ~~; or~~ under section 59 of the *Act* (Approval for particular arrangements).
EEA branch senior manager function	*FCA controlled function* SMF21 in ~~Part 2 of~~ the ~~table in *SUP* 10C.4.3R (Table of FCA controlled functions for relevant authorised persons)~~ <u>*table of FCA-designated senior management functions*</u>, described more fully in *SUP* 10C.8.4R.
employee	… (3) (for the purposes of ~~*SYSC* 5.2 (Certification regime)~~ <u>*SYSC* 27 (Senior management and certification regime: Certification regime)</u> and the definition of *certification*

employee) has the meaning in section 63E(9) of the *Act* (Certification of employees by ~~relevant~~ authorised persons) which, in summary, says an employee of a *person* (the "employer") includes a reference to a *person* who:

…

…

(4A) (for the purposes of *SYSC* 22 (Regulatory references)) has the same meaning as in (3) and, in addition, includes a person who:

…

(c) …

(iii) a *person* who performs a function of that *group* member under an *arrangement* entered into by the *group* member or a contractor of the *group* member; or

(d) is a *board director* of a *person* (the "employer") who is not an *SMF manager* or *certification employee* of that *person*.

FCA controlled function — a *controlled function* which is specified by the *FCA* under section 59 of the *Act* (Approval for particular arrangements) in~~:~~

~~(a)~~ ~~(for *relevant authorised persons*) the tables in *SUP* 10C.4.3R (Table of FCA-designated senior management functions for relevant authorised persons); or~~

~~(b)~~ ~~(for other *firms*)~~ the *table of* ~~*FCA controlled*~~ *FCA-designated senior management* *functions*.

FCA governing functions — any of the ~~following~~ *FCA controlled functions* labelled as FCA governing functions in the *table of FCA-designated senior management functions*. ~~:~~

~~(a)~~ ~~(for *relevant authorised persons*) *FCA controlled functions* SMF3 and SMF13 in Parts 1 and 3 of the table in *SUP* 10C.4.3R (Table of FCA-designated senior management functions for relevant authorised persons);~~

~~(b)~~ ~~(for a *Solvency II firm*, including a *large non-directive insurer*) *FCA controlled functions* CF1, CF2a, CF2b, CF5 and, for *large non-directive insurers* only, CF6, in Part 2 of the *table of FCA controlled functions*; and~~

~~(c)~~ ~~(for a *small non-directive insurer*) *FCA controlled functions* CF1, CF3, CF5 and CF6 in Part 2 of the *table of FCA*~~

~~*controlled functions*; and~~

~~(d)~~ ~~(for other *firms* and *appointed representatives*) *FCA controlled functions* 1 to 6 in Part 1 of the *table of FCA controlled functions*.~~

FCA-prescribed senior management responsibilities

~~(a)~~ ~~(for *UK relevant authorised persons*) the responsibilities in *SYSC* 4.7.7R (Table: FCA-prescribed senior management responsibilities);~~

~~(b)~~ ~~(for *third-country relevant authorised persons*)~~ the responsibilities in ~~*SYSC* 4.8.9R~~ *SYSC* 24.2.6R (Table: FCA-prescribed senior management responsibilities ~~for third-country relevant authorised persons~~).

FCA required functions

any of the ~~following~~ *FCA controlled functions* labelled as FCA required functions in the *table of FCA-designated senior management functions*. ~~:~~

~~(a)~~ ~~(for *relevant authorised persons*) *FCA controlled functions* SMF16 and SMF17 in Parts 1 to 3 of the table in *SUP* 10C.4.3R (Table of FCA-designated senior management functions for relevant authorised persons); and~~

~~(b)~~ ~~(for other *firms*) *FCA controlled functions* 8 to 11 in Part 1 or Part 2 of the *table of FCA controlled functions*.~~

FIT

the part of the *Handbook* in High Level Standards which has the title the Fit and Proper test for ~~Approved Persons and Specified significant-harm functions~~ Employees and Senior Personnel.

management responsibilities map

the ~~document~~ *document* describing the management arrangements of ~~a *relevant authorised person*~~ certain *SMCR firms* required by ~~*SYSC* 4.5.4R, *SYSC* 4.6.6R or *SYSC* 4.6.15R~~ *SYSC* 25 (Senior management and certification regime: Management responsibilities maps and handover procedures and material).

money laundering reporting function

~~(1)~~ ~~(for *relevant authorised persons*)~~ *FCA controlled function* SMF17 in ~~Parts 1 to 3 of~~ the ~~table in *SUP* 10C.4.3R (Table of FCA-designated senior management functions for relevant authorised persons)~~ *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.6.2R. ~~; and~~

~~(2)~~ ~~(for other *firms*) *FCA controlled function* CF11 in Parts 1 and 2 of the *table of FCA controlled functions*, described more fully in *SUP* 10A.7.10R.~~

other local responsibility function

FCA controlled function SMF22 in ~~Part 3 of~~ the ~~table in *SUP* 10C.4.3R (Table of FCA controlled functions for relevant authorised persons)~~ *table of FCA-designated senior management*

	functions, described more fully in *SUP* 10C.8.1R.
other overall responsibility function	*FCA controlled function* SMF18 in ~~Part 1 of~~ the ~~table in *SUP* 10C.4.3R (Table of FCA-designated senior management functions for relevant authorised persons)~~ *table of FCA-designated senior management functions*, described more fully in *SUP* 10C.7.1R.
partner function	*FCA controlled function* ~~CF4~~ SMF27 in ~~Part 1 of~~ the *table of* ~~*FCA controlled*~~ *FCA-designated senior management functions*, described more fully in ~~*SUP* 10A.6.23R to *SUP* 10A.6.27R~~ *SUP* 10C.5.16R to *SUP* 10C.5.20R.
PRA controlled function	a *controlled function* which is specified by the *PRA* under section 59 of the Act (Approval for particular arrangements) in:

(1) (for ~~*relevant authorised persons*~~ CRR firms, credit unions and third country CRR firms (as defined in the *PRA Rulebook*)) the part of the ~~*PRA's* rulebook~~ *PRA Rulebook* titled 'Senior Management Functions'~~.~~ ;or

(2) (for *Solvency II firms* including *large non-directive insurers*, and for *small non-directive insurers*) the Senior Insurance Management Functions parts of the *PRA* ~~Rulebook:~~ *Rulebook* applicable to Solvency II Firms and Non-Solvency II Firms. ~~; or~~

~~(3) [deleted].~~

PRA-prescribed senior management responsibilities	one of the functions described as:

(1) (for CRR firms, credit unions and third country CRR firms (as defined in the *PRA Rulebook*)):

(a) a 'prescribed responsibility' in Chapter 4; ~~or~~

(b) a 'small firm prescribed responsibility' in Chapter 5; or

(c) a 'UK branch prescribed responsibility:' in Chapter 6;

of the part of the ~~*PRA's* rulebook~~ *PRA Rulebook* called Allocation of Responsibilities;

(2) (for *firms* covered by the Insurance - Allocation of Responsibilities and Large Non-Solvency II Firms – Allocation of Responsibilities parts of the *PRA Rulebook*) an SIMR prescribed responsibility as defined in those parts;

	and
	(3) (for *firms* covered by the Non-solvency II Firms - Allocation of Responsibilities part of the *PRA Rulebook*) a small non-directive insurer prescribed responsibility as defined in that part.
relevant senior management application	has the meaning in section 61(1)(b) of the *Act* (Determination of applications) which, in summary, is an application for approval to perform a *designated senior management function* in relation to the carrying on of a *regulated activity* by ~~a *relevant*~~ an *authorised person*. This definition is not relevant to a *firm* that is not an *SMCR firm*.
senior conduct rules staff member	(in *COCON*) a *person* who: (a) comes within row (1) of the table in *COCON* 1.1.2R (an *SMF manager*); (b) comes within row (2) of the table in *COCON* 1.1.2R (an *employee* of ~~a *relevant authorised person*~~ an *SMCR firm* who performs the function of an *SMF manager*; or (c) ~~meets the following conditions:~~ [deleted] ~~(i) they come within row (7) of the table in *COCON* 1.1.2R (an *approved person* performing a *controlled function* (including a *PRA controlled function*) in a *Solvency II firm* (including a *large non-directive insurer*) or a *small non-directive insurer*); and~~ ~~(ii) that *controlled function* is a *significant-influence function*; or~~ (d) a *non-executive director* who comes within row (8) of the table in *COCON* 1.1.2R (a *board* ~~*standard non-executive*~~ *director* of a ~~*relevant authorised person*, a *Solvency II firm* (including a *large non-directive insurer*) or a *small non-directive* insurer~~ *UK SMCR firm*).
significant-harm function	a function defined in section 63E(5) of the *Act* (Certification of employees by ~~relevant~~ authorised persons) which is, in summary (in relation to the carrying on of a *regulated activity* by ~~a *relevant*~~ an *authorised person*), a function that meets the following conditions: (a) it requires the *person* performing it to be involved in one or more aspects of the ~~*relevant*~~ *authorised person's* affairs, so far as relating to the activity; and

	(b) those aspects involve, or might involve, a risk of significant harm to the ~~*relevant*~~ *authorised person* or to anyone who is using, or who is or may be contemplating using, any of the services provided by the ~~*relevant*~~ *authorised person*. <u>This definition is not relevant to a *firm* that is not an *SMCR firm*.</u>
SMF manager	(in relation to ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>) a *person* who has approval under section 59 of the *Act* (Approval for particular arrangements) to perform a *designated senior management function* in relation to the carrying on by that ~~*relevant authorised person*~~ <u>*SMCR firm*</u> of a *regulated activity*.
Solvency II firm	a *firm* which is any of: … (f) in *SUP* TP 7 and *SUP* TP 8, *SYSC*, *COCON*, ~~*APER*, *SUP* 10A~~ <u>*SUP* 10C</u> and *DEPP* only, a *large non-directive insurer*; …
staff being assessed under FIT	(in *FIT* and in relation to ~~a *relevant authorised person*:~~ <u>an *SMCR firm*</u>) <u>those *persons* set out in *FIT* 1.1.1G(4) to (9).</u> ~~(a) any of the following whose fitness is being assessed by the *FCA* or the *relevant authorised person*:~~ ~~(i) an *FCA-approved SMF manager*; or~~ ~~(ii) a *candidate* for an *FCA-designated senior management function*; or~~ ~~(b) a *person* whose fitness to perform an *FCA-specified significant harm function* is being assessed by the *relevant authorised person* under section 63F of the *Act* (Issuing of certificates), whether or not that *person* is already a *certification employee* in relation to that *FCA-specified significant harm function*.~~

Delete the following definitions. The text is not shown struck through.

APER	the part of the *Handbook* in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons.
apportionment and oversight function	*FCA controlled function* CF8 in Parts 1 and Part 2 of the *table of FCA controlled functions*, described more fully in *SUP* 10A.7.1R.

EEA relevant authorised person	an *incoming firm* which is a relevant authorised person in accordance with article 2 of the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 which, in summary, is an *incoming EEA firm* or *incoming Treaty firm* that meets the following conditions: (a) it has a *branch* in the *United Kingdom*; (b) it does not have *permission for effecting contracts of insurance* or *carrying out contracts of insurance*; and (c) it meets one of the following conditions: (i) it is a *credit institution* which has a *permission* under Part 4A, Schedule 3 or Schedule 4 of the *Act* that includes *accepting deposits*; or (ii) it meets all the following conditions: (A) the institution is an *investment firm*; (B) it has a *permission* under Part 4A, Schedule 3 or Schedule 4 of the *Act* that covers *dealing in investments as principal*; and (C) when carried on by it, that activity is a *PRA-regulated activity*.
full scope regulatory reference firm	for the purpose of *SYSC* 22 (Regulatory references): (a) a *relevant authorised person*; (b) a *Solvency II firm*; or (c) a *large non-directive insurer*.
non-executive director function	*FCA controlled function* CF2 in Part 1 of the *table of FCA controlled functions*, described more fully in *SUP* 10A.6.12R and *SUP* 10A.6.13R.
non-UK relevant authorised person	(a) an *EEA relevant authorised person*; or (b) a *third-country relevant authorised person*.
PRA-prescribed UK branch senior management responsibility	a “UK branch prescribed responsibility” in Chapter 6 of the part of the *PRA’s* rulebook called Allocation of Responsibilities.

relevant authorised person	(a) an *EEA relevant authorised person*; or (b) a *third country relevant authorised person*; or (c) a *UK relevant authorised person*.
systems and controls function	*FCA controlled function* CF28 in Part 1 and, for a *Solvency II firm* which is a third-country insurance or reinsurance undertaking or an *insurance special purpose vehicle*, Part 2 of the *table of FCA controlled functions*, described more fully in *SUP* 10A.8.1R and *SUP* 10A.8.1AR.
third-country relevant authorised person	a non-UK institution other than an *incoming firm* which is a relevant authorised person in accordance with article 2 of the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 which, in summary, is a non-UK institution other than an *incoming firm* that meets the following conditions: (a) it has a *branch* in the *United Kingdom*; (b) it is not an institution that has *permission* for *effecting contracts of insurance* or *carrying out contracts of insurance*; and (c) it meets one of the following conditions: (i) it is a *credit institution* which has a *Part 4A permission* that includes *accepting deposits*; or (ii) it meets all the following conditions: (A) the institution is an *investment firm*; (B) its *Part 4A permission* covers *dealing in investments as principal*; and (C) when carried on by it, that activity is a *PRA-regulated activity*.
UK relevant authorised person	has the meaning in section 71A of the *Act* (‘relevant authorised person’) which, in summary, is an institution that meets the following conditions: (a) it is incorporated in, or formed under the law of any part of, the *United Kingdom*; (b) it does not have *permission* for *effecting contracts of insurance* or *carrying out contracts of insurance*; and (c) it meets one of the following conditions:

(i) its *Part 4A permission* includes *accepting deposits*; or

(ii) it meets all the following conditions:

(A) the institution is an *investment firm*; and

(B) its *Part 4A permission* covers *dealing in investments as principal*; and

(C) when carried on by it, that activity is a *PRA-regulated activity*.

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

3 Systems and ~~Controls~~ controls

…

3.2 Areas covered by systems and controls

…

The compliance function

…

3.2.8 R (1) A *firm* ~~which carries on *designated investment business* with or for *retail clients* or *professional clients*~~ must allocate to a *director* or *senior manager* the function of:

(a) having responsibility for oversight of the *firm's* compliance; and

(b) reporting to the *governing body* in respect of that responsibility.

(2) In (1) "compliance" means compliance with ~~the *rules* in~~ the *firm's* obligations under the *regulatory system* in relation to which the *FCA* has responsibility. ~~:~~

~~(a) *COBS* (Conduct of Business);~~

~~(b) *COLL* (Collective Investment Schemes sourcebook); and~~

~~(c) *CASS* (Client Assets)~~

3.2.9 G ~~(1)~~ ~~*SUP* 10A.7.8R~~ *SUP* 10C.6.1R uses *SYSC* 3.2.8R to describe the *controlled function*, known as the *compliance oversight function*, of acting in the capacity of a *director* or *senior manager* to whom this function is allocated.

~~(2) The *rules* referred to in *SYSC* 3.2.8R(2) are the minimum area of focus for the *firm's compliance oversight function*. A *firm* is free to give additional responsibilities to a person performing this function if it wishes.~~

Conduct risk oversight (Lloyd's) function

3.2.9A R In relation to business done at Lloyd's, the *Society* must allocate to a *director* or *senior manager* the function of having responsibility for overseeing the conduct of business standards required of *managing agents* for which the *Society* has responsibility.

…

In the text shown amended below, 'Editor's notes' are included for the benefit of the reader and do not form part of the legislative text. The text of provisions marked only as 'deleted' is not shown struck through elsewhere in the instrument.

4.5 ~~Management responsibilities maps for UK relevant authorised persons~~

~~Application~~

4.5.1 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.1R]

4.5.2 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.3R]

4.5.3 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.2R]

~~General rule~~

4.5.4 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.2.1R]

4.5.5 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.2.2R]

4.5.6 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.6G(1)]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.6G(2)]

~~Specific requirements~~

4.5.7 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.2.3R]

4.5.8 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.2.4R]

~~Guidance about what should be in a management responsibilities map~~

4.5.9	G	(1)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.1G]
		(2)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.2G]
4.5.10	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.3G]	
4.5.11	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.4G]	
4.5.12	G	(1)	[deleted]
		(2)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.5G]
		(3)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.6G]
		(4)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.7G]
		(5)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.8G]
		(6)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.11G]
		(7)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.9G]
		(8)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.10G]
		(9)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.4.12G]

~~Small firms~~

4.5.13	G	(1)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.14G(1)]
		(2)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.5G]

~~Single document~~

4.5.14	R	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.1R]

4.5.15	G	(1)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.2G(1)]
		(2)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.2G(2)]
		(3)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.2G(3)]
		(4)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.2G(4)]
		(5)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.5.3G]
	~~Purpose of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person)~~		
4.5.16	G	(1)	[deleted]
		(2)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.2G(1)]
		(3)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.2G(2)]
		(4)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.4G]
		(5)	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.3G]
4.5.17	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.5G]	
	~~Contents of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person)~~		
4.5.18	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.6G]	
4.5.19	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.7G]	
4.5.20	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.7.8G]	
	~~Records~~		
4.5.21	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.8.1G]	

4.5.22 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.8.2G]

4.6 ~~**Management responsibilities maps for non-UK relevant authorised persons**~~

~~Application~~

4.6.1 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.4R]

4.6.2 R [deleted]

4.6.3 R [deleted]

4.6.4 G [deleted]

~~Purpose~~

4.6.5 G (1) [deleted]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.3G]

~~General rule for third-country relevant authorised persons~~

4.6.6 R [deleted]

4.6.7 R [deleted]

4.6.8 G [deleted]

~~Specific requirements for third-country relevant authorised persons~~

4.6.9 R (1) [deleted]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.5R]

4.6.10 R [deleted]

~~Single document~~

4.6.11 R [deleted]

~~Guidance about management responsibilities maps for a branch maintained by a third-country relevant authorised person~~

4.6.12 G [deleted]

4.6.13 G [deleted]

4.6.14 G [deleted]

~~Management responsibilities maps for EEA relevant authorised persons: General rule~~

4.6.15 R [deleted]

4.6.16 R [deleted]

~~Responsibilities maps for EEA relevant authorised persons: purpose~~

4.6.17 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.2G(1)]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.2G(2)]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.1.6G(3)]

(4) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.2G(4)]

~~Responsibilities maps for EEA relevant authorised persons: detailed requirements~~

4.6.18 R [deleted]

4.6.19 R [deleted]

~~Responsibilities maps for EEA relevant authorised persons: leaving out information already supplied~~

4.6.20 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.5R]

4.6.21 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.6G]

4.6.22 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.7G]

4.6.23 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.8G]

4.6.24 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.9G]

~~Management responsibilities maps for EEA relevant authorised persons: Single document~~

4.6.25 R [deleted]

~~Management responsibilities maps for EEA relevant authorised persons: guidance about what should be included~~

4.6.26 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.6.10G]

4.6.27 G [deleted]

4.6.28 G [deleted]

~~Management responsibilities maps for small branches maintained by non-UK relevant authorised persons~~

4.6.29 G [deleted]

4.7 ~~Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities~~

~~Application~~

4.7.1 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.1.1R]

4.7.2 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.1.3R]

4.7.3 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.1.2R]

~~Purpose of this section~~

4.7.4 G [deleted]

~~Allocation of FCA-prescribed senior management responsibilities~~

4.7.5 R (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.2.1R]

(2) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.2.3R(1)]

(6) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.2.3R(2)]

(7) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.2.4R]

4.7.6 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.2.5R]

4.7.7 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.2.6R]

~~Allocation of overall responsibility for a firm's activities, business areas and management functions~~

4.7.8 R (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.3.1R]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.4.2R]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.3.4R]

4.7.9 G [deleted]

4.7.10 G [deleted]

~~Meaning of overall responsibility~~

4.7.11 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.7.2G]

4.7.12 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.6.7G]

4.7.13 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.7.4G]

4.7.14 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.7.5G]

4.7.15 G [deleted]

4.7.16 G [deleted]

4.7.17 G [deleted]

4.7.18 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.4.5R]

~~Who functions should be allocated to~~

4.7.19 G [deleted]

4.7.20 G [deleted]

4.7.21 G (1) [deleted]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.9.1G]

4.7.22 G [deleted]

4.7.23 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.9.4G]

4.7.24 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.2G]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.3G(1)]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.1G]

(4) [deleted]

(5) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.4G]

~~Dividing and sharing management functions between different people~~

4.7.25 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.7G]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.8G]

4.7.26 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.9G]

4.7.27 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.10G]

4.7.28 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.11G]

4.7.29 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 23.1.12G]

~~Allocation of responsibilities and territorial scope.~~

4.7.30 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.13G]

~~Group management arrangements and outsourcing~~

4.7.31 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.10.1G]

4.7.32 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.10.3G]

4.7.33 G [deleted]

4.7.34 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.10.2G]

~~Link between the senior management regime and this section~~

4.7.35 G [deleted]

4.7.36 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.11.1G(1) to (3)]

~~Link between SYSC 4 Annex 1G and this section~~

4.7.37 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.11.2G]

4.7.38 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.11.3G]

4.8 ~~Senior management responsibilities for third-country relevant authorised persons: allocation of responsibilities~~

4.8.1 R [deleted]

4.8.2 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.1.5R]

4.8.3 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.1.4R]

4.8.4 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.1.2R]

~~Purpose~~

4.8.5 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.2.1G]

~~Allocation of FCA-prescribed senior management responsibilities for third-country relevant authorised persons~~

4.8.6 R [deleted]

4.8.7 R [deleted]

4.8.8 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 24.3.14G]

4.8.9 R [deleted]

~~Local responsibility for a branch's activities, business areas and management functions~~

4.8.10 R (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.3.2R(1)]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.3.2R(2)]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.3.2R(3)]

(4) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.6.3R]

(5) [deleted]

(6) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.4.3R]

(7) [deleted]

4.8.11 G (1) [deleted]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.6.4G(1)]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.6.4G(2)]

(4) [deleted]

(5) [deleted]

(6) [deleted]

~~Meaning of local responsibility: general~~

4.8.12 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.6.6G]

4.8.13 G (1) [deleted]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.4.4G]

4.8.14 G [deleted]

~~Meaning of local responsibility in SYSC 4.8.10R(1): overall responsibility~~

4.8.15 G [deleted]

4.8.16 G [deleted]

4.8.17 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.7.3G]

4.8.18 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.7.6G]

4.8.19 G [deleted]

~~Meaning of local responsibility in SYSC 4.8.10R(2)~~

4.8.20 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.8.1G]

(2) [deleted]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.8.2G]

(4) [deleted]

~~Who functions should be allocated to~~

4.8.21 G [deleted]

4.8.22 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.9.2G]

4.8.23 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.9.1G]

4.8.24 G [deleted]

4.8.25 G [deleted]

4.8.26 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.8.4G]

~~Setting overall strategy for a branch~~

4.8.27 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.8.3G]

~~Not giving too much responsibility to one individual~~

4.8.28 G (1) [deleted]

(2) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.9.5G]

~~Group arrangements and outsourcing~~

4.8.29 G [deleted]

~~Allocation of responsibility for transactions~~

4.8.30 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.5.3G]

~~Application of SYSC 4.7 to branches maintained by third-country relevant authorised persons~~

4.8.31 R [deleted]

~~Link between the senior management regime and this section~~

4.8.32 G [deleted]

4.8.33 G (1) [deleted]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.11.1G(4)]

4.8.34 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 26.11.1G(5)]

~~Link between SYSC 4 Annex 1G and this section~~

4.8.35 G [deleted]

4.9 ~~Handover procedures and material~~

~~Application~~

4.9.1 R (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.1R]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.2R]

4.9.2 R [deleted]

4.9.3 R [deleted]

~~Rules about handover material~~

4.9.4 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.4R]

4.9.5 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.5R]

4.9.6 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.6G]

4.9.7 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.7G]

~~Handover arrangements and certificates~~

4.9.8 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.8G]

~~Application of this section to other parts of a firm's management~~

4.9.9 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 25.9.9G]

…

4 Annex 1G **~~The main business activities and functions of a relevant authorised person~~**

[*Editor's note*: The text of this annex has been moved to *SYSC* 25 Annex 1G]

…

5.2 **~~Certification regime~~**

~~Application~~

5.2.1 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.1.1R]

5.2.2 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.1.2G]

~~Purpose~~

5.2.3 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.1.4G]

~~General requirements~~

5.2.4 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.3G]

5.2.5 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.2G]

~~Fitness to act~~

5.2.6 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.4G]

5.2.7 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.5G]

5.2.8 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.6G]

5.2.9 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.7G]

5.2.10 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.8G]

~~Issuing and renewing certificates~~

5.2.11 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.9G]

5.2.12 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.10G]

5.2.13 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.11G]

5.2.14 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.12G]

5.2.15 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.13G]

5.2.16 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.14G(1)]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.14G(4)]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.14G(5)]

5.2.17 G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.15G(1)]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.15G(3)]

(3) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.15G(4)]

5.2.17A G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.2.16G]

~~Scope: general requirements~~

5.2.18 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.6.1R]

~~Scope: territorial scope~~

5.2.19 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.3.1R]

5.2.20 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.3.2G]

5.2.20A G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.3.3G]

~~Scope: employees~~

5.2.21 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.4.1G]

5.2.22 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.4.2G]

~~Scope: effect of PRA requirements~~

5.2.23 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.4.3G]

~~Scope: exclusions~~

5.2.24 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.4.4G]

5.2.25 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.4.5R]

5.2.26 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.4.6R]

~~Scope: emergency appointments~~

5.2.27 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.5.1R]

5.2.28 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.5.2G]

~~Scope: temporary UK role (the 30-day rule)~~

5.2.28A R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.5.3R]

5.2.28B G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.5.4G]

5.2.28C G (1) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.5.5G]

(2) [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.5.6G]

~~Scope: FCA-specified significant-harm functions~~

5.2.29 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.6.2R]

5.2.30 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.6.3R]

5.2.31 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.6.4G]

~~CASS oversight function~~

5.2.32 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.1R]

5.2.32A G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.2G]

~~Benchmark submission and administration function~~

5.2.33 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.3R]

~~Proprietary trader function~~

5.2.34 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.4R]

~~Significant management function~~

5.2.35 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC*

27.7.5R]

5.2.36 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.6G]

5.2.37 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.9G]

5.2.38 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.10G]

~~Functions requiring qualifications~~

5.2.39 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.11R]

5.2.40 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.12G]

~~Managers of certification employees~~

5.2.41 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.13R]

~~Material risk takers~~

5.2.42 R [deleted]

5.2.43 G [deleted]

~~Client-dealing function~~

5.2.44 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.18R]

5.2.45 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.19R]

5.2.46 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.20G]

5.2.47 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.21G]

5.2.48 G [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.22G]

~~Algorithmic trading function~~

5.2.49 R [deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.23R]

5.2.50	R	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.24R]
5.2.51	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.25G]
5.2.52	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.26G]
5.2.53	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.27G]
5.2.54	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.28G]
5.2.55	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.29G]
5.2.56	G	[deleted] [*Editor's note*: The text of this provision has been moved to *SYSC* 27.7.30G]
5.2.57	G	[deleted] [Editor's note: The text of this provision has been moved to *SYSC* 27.7.31G]

5 Annex 1G ~~**Examples of how the temporary UK role rule in SYSC 5.2.28A (the 30-day rule) works**~~

[*Editor's note*: The text of this annex has been moved to *SYSC* 27 Annex 1G]

…

22 Regulatory references

22.1 Application

General application

22.1.1 R This chapter applies to all *firms* (subject to *SYSC* 22.1.5R).

Activities covered

22.1.2 G This chapter is not limited to *regulated activities* or other specific types of activities.

Territorial scope and overseas firms

22.1.3 R There is no territorial limitation on the application of this chapter, subject to *SYSC* 22.1.5R and *SYSC* 22.1.6R.

22.1.4 G One effect of *SYSC* 22.1.3R is that the obligation to provide a reference can apply even if the *employee* worked in an overseas office of the *employer*.

22.1.5 R This chapter does not apply to:

(1) an *overseas firm* that does not have an establishment in the *United Kingdom*; or

(2) a *UCITS qualifier* (see section 266 of the *Act* (Disapplication of rules)).

22.1.6 R For an *incoming firm* or any other *overseas firm*, *SYSC* 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question (defined as "P" in *SYSC* 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

22.1.7 R (1) In order to decide whether someone is an *employee* of a *branch*, the *Glossary* definition of *employee* is applied to the *branch* as if the *branch* and the *firm* of which it forms part were separate *firms*.

(2) For the purpose of (1), paragraph (4A)(c) of the definition of *employee* (someone employed elsewhere in the *group*) does not apply.

22.2 Getting, giving and updating references: the main rules

Obligation to obtain references (~~full scope regulatory reference firms only~~ applicable to SMCR firms)

22.2.1 R (1) If ~~a *full scope regulatory reference firm*~~ an *SMCR firm* (A) is considering:

(a) permitting or appointing someone (P) to perform a *controlled function*; ~~or~~

(b) issuing a certificate under the certification regime for P; or

(ba) appointing a *board director*;

(as explained in more detail in rows (A) and (B) of the table in *SYSC* 22.2.3R), A must take reasonable steps to obtain appropriate references from:

(c) P's current *employer*; and

(d) anyone who has been P's *employer* in the past six years.

(2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in *SYSC* 22.2.3R.

(3) A must in particular request:

(a) the information in *SYSC* 22.2.2R(1) to (3); and

(b) (if P's current or previous *employer* is also ~~a *full scope regulatory reference firm*~~ an *SMCR firm*) the information in *SYSC* 22.2.2R(4) (questions (A) to (F) of Part One of *SYSC* 22 Annex 1R).

(4) When deciding what information to request under (1), A must have regard to the factors in *SYSC* 22.2.2R(5) (Factors set out in *SYSC* 22 Annex 2R).

Obligation to give references

22.2.2 R (1) A *firm* (B) must provide a reference to another *firm* (A) as soon as reasonably practicable if:

(a) A is considering:

(i) permitting or appointing someone (P) to perform a *controlled function*; or

(ii) issuing a certificate under the certification regime for P; or

(iii) appointing P to another position in the table in *SYSC* 22.2.3R;

(as explained in more detail in the table in *SYSC* 22.2.3R);

(b) A makes a request, for a reference or other information in respect of P from B, in B's capacity as P's current or former *employer*;

(c) B:

(i) is P's current *employer*; or

(ii) has been P's *employer* at any time in the six year period preceding the request in (1)(b); and

(d) A indicates to B the purpose of the request.

(2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A's assessment of whether P is fit and proper.

(3) B is only required to disclose under (1) and (2) something that occurred or existed:

(a) in the six years before the request for a reference; or

(b) between the date of the request for the reference and the date B gives the reference; or

(c) (in the case of serious misconduct) at any time.

[**Note:** See *SYSC* 22.5.10G and *SYSC* 22.5.11G for *guidance* on the meaning of serious misconduct]

(4) ~~If B is a *full scope regulatory reference firm*~~ Where B is an *SMCR firm*:

(a) B must in addition disclose the information in questions (A) to (F) of Part One of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements); and

(b) B must disclose the information in (a) whether or not A is ~~a *full scope regulatory reference firm*~~ an *SMCR firm*.

(5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in *SYSC* 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

22.2.3 R Table: What positions need a reference

Position	When to obtain reference	Comments
(A) Permitting or appointing someone to perform an *FCA controlled function* or a *PRA controlled function*.	One *month* before the end of the application period	
	Where a request for a reference would require: (a) the *firm* requesting the reference; (b) the *employer* giving the reference; or (c) any other *person*; to make a mandatory disclosure prior to P disclosing to its current *employer* that such application has been made, the date is the end of the application period.	

(B) Issuing a certificate under section 63F of the *Act* (Certification of employees by relevant authorised persons).	Before the certificate is issued	This includes renewing an existing certificate.
(C) Appointing someone to any of the following positions (as defined in the *PRA Rulebook*): (a) a notified non-executive director; (b) a credit union non-executive director; ~~or~~ (c) a key function holder.	Not applicable	~~*SYSC* 22.2.1R (obligation to obtain a reference) does not apply to a *firm* appointing someone to the position in column (1).~~ ~~However *SYSC* 22.2.2R does apply to a *firm* asked to give a reference to a *firm* appointing someone to the position in column (1).~~
(D) Appointing someone to be a *non-SMF board director subject to competence requirements* .	Before appointment	Only applies to a *UK SMCR firm* that: (a) is an *FCA-authorised person*; and (b) is not a *limited scope core SMCR firm.*
Note 1: Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public.		
Note 2: P refers to the *employee* or ex-*employee* about whom the reference is given as defined in more detail in *SYSC* 22.2.1R and *SYSC* 22.2.2R.		
Note 3: The application period means the period for consideration referred to in section 61 of the *Act* (Determination of application).		

Obligation to revise references: The main rule (~~full scope regulatory reference firms only~~ applicable to SMCR firms)

22.2.4 R If at any time:

(1) ~~a *full scope regulatory reference firm*~~ an *SMCR firm* (B) has given a reference under *SYSC* 22.2.2R to another *firm* (A) about an *employee*

or ex-*employee* of B (P);

(2) B was also ~~a *full scope regulatory reference firm*~~ an *SMCR firm* when it gave the reference in (1);

(3) either of the following applies:

(a) B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or

(b) the following applies:

(i) B has since giving the reference reached conclusions of the type described in question (E) of Part One of *SYSC* 22 Annex 1R or taken disciplinary action of the type described in question (F) of Part One of *SYSC* 22 Annex 1R; and

(ii) if B had taken or reached those conclusions or actions within the six year period referred to in Part One of *SYSC* 22 Annex 1R, this chapter would have required B to draft the reference differently; and

(4) it would be reasonable to consider the differences in (3) to be significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must:

(5) make reasonable inquiries as to the identity of P's current *employer*; and

(6) give A details of those differences in writing as soon as reasonably practicable, unless *SYSC* 22.2.5R says that B does not have to do so.

22.2.5 R B does not need to update A if:

(1) A is no longer a *firm*;

(2) P has not yet been *employed* by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to *employ* P;

(3) A is no longer P's *employer*; or

(4) despite making reasonable enquiries under *SYSC* 22.2.4R, B does not know whether P is still *employed* by A.

22.2.6 R This *rule* sets out time limits about the obligation to update a reference in *SYSC* 22.2.4R.

(1) If B still *employs* P, *SYSC* 22.2.4R applies throughout the period B remains *employed*.

(2) If B no longer *employs* P, the obligation to update ends six years after P ceased to be *employed* by B.

(3) If B no longer *employs* P and the matters or circumstances are not serious misconduct by P, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation applies in addition to the one in (2).

[**Note:** See *SYSC* 22.5.10G and *SYSC* 22.5.11G for *guidance* on the meaning of serious misconduct]

Obligation to revise references: Finding out who the current employer is (all firms)

22.2.7 R If at any time:

(1) ~~a *full scope regulatory reference firm*~~ an *SMCR firm* (B) has given a reference under *SYSC* 22.2.2R to another *firm* (A) about an *employee* or ex-*employee* of B (P);

(2) B asks A whether P is still an *employee* of A; and

(3) B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.

22.3 Drafting the reference and the request for a reference

How to draft the reference

22.3.1 G There are no requirements about the form in which a *firm* that is not ~~a *full scope regulatory reference firm*~~ an *SMCR firm* should give a reference.

22.3.2 G *SYSC* 22.4 has requirements about the form in which ~~a *full scope regulatory reference firm*~~ an *SMCR firm* should give a reference.

How to draft the request for a reference

22.3.3 G (1) A *firm* (A) asking another *firm* (B) for a reference should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply.

(2) As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is because B should include that information even though B is not

specifically asked to include it.

22.3.4 G A *firm* asking for a reference under this chapter from a current or former *employer* that is not a *firm* will normally need to specify what information it would like.

Inclusion of additional material

22.3.5 G (1) This chapter sets out minimum requirements for a reference. It does not prevent a *firm* from including more than is required by this chapter.

(2) If a *firm* does disclose more than is required by this chapter the reference should still meet its duties under general law to its former *employee* and the recipient (see *SYSC* 22.5.3G to *SYSC* 22.5.5G).

22.3.6 G Nothing in this chapter prevents a *firm* from disclosing material outside the time limits under this chapter.

22.4 Drafting the reference: detailed requirements for ~~full scope regulatory reference firms~~ SMCR firms

Purpose of *SYSC* 22 Annex 1R

22.4.1 G *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements) has two purposes:

(1) to set out what information ~~a *full scope regulatory reference firm*~~ an *SMCR firm* should disclose under *SYSC* 22.2.2R(4); and

(2) to provide a template that ~~a *full scope regulatory reference firm*~~ an *SMCR firm* should use when giving a reference under this chapter.

How to draft the reference

22.4.2 R (1) ~~A *full scope regulatory reference firm*~~ An *SMCR firm* must use the template in Part One of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements) when giving a reference under this chapter to another *firm* (A).

(2) A *firm* may make minor changes to the format of the template in Part One of *SYSC* 22 Annex 1R when giving a reference under this chapter, provided that the reference includes all the information required by *SYSC* 22 Annex 1R.

(3) This *rule* applies even if A is not ~~a *full scope regulatory reference firm*~~ an *SMCR firm*.

22.4.3 G (1) *SYSC* 22.4.2R does not stop ~~a *full scope regulatory reference firm*~~ an *SMCR firm* including matters in the reference not required by the template in *SYSC* 22 Annex 1R.

(2) ~~A *full scope regulatory reference firm*~~ An *SMCR firm* may include the material required by the template and additional material in the same document.

(3) Any additional material should not alter the scope of any of the questions in the templates.

22.4.4 G ~~A *full scope regulatory reference firm*~~ An *SMCR firm* should use the template in *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements) even if the *firm* asking for the reference does not specifically ask it to.

PRA requirements

22.4.5 R B may combine in a single reference what the *PRA's rules* require and what this chapter requires.

22.5 Giving references: additional rules and guidance for all firms

Verification

22.5.1 R This chapter does not require a *firm* to disclose information that has not been properly verified.

22.5.2 G (1) For example, this chapter does not necessarily require a *firm* to include in a reference the fact that an ex-*employee* left while disciplinary proceedings were pending or had started. Including such information is likely to imply that there is cause for concern about the ex-*employee* but the *firm* may not have established that the ex-*employee* was actually responsible for misconduct.

(2) However, a *firm* may include such information in a reference if it wishes to (see *SYSC* 22.3.5G).

Accuracy

22.5.3 G A *firm* should, when giving a reference under this chapter, provide as complete a picture of an *employee's* conduct record as possible to new *employers*.

Fairness

22.5.4 G (1) A *firm* supplying a reference in accordance with this chapter owes a duty under the general law to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.

(2) The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed.

(3) References should be true, accurate, fair and based on documented fact.

22.5.5 G (1) An example of the general duty described in *SYSC* 22.5.4G is that fairness will normally require a *firm* to have given an *employee* an opportunity to comment on information in a reference. The *firm* might do this through, for example, disciplinary proceedings.

(2) Paragraph (1) does not mean that the *firm* should provide an opportunity to comment on the reference itself, as opposed to the allegations on which it is based.

(3) A *firm* may have given the *employee* an opportunity to comment on allegations that are later included in a reference even though, at the time that the *firm* is giving that opportunity, no reference is being contemplated. That may mean that the *firm* gives the *employee* their opportunity to comment on the allegations some time before the reference is prepared.

(4) Paragraph (1) does not mean that a *firm* will be unable to include an allegation in a reference if it has offered the *employee* an opportunity to comment on the allegation but the *employee* has unreasonably refused to do so.

(5) Where a *firm* should have given an *employee* an opportunity to comment on an allegation if the allegation is to be included in a reference, this chapter requires the *firm* to give the *employee* that opportunity rather than merely to leave the allegation out of the reference.

(6) Paragraph (5) may mean that where the *firm* has not given its *employee* an opportunity to comment on a matter at the time it first arose, it will have to give the *employee* the opportunity around the time that the *firm* is preparing the reference.

(7) The obligation to give an *employee* an opportunity to comment does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see *SYSC* 22.5.18G).

(8) This chapter does not require the *employee's* views to be included in the reference. Instead the *firm* should take those views into account so far as appropriate when deciding whether something should be disclosed and how the disclosure is drafted.

Outsourcing

22.5.6 G The requirements in this chapter for a *firm* (B) to give a *firm* (A) a reference also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

Circumstances in which the ex-employee left

22.5.7 G The obligation to give a reference for an *employee* or ex-*employee* applies however the *employment* ended or is going to end. For example, it applies whether it ended through resignation, redundancy, dismissal or fixed term work, a secondment or temporary work coming to an end.

Missing or incomplete information

22.5.8 G (1) If a *firm's* records do not cover the maximum periods contemplated by *SYSC* 22.2.2R or *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ <u>SMCR firms</u> and disclosure requirements), the *firm* should note that in the reference.

(2) A *firm* should not include a warning of the type described in (1) as a matter of routine. It should only be included if there is a genuine need to include it.

All relevant information: Calculation of six year period for disclosure

22.5.9 G (1) In general there is a six year limit on what should be disclosed under *SYSC* 22.2.2R(1) to (3).

(2) Where the matter to be disclosed consists of a single course of conduct (such as market manipulation) the six year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six year limit.

(3) This *guidance* is also relevant to the six year time limits for updating references in *SYSC* 22.2.6R.

All relevant information: Removal of six year period

22.5.10 G (1) *SYSC* 22.2.2R(1) to (3) normally has a six year time limit. *SYSC* 22.2.2R(3)(c) removes that time limit for serious matters. This paragraph (*SYSC* 22.5.10G) and *SYSC* 22.5.11G have *guidance* about this. This *guidance* is also relevant to the time limits for updating references in *SYSC* 22.2.6R.

(2) The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. In general, the longer ago the matter occurred, the less likely it is still to be serious for these purposes.

(3) In determining whether something is serious for these purposes, the key question is how important the information still is for the requesting *firm's* assessment of the *employee's* fitness for the function that they are going to perform.

(4) In considering what is relevant, a *firm* should, in particular, have regard to *SYSC* 22.5.4G (Fairness).

(5) The table in *SYSC* 22.5.11G provides *guidance* on some of the factors which a *firm* should take into account when determining whether a matter is serious.

(6) The *guidance* in this paragraph and in the table in *SYSC* 22.5.11G is only designed for the purposes of this chapter. It does not, for example, apply for the purposes of *SUP* 15 (Notifications to the FCA), *DEPP* or *EG*.

22.5.11 G Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose

Factors to take into account	Comments
(A) Whether P has committed a serious breach of individual conduct requirements.	Individual conduct requirements has the same meaning as in Part Two of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements).
	Factors to take into account in deciding whether the breach is serious include the following.
	(1) The extent to which the conduct was deliberate or reckless.
	(2) The extent to which the conduct was dishonest.
	(3) Whether the breaches are frequent or whether they have continued over a long period of time. The fact that breaches were frequent or repeated may increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance.
	(4) The extent of loss, or risk of loss, caused to existing, past or potential investors, depositors, policyholders

	or other counterparties or customers.
	(5) The reasons for the breach. For example, where the breach was caused by lack of experience which has been remedied by training or further experience, it is less likely that the breach will still be relevant.
(B) Whether the conduct caused B to breach requirements of the *regulatory system* or P was concerned in a contravention of such a requirement by B and, in each case, whether P's conduct was itself serious.	(1) The factors in (A) are relevant to whether P's conduct was serious.
	(2) The seriousness of the breach by B is relevant. The factors in (A) are also relevant to this.
	(3) A breach by B of certain requirements is always likely to be serious under (2). Breach of the *threshold conditions* is an example. However that does not mean that P's involvement will automatically be serious.
(C) Whether P's conduct involved dishonesty (whether or not also involving a criminal act).	Dishonesty is an important factor but it is not automatically decisive in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure.
(D) Whether the conduct would have resulted in B's dismissing P, had P still been working for B, based on B's disciplinary policies and the requirements of the law about unfair dismissal.	
(E) Whether the conduct was such that, if B was considering P for a role today and became aware of the historical conduct, B would not employ P today notwithstanding the time that	

has passed.	
Note 1: P refers to the *employee* about whom the reference is being written.	
Note 2: B refers to the *firm* giving the reference.	

Breach of APER

22.5.12 G (1) An example of information that may be relevant under *SYSC* 22.2.2R(1) to (3) is the fact that the *employee* has breached a requirement in *APER*.

(2) This means that any *firm* (not just one that is ~~a *full scope regulatory reference firm*~~ <u>an *SMCR firm*</u>) should consider whether it needs to disclose a breach of *APER* when giving a reference under this chapter.

[*Editor's note*: This provision will be dealt with in a second Consultation Paper]

Agreements not to disclose information

22.5.13 R A *firm* must not enter into any arrangements or agreements with any *person* that limit its ability to disclose information under this chapter.

22.5.14 G *SYSC* 22.5.13R covers all types of agreements and arrangements. For example:

(1) it is not limited to an agreement or arrangement entered into when the *employee* leaves;

(2) it applies however the *employment* ends (see *SYSC* 22.5.7G); and

(3) it covers a "COT 3" Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS).

22.5.15 G A *firm* should not give any undertakings to supress or omit relevant information in order to secure a negotiated release.

22.5.16 G The obligation to supply information to another *firm* under this chapter will apply notwithstanding any agreement prohibited by *SYSC* 22.5.13R.

Time in which to respond to reference requests

22.5.17 G The *FCA* expects that normally a *firm* should issue a reference under this chapter within six weeks of being asked to.

Duty to investigate allegations

22.5.18 G (1) A *firm* should, wherever feasible, conclude investigative procedures before the *employee* departs.

(2) However, this chapter does not create a duty to investigate alleged misconduct by an *employee* or former *employee*.

(3) There are several reasons why a *firm* may find it appropriate to investigate potential misconduct by an *employee* or former *employee*, including:

(a) assessing the actual and potential damage resulting from misconduct;

(b) identifying other individuals potentially culpable or accountable for the breach;

(c)

satisfying itself that the *SMF manager* responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it; and

(d) (where the *employee* has *remuneration* susceptible to malus or clawback) enabling it to consider whether any adjustments are justified.

Criminal record checks

22.5.19 G A *firm* giving a reference need not include information from a criminal records check it has carried out under Part V of the Police Act 1997 (Certificates of Criminal records, etc). The recruiting *firm* should carry out a criminal records check itself if necessary. *SUP* 10C.10.16R requires ~~a *relevant authorised person*~~ an *SMCR firm* to carry out such a check when appointing an *SMF manager* or a *board director* who is not an *approved person*.

22.6 Giving and updating references: additional rules and guidance for ~~full scope regulatory reference firms~~ SMCR firms

Omitting or supplementing mandatory disclosures

22.6.1 G (1) A *firm* may have concluded that an *employee* is unfit or has breached *COCON* or *APER* (as described in questions (E) to (F) of Part One of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements)). The *firm* may later become aware of facts or matters causing it to revise its original conclusions.

(2) If so, the *firm* may decide not to disclose in a reference its conclusion or may qualify its conclusion with supplementary information.

22.6.2 G (1) A *firm* may have concluded that an *employee* is unfit or has breached *COCON* or *APER* (as described in questions (E) to (F) of Part One of

SYSC 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements)). However the *firm* may consider that the disclosure is incomplete without including mitigating circumstances.

(2) For example, if the *firm* is reporting a breach of *COCON* it may consider that the breach is very uncharacteristic of the *employee* and that they have had an exemplary record since then. In that case, the *firm* should include those views.

Requirement to consider whether there has been a conduct breach

22.6.3 G (1) If a *firm* has taken disciplinary action of the type referred to in question (F) in Part One of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements) against an *employee* and is asked to give a reference about that *employee*, the *firm* should (if it has not already done so) consider whether the basis on which it took that action amounts to a breach of any individual conduct requirements covered by question (F).

(2) If the *firm* decides that the basis on which it took that action does amount to a breach of those requirements, it should include that disciplinary action in the reference under question (F).

(3) Paragraph (2) applies even if the grounds of the disciplinary action did not include such a breach of individual conduct requirements.

[(4) *SYSC* TP 5.4.5R disapplies the requirement in (1) for disciplinary action taken before 7 March 2017 or, in the case of ~~*relevant authorised persons*~~ *SMCR dual regulated banking sector firms*, 7 March 2016, where ~~a~~ ~~*full scope regulatory reference firm's*~~ an *SMCR dual regulated banking sector firm's* records do not record whether previous conduct subject to disciplinary action amounted to a breach.

[*Editor's note*: This provision will be dealt with in a second Consultation Paper]

(5) The obligation to consider whether there was a conduct breach does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see *SYSC* 22.5.18G).

All relevant information: Interaction with mandatory disclosures

22.6.4 G (1) *SYSC* 22.2.2R(1) to (3) may require ~~a~~ ~~*full scope regulatory reference firm*~~ an *SMCR firm* to disclose information that goes beyond the mandatory minimum information in Part One of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements).

(2) This may mean, for instance, that a *firm* should in some cases disclose a conclusion that an *employee* or former *employee* has breached *COCON* or *APER* where that conclusion was reached outside the time limits in Part One of *SYSC* 22 Annex 1R.

Updating references fairly

22.6.5 G (1) *SYSC* 22.5.1R to *SYSC* 22.5.5G (Verification, accuracy and fairness) also apply to updating a reference under *SYSC* 22.2.4R.

(2) Therefore fairness may require a *firm* to have given an *employee* an opportunity to comment on an allegation if it is included in an update to a reference.

22.7 Getting references: additional rules and guidance for ~~full scope regulatory reference firms~~ <u>SMCR firms</u>

Intra-group transfers

22.7.1 R (1) This *rule* applies when:

(a) ~~a *full scope regulatory reference firm*~~ <u>an *SMCR firm*</u> (A) would otherwise have to ask another *person* (B) for a reference under *SYSC* 22.2.1R; and

(b) A and B are in the same *group*.

(2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under *SYSC* 22.2.1R (Obligation to obtain references).

(3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.

(4) If A, in accordance with this *rule*, does not ask for a reference or a full reference it must access the information resources referred to in this *rule* and get the relevant information within the time specified by *SYSC* 22.2.3R.

22.7.2 G (1) *SYSC* 22.7.1R means that a *firm* recruiting someone from another member of its *group* is not required to request a reference from the other where the *group* has centralised records or alternative measures in place to ensure sharing of relevant information between its members.

(2) The recruiting *firm* should be satisfied that the centralised or

alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

Who should be asked to give a reference

22.7.3 G The *Glossary* definition of *employer* covers more than just a conventional employer and so it may not always be obvious who a *person's employer* is. Therefore ~~a *full scope regulatory reference firm*~~ an *SMCR firm* appointing someone to a position that requires a reference may have to get the *employee's* help in identifying their previous *employers*.

22.7.4 G (1) *SYSC* 22.2.1R (Obligation of ~~a full scope regulatory reference firm~~ an *SMCR firm* to try to obtain a reference) applies even if the ex-*employer* is not a *firm*.

(2) ~~A *full scope regulatory reference firm*~~ An *SMCR firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the *FCA* accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

22.7.5 G (1) *SYSC* 22.2.1R (Obligation of ~~a full scope regulatory reference firm~~ an *SMCR firm* to try to obtain a reference) applies even if the *employer* has already got a reference for the *employee*. For example:

(a) ~~a *relevant authorised person*~~ an *SMCR firm* should have a reference whenever it renews the certificate of a *certification employee*; and

(b) changing jobs within the same ~~*full scope regulatory reference firm*~~ *SMCR firm* may require a reference.

(2) However, the ~~*full scope regulatory reference firm*~~ *SMCR firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see *SYSC* 22.7.6G to *SYSC* 22.7.8G).

22.7.6 G If ~~a *relevant authorised person*~~ an *SMCR firm* (A):

(1) appoints someone (P) to a *specified significant-harm function* position;

(2) obtains a reference from an ex-*employer*; and

(3) later wishes to renew P's certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that ex-*employer* or ask for it to be reissued unless there is a change in P's role of the type described in *SYSC* 27.2.15G (major changes in role).

22.7.7 G (1) If ~~a *full scope regulatory reference firm*~~ <u>an *SMCR firm*</u> (A):

(a) appoints someone (P) to a *specified significant-harm function* or an *approved person* position;

(b) obtains a reference from an ex-*employer* (B); and

(c) later wishes to:

(i) appoint P to another *specified significant-harm function* or *approved person* position; or

(ii) keep P in the same *specified significant-harm function* but make a change in P's role of the type described in *SYSC* 27.2.15G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or

(iii) move P from a *specified significant-harm function* to an *approved person* position or vice versa;

A should consider whether to ask B to reissue or amend its reference.

(2) A may decide that it is not necessary to ask B to reissue or amend its reference. For example, A may decide that:

(a) the existing reference already covers everything necessary; or

(b) (where B is not a *firm*) B will not give any further information.

22.7.8 G If:

(1) a *firm* (A) appoints someone (P) to a *specified significant-harm function* or *approved person* position;

(2) A obtains a reference from an ex-*employer* (B);

(3) later P transfers to a *specified significant-harm function* or an *approved person* position with a ~~*full scope regulatory reference*~~ <u>*SMCR*</u> *firm* in A's *group* (C);

(4) B's reference is:

(a) addressed to all *firms* in A's *group*; or

(b) otherwise drafted so that it is clear that C may rely on it; and

(5) C does not need to ask for the reference to be reissued or amended, taking account of *SYSC* 22.7.6G and *SYSC* 22.7.7G;

C may be able to rely on that reference without asking B to give another one.

When references are to be obtained

22.7.9 G If ~~a *full scope regulatory reference firm*~~ an *SMCR firm* is unable to obtain a reference by the time in column two of the table in *SYSC* 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.

22.7.10 G (1) Where ~~a *relevant authorised person*~~ an *SMCR firm* needs to fill a vacancy for a *specified significant-harm function* which could not have reasonably been foreseen, the *FCA* recognises that it may not be reasonable to expect the ~~*relevant authorised person*~~ *SMCR firm* to obtain references prior to issuing a certificate.

(2) In such cases, the ~~*relevant authorised person*~~ *SMCR firm* should take up the reference as soon as reasonably possible.

(3) If a reference obtained later raises concerns about the person's fitness and propriety, the ~~*relevant authorised person*~~ *SMCR firm* should revisit its decision to issue the person with a certificate.

22.7.11 G (1) Although this chapter (see *SYSC* 22.2.3R) only requires ~~a *full scope regulatory reference firm*~~ an *SMCR firm* to try to get a reference for a *person* it is recruiting to perform an *FCA controlled function* or a *PRA controlled function* towards the end of the application process, the *FCA* would normally expect a *firm* to have obtained the reference before the application for approval is made.

(2) The main examples of circumstances in which it would be reasonable for a *firm* to delay getting a reference are where asking for a reference earlier will create a serious risk of:

(a) breaching the confidentiality of a wider commercial or corporate transaction;

(b) prematurely triggering the need for a public announcement; or

(c) the *candidate* not applying for the position in the first place because it would reveal to the *candidate's* current *employer* the proposed move too soon.

(3) The *FCA* may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. *SUP* 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the *FCA* has to make a decision about an application.

(4) ~~*Full scope regulatory reference firms*~~ *SMCR firms* are reminded that the *Act* itself requires a *firm* to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see *SUP* 10C.10.14G for more detail). *SYSC* 22.7.11G(2) does not affect that obligation.

22.8 Additional rules and guidance for all firms

Policies and procedures

22.8.1 R A *firm* must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.

22.8.2 G *SYSC* 22.8.1R does not require a *firm* to create or keep records that are not required under *SYSC* 22.9.1R (General record keeping rules) or another *rule*.

Appointed representatives

22.8.3 R This chapter applies to a *firm's appointed representatives* as well as to the *firm*.

22.8.4 R When ~~a *relevant authorised person*~~ an *SMCR firm* is permitting or appointing someone to perform a *controlled function* whose approval is given under *SUP* 10A.1.15R or *SUP* 10A.1.16R (appointed representatives of ~~relevant authorised persons~~ *SMCR firms*), the requirements of this chapter for *firms* that are not ~~*full scope regulatory reference firms*~~ *SMCR firms* apply in place of the requirements that only apply ~~to *full scope regulatory reference firms*~~ *SMCR firms*.

22.8.5 G A *firm* should ensure its *appointed representative* complies with the requirements of this chapter when the *appointed representative* appoints an *approved person* under *SUP* 10A.1.15R to *SUP* 10A.1.16BR (appointed representatives).

[*Editor's note*: This provision will be dealt with in the second Consultation Paper]

22.8.6 G (1) A *firm* should ensure that its *appointed representative* gives a reference when another *firm* (or its *appointed representative*) asks that *appointed representative* to give a reference in accordance with this chapter.

(2) A *firm* is not responsible for its *appointed representative's* giving references if another *principal* has accepted responsibility for this.

[*Editor's note*: This provision will be dealt with in the second Consultation Paper]

Getting and giving a reference where the employee has worked in a group or on secondment

22.8.7 G If:

(1) a *firm* (A) is thinking of employing someone (P);

(2) P is *employed* by a group services company (D) that is not a *firm*;

(3) P (in their capacity as an *employee* of D) performs a function or service for a *firm* (B) in the same *group* as D such that P is also an *employee* of B; and

(4) A intends to appoint (P) to a position that entitles A to obtain a reference from B;

then:

(5) (if A is ~~a *full scope regulatory reference firm*~~ an *SMCR firm*) A should ask both B and D for a reference;

(6) B is obliged to give the reference if A asks it to (whether or not A is ~~a *full scope regulatory reference firm*~~ an *SMCR firm*);

(7) B should ask D to provide it with the information needed to provide a reference in accordance with this chapter;

(8) D may give a reference but (as it is not a *firm*) it is not obliged to; and

(9) D and B may give a single joint reference.

22.8.8 G *SYSC* 22.8.7G also applies where:

(1) D is not in the same *group* but has seconded P to B; and

(2) P (in their capacity as an *employee* of D) performed any function or services for B such that P was also an *employee* of B.

22.8.9 G If:

(1) a *firm* (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another *firm* (B); and

(2) P was an *employee* of other members of B's *group* as well as of B;

then:

(3) (if A is ~~a *full scope regulatory reference firm*~~ an *SMCR firm*) A should ask all the group members that *employed* P for a reference;

(4) B should give a reference if A asks it to (whether or not A is ~~a *full scope regulatory reference firm*~~ an *SMCR firm*);

(5) P's *employers* in that group (including any that are not *firms*) may give a single joint reference; and

(6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which *employer* within the *group*.

22.9 Records

General record keeping rules (~~full scope regulatory reference firms only~~ applicable to SMCR firms)

22.9.1 R (1) ~~A *full scope regulatory reference firm*~~ An *SMCR firm* must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.

(2) This *rule* only applies to records in relation to the following questions in Part One of *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements):

(a) question (E) (fit and proper); and

(b) question (F) (disciplinary action).

Time limit for records to be kept (~~full scope regulatory reference firms only~~ applicable to SMCR firms)

22.9.2 G *SYSC* 22.9.1R does not have an express time limit for which a *firm* should retain the records as its effect is that those time limits are the same as the time limits in *SYSC* 22 Annex 1R (Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements).

Reduction in disclosure obligations where there are limited record keeping requirements (all firms)

22.9.3 R A *firm* does not breach the requirements of this chapter by failing to include information in a reference that it would otherwise have to include if:

(1) the reason for the omission is that the *firm* does not have the necessary records; and

(2) neither *SYSC* 22.9.1R nor any other requirement of or under the *regulatory system* requires the *firm* to have those records.

22.9.4 G If a *firm* is asked to give a reference in circumstances where the record keeping requirements in *SYSC* 22.9.1R do not apply:

(1) it is still required to give the reference;

(2) it should give the reference based on the records it does have; and

(3) it will not breach the requirements of this chapter by failing to include information in a reference if the reason for this is that it does not have the necessary records, as long as it is not required to have those records by some other requirement in the *Handbook* outside this chapter or some other requirement of or under the *regulatory system*.

Effect of previous record keeping requirements (~~full scope regulatory reference firms only~~ applicable to SMCR firms)

22.9.5 G (1) *SYSC* 22.9.1R applies to keeping records created before the date this chapter came into force (or before this chapter first applied to the *firm* in question) as well as ones created afterwards.

(2) ~~A *full scope regulatory reference firm*~~ An *SMCR firm* does not breach the requirements of this chapter by failing to include something in a reference or failure to have records because it destroyed the relevant records before the date this chapter came into force (or before this chapter first applied to it) in accordance with the record keeping requirements applicable to it at the time of destruction.

22 Annex 1R Template for regulatory references given by ~~relevant authorised persons~~ SMCR firms and disclosure requirements

Part One: Form of Template

Guide to using this template: Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.

In this template: • "we" / "our firm" refers to the firm or firms giving the reference (as set out in either 1A or 1B below); • "individual" refers to the subject of the reference (as set out in 2 below); and • "your" refers to the firm requesting the reference (as set out in 3 below).

Information requested	Response

1A	Name, contact details and firm reference number of firm providing reference; or	
1B	Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference	
2	Individual's name (i.e. the subject of the reference)	
3	Name, contact details and firm reference number of firm requesting the reference	
4	Date of request for reference	
5	Date of reference	

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference.

Question A

Has the individual:

(1) performed a specified significant harm function for our firm; or

(2) been an approved person for our firm.

Answer:

Yes	
No	

Question B:

Has the individual performed one or more of the following roles in relation to our firm:

(1) notified non-executive director;

(2) credit union non-executive director; ~~or~~

(3) key function holder (other than a controlled function); or

(4) board director.

Answer:

Yes	
No	

Question C:

If we have answered 'yes' to either Question A or B above, we set out the details of each position held below, including:

(1) what the controlled function, specified significant-harm function or key function holder role is or was;

(2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;

(3) whether any potential FCA governing function is or was included in a PRA controlled function; and

(4) the dates during which the individual held the position.

Answer:

Question D

Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:

Answer:

Yes	
No	

If 'yes', we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

<u>Question E</u>

Have we concluded that the individual was not fit and proper to perform a function:

<u>Answer</u>:

Yes	
No	

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.

If 'yes', and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

<u>Question F</u>

We have taken disciplinary action against the individual that:

(1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:

(a) apply or applied to the individual; or

(b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under *PRA* rules (including if applicable, *PRA* rules in force before 7 March 2016); or

(2) relates to the individual not being fit and proper to perform a function.

<u>Answer</u>:

Yes	
No	

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

<u>Question G</u>

Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:

(1) occurred or existed:

(a) in the six years before your request for a reference; or

(b) between the date of your request for the reference and the date of this reference; or

(2) is serious misconduct.

<u>Answer</u>:

Yes	
No	

If 'yes', we have provided the relevant information below.

Part Two: Definitions used in Part One

Section One of Part Two of this annex defines terms used in this annex.

Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
B	B refers to the *employer* or ex-*employer* giving the reference as defined in more detail in *SYSC* 22.2.1R and *SYSC* 22.2.2R.
P	P refers to the *employee* or ex-*employee* about whom the reference is given as defined in more detail in *SYSC* 22.2.1R and *SYSC* 22.2.2R.
A finding or conclusion by B that P was not fit and proper to perform a function (see questions (E) to (F) of the template)	This means a finding or conclusion by B in the following circumstances where: (a) B assesses the continuing fitness and propriety of P as an *approved person* in

	accordance with the requirements of the *regulatory system*, including when carrying out this assessment under section 63(2A) of the *Act* (annual assessment of *approved persons* by ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>); or (b) B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the *Act* (Certification of employees by ~~*relevant authorised persons*~~ <u>*SMCR firms*</u>) for P. Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed.
Individual conduct requirements	Individual conduct requirements mean any of the following: (a) *COCON*; (b) *APER*; (c) the *PRA's* Individual Conduct Standards or Senior Insurance Manager Conduct Standards (in Chapter 3 of the Part of the *PRA Rulebook* called Solvency II Firms: Insurance – Conduct Standards and in Chapter 3 of the Part of the *PRA Rulebook* called Non-Solvency II Firms: Large Non-Solvency II Firms – Conduct Standards <u>and in Non-Solvency II firms - Conduct Standards</u>); (d) the *PRA's* Individual Conduct Rules or Senior Manager Conduct Rule (in Chapters 2 and 3 of the Part of the *PRA Rulebook* called CRR Firms: Conduct Rules and in Chapters 2 and 3 of the Part of the *PRA Rulebook* called Non-CRR Firms: Conduct Rules); or (e) the *PRA's* Conduct Standards (in Chapter 3 of the Part of the ~~*PRA's*~~ <u>*PRA*</u> *Rulebook* called CRR Firms: Fitness and Propriety and Chapter 3 of the Part of the *PRA Rulebook* called Non-CRR Firms: Fitness and Propriety).
Function (as referred to in questions (E) to (F))	A function means a function as an *approved person* or *certification employee*.
Disciplinary action	Disciplinary action has the same meaning as in section 64C(2) of the *Act* (Requirement for

	~~relevant~~ authorised persons to notify regulatory of disciplinary action), which is: (a) the issue of a formal written warning; or (b) the suspension or dismissal of P; or (c) the reduction or recovery of any of P's remuneration. This definition applies even if B is not ~~a~~ ~~*relevant authorised person*~~ <u>an *SMCR firm*</u>.
Notified non-executive director, credit union non-executive director and key function holder	These terms have the same meaning as they do in the *PRA Rulebook*.
Specified significant harm function, approved person, controlled function and PRA controlled function	These terms have the same meaning as they do in the *Glossary*.
Potential FCA governing function	Potential FCA governing function means a function: (a) that would have been an *FCA controlled function* but for: (i) *SUP* 10A.11 (Minimising overlap with the PRA approved persons regime); or (ii) *SUP* 10C.9 (Minimising overlap with the PRA approved persons regime); (b) but instead is included in a *PRA controlled function* under the following parts of the *PRA Rulebook*: (i) Part 2 of "Senior management functions"; (ii) Part 2 of "Insurance – Senior Insurance Management Functions"; (iii) Part 6 of "Solvency II Firms: Senior Insurance Managers Regime – Transitional Provisions"; or (iv) Part 6 of "Non-Solvency II Firms: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions.
Section Two: Supplementary requirements	
Item of template for which supplemental requirements apply	Supplemental requirements
Questions (E) and (F)	If: (a) the finding or disciplinary action was

	reached or taken by another member of B's *group* with the authority to do so; and (b) the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not *regulated activities*) by B; this question applies to such finding or disciplinary action in the same way as it does to findings or disciplinary action made or taken by the *firm* itself.
Question (F)	This question is subject to *SYSC* TP 5.4.5R (where there is no need to disclose disciplinary action that took place before certain dates if the *firm's* records do not show whether there was a breach of individual conduct requirements).
The whole of Part One of this annex	The template to be used by a *firm* in giving a reference includes everything in Part One of this annex except for the "Guide to using this template" paragraph.

22 Annex 2 **Factors to take into account when asking for and giving regulatory references**

Matters to take into account	Comments
(A) Any outstanding liabilities of that person from commission payments	
(B) Any relevant outstanding or upheld complaint from an *eligible complainant* against P	
(C) Section 5 of the relevant Form A in *SUP* 10A Annex 4 (Application to perform controlled functions under approved persons regime) or *SUP* 10C Annex 2 (Application to perform senior management functions) <u>[To be reviewed in a second Consultation Paper]</u>	
(D) *FIT* 2 (Main assessment criteria)	
(E) The persistency of any life policies sold	This only applies if *SUP* 16.8.1G(1)

by P	(Persistency reports from insurers) applies to B
Note: P refers to the *employee* or ex-*employee* about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.	

After SYSC 22 (Regulatory references) insert a new chapter SYSC 23. The text is not underlined.

23 Senior managers and certification regime: Introduction and classification

23.1 Purpose

23.1.1 G The purpose of this chapter is to:

(1) explain what the senior managers and certification regime is and where to find the main *Handbook* provisions;

(2) define which *firms* the regime applies to;

(3) define the different kinds of *SMCR firm*; and

(4) require certain *firms* to carry out criminal record checks before appointing certain *board directors*.

23.2 Definitions and types of firms

23.2.1 R *SYSC* 23 Annex 1R (Definition of SMCR firm and different types of SMCR firms) defines:

(1) what an *SMCR firm* is; and

(2) what the different types of *SMCR firm* are.

23.2.2 G Broadly speaking, *firms* covered by the senior managers and certification regime that are dual-regulated by the *FCA* and the *PRA* are divided into two categories:

(1) Banks and deposit-takers. They are called *SMCR dual regulated banking sector firms*.

(2) Insurers.

23.2.3 G Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:

(1) *Firms* regulated by the *FCA* that do not fall into (2) or (3). They are

called *core SMCR firms*. A large number of *firms* will be in this category.

(2) Certain large *firms*. These are called *enhanced scope SMCR firms*. Relatively few *firms* fall into this category.

(3) *Firms* whose business is limited to certain types. These are called *limited scope core SMCR firms*. A large number of *firms* will be in this category. The main examples are:

(a) *limited permission* consumer credit *firms*;

(b) an *authorised professional firm* whose only *regulated activities* are *non-mainstream regulated activities*;

(c) internally managed *AIFs*; and

(d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*.

23.3 Overview of the senior managers and certification regime

23.3.1 G There are three main elements to the regime:

(1) the senior managers regime;

(2) the certification regime; and

(3) conduct rules that apply directly to a *firm's* workforce.

23.3.2 G The table in *SYSC* 23.3.3G gives more details about each of those three elements. The first two columns of the table applies to all *firms*. The third column only covers *firms* that are not regulated by the *PRA*.

23.3.3 G Table: Summary of the senior managers and certification regime

Description of component of the regime	Handbook provisions	Application to solo-regulated firms
The senior managers regime: Parts that apply to all firms		
Pre-approval by the *FCA* of senior management (the *Handbook* calls senior management subject to pre-approval *SMF managers*)	*SUP* 10C	Applies to all solo-regulated *firms*

Firm to be satisfied that a *person* is fit and proper before applying for them to be approved as an *SMF manager* by the *FCA* or *PRA*	This requirement comes from section 60A of the *Act*. There is *guidance* on it in *SUP* 10C.10.14G (Vetting of candidates by the firm)	Applies to all solo-regulated *firms*
Annual assessment of fitness and propriety by the *SMF managers' firms*	This requirement comes from section 63(2A) of the *Act*. There are related notification obligations in *SUP* 10C.14.18R to *SUP* 10C.14.25G (Notifications about fitness, disciplinary action and breaches of COCON).	Applies to all solo-regulated *firms*
A *firm* should carry out criminal records checks before applying for someone to be approved as an *SMF manager*	*SUP* 10C.10.16R (Criminal records checks and verifying fitness and properness)	Applies to all solo-regulated *firms* except for a *sole trader* without employees
A *firm* should ask for a regulatory reference before appointing someone to be an *SMF manager*, or to certain other senior management positions, and give one if asked to by another *firm* doing so	*SYSC* 22 (Regulatory references)	Applies to all solo-regulated *firms*
Statements of responsibilities This is a document that sets out the	*SUP* 10C.11 (Statements of	Applies to all solo-regulated

responsibilities that an *SMF manager* performs as part of their *designated senior management function*. It is prepared as part of the *firm's* application to the *FCA* or *PRA* for them to be approved as an *SMF manager*. It should be updated after approval when there has been any significant change in the responsibilities of the *SMF manager*	responsibilities). Many of the requirements are in the *Act* itself but they are summarised in *SUP* 10C.11. *SUP* 10C.11 also adds some further requirements, particularly about there being one *statement of responsibilities* per *SMF manager* per *firm*.	*firms*
The senior managers regime: Parts that apply to many firms		
A *firm* should allocate certain specified management responsibilities among its *SMF managers* The *Handbook* calls them *FCA-prescribed senior management responsibilities*	*SYSC* 24 (Senior managers and certification regime: Allocation of prescribed responsibilities)	Does not apply to a *limited scope core SMCR firm* Applies to a *core SMCR firm* and an *enhanced scope SMCR firm*
A *firm* should carry out criminal records checks before appointing a *board director* who is not an *SMF manager*	*SYSC* 23.4 (Criminal record checks for non-executive directors)	Does not apply to a *limited scope core SMCR firm* Applies to a *core SMCR firm* and an *enhanced scope SMCR firm*
The senior managers regime: Parts that only apply to a limited range of firms		
A *firm* should maintain a comprehensive and up-to-date *document* (called the *management responsibilities map*) that describes its management and governance arrangements	*SYSC* 25 (Senior managers and certification regime: Management responsibilities	Does not apply to a *limited scope core SMCR firm* or a *core SMCR firm* Applies to an *enhanced scope*

	maps and handover procedures and material)	*SMCR firm*
A *firm* should ensure that, at all times, one or more of its *SMF managers* have overall responsibility for each of the activities, business areas and functions of the *firm*	*SYSC* 26 (Senior managers and certification regime: Overall and local responsibility)	Does not apply to a *limited scope core SMCR firm* or a *core SMCR firm* Applies to an *enhanced scope SMCR firm*
A *firm* should ensure that a person becoming an *SMF manager* has all the information and material that they could reasonably expect to have to perform their responsibilities	*SYSC* 25.9 (Handover procedures and material)	Does not apply to a *limited scope core SMCR firm* or a *core SMCR firm* Applies to an *enhanced scope SMCR firm*
The senior managers regime: Parts outside the Handbook		
Duty of responsibility This applies to *SMF managers* in all types of *firm*.	This is dealt with in section 66A(5) of the *Act*. There is *guidance* on this in *DEPP* 6.2.9-AG to *DEPP* 6.2.9-FG.	Applies to all solo-regulated *firms*
Criminal offence relating to a decision that causes a financial institution to fail. It applies to a *UK SMCR dual regulated banking sector firm* but does not apply to a *credit union*. It does not apply to any *firm* that is not a *UK SMCR dual regulated banking sector firm*.	This is contained in section 36 of the Financial Services (Banking Reform) Act 2013	Does not apply to any solo-regulated *firm*
The certification regime		
A *firm* should not permit an	Most of the	Applies to all

employee to carry out certain functions (*FCA-specified significant-harm functions*) unless it has issued them with a certificate. The certificate is only valid for a year. The *firm* will have to renew it if the *employee* is to carry on performing the function. A *firm* may not issue or renew a certificate unless it is satisfied that the *person* is fit and proper. Certification does not involve pre-approval by the *FCA* or *PRA*.	requirements of this regime are in section 63E (Certification of employees by authorised persons) and 63F (Issuing of certificates) of the *Act*. *SYSC* 27 (Senior managers and certification regime: Certification regime) describes the regime and explains which *employees* are covered.	solo-regulated *firms* except for internally managed *AIFs*
A *firm* should ask for a regulatory reference before appointing someone to perform an *FCA-specified significant-harm functions* (or a *PRA* equivalent) and give one if asked to by another *firm* doing so	*SYSC* 22 (Regulatory references)	Applies to all solo-regulated *firms*
Conduct rules (applies to all firms)		
Rules of conduct that apply directly to a *firm's* workforce other than ancillary staff	*COCON*	Applies to all solo-regulated *firms*
A *firm* should report breaches of *COCON* to the *FCA*	*SUP* 15.11 (Notification of COCON breaches and disciplinary action)	Applies to all solo-regulated *firms*
A *firm* should: (a) ensure that all *persons* subject to *COCON* are notified of the *rules* that apply to them; and (b) take all reasonable steps to ensure that they understand how *COCON*	These obligations are in section 64B of the Act (Rules of conduct: responsibilities	Applies to all solo-regulated *firms*

applies to them	of authorised persons). There is *guidance* in *COCON* 2.3 (Firms: Training and breaches)	

23.3.4 G The *PRA* has requirements corresponding to the senior managers and certification regime that apply to *PRA-authorised persons*. The *FCA* and *PRAs'* regimes are designed to work together and complement each other. A *PRA-authorised person* will therefore need to consider the *PRA's* requirements to get a complete picture of the requirements that apply to it (and its workforce) in the area covered by the senior managers and certification regime and the requirements in the *Act* on which it is based.

23.4 Criminal record checks for certain directors

23.4.1 R This section applies to a *UK SMCR firm* that:

(1) is an *FCA-authorised person*; and

(2) is not a *limited scope core SMCR firm*.

23.4.2 R A *firm* must (as part of its assessment of the fitness and propriety of any of its *non-SMF board directors subject to competence requirements* (P) obtain the fullest information that it is lawfully able to obtain about P under Part V of the Police Act 1997 (Certificates of Criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK* before P's appointment as a *board director*.

23.4.3 G The *guidance* in *SUP* 10C.10.17G to *SUP* 10C.10.18G and *SUP* 10C.10.21G about criminal record checks (criminal record checks for *candidates* to be an *SMF manager*) applies to criminal record checks under this section.

23 Annex 1 Definition of SMCR firm and different types of SMCR firms

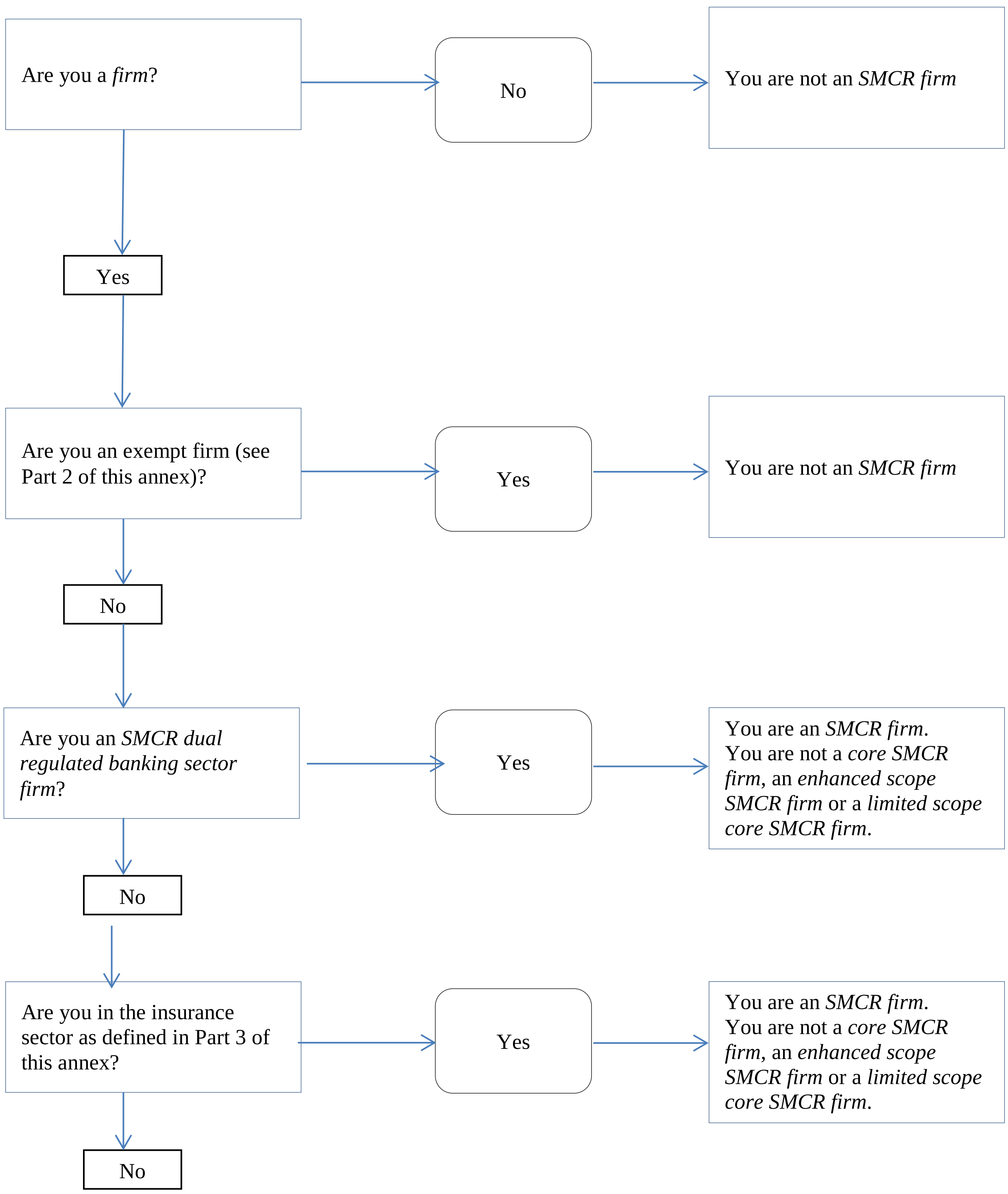
Part One: Flow diagram and other basic provisions

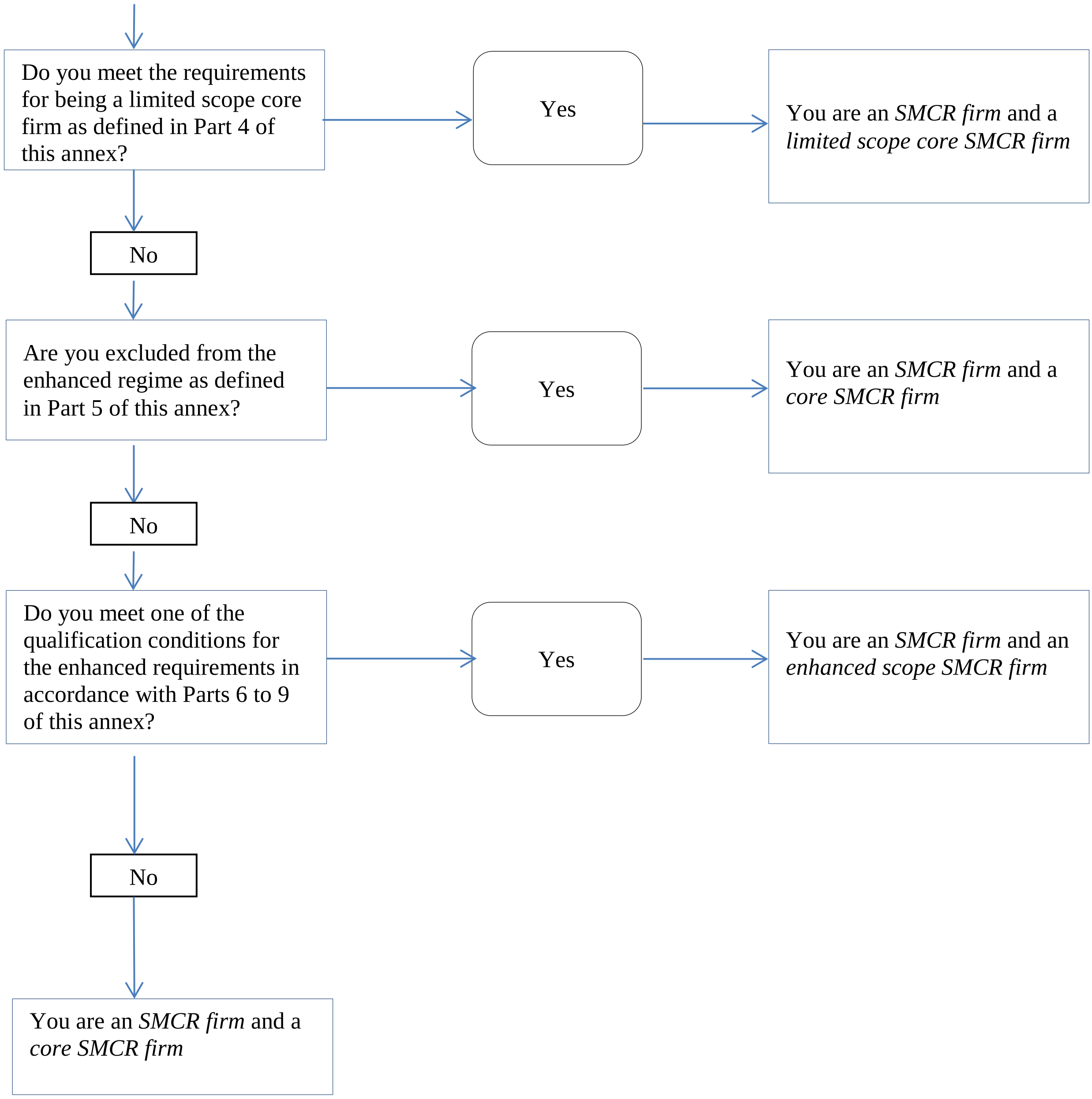
1.1 R The flow diagram in *SYSC* 23 Annex 1 1.2R, defines:

(1) an *SMCR firm*; and

(2) the different categories of *SMCR firm*.

1.2 R Flow diagram: Types of SMCR firm





1.3	R	If a *firm* is subject to a *requirement* that it must comply with the *rules* in the *Handbook* applicable to one of the categories of *SMCR firm* set out in this Annex, it is to be treated as falling into that category of *SMCR firm* for all purposes.	
1.4	G	(1)	The *FCA* may, on a case-by-case basis, require a *core SMCR firm* to comply with the requirements that apply to an *enhanced scope SMCR firm* if the *FCA* considers it appropriate to do so to advance one or more of its operational objectives under the *Act*.
		(2)	The most common example of a *requirement* described in *SYSC* 23 Annex 1 1.3R is likely to be one of the kind described in (1).

(3) One effect of *SYSC* 23 Annex 1 1.3R is that if a *firm* is moved from the *core SMCR firm* to the *enhanced scope SMCR firm* category, the *FCA-designated senior management functions* that will apply to it are the ones for *enhanced scope SMCR firms*.

Part Two: Definition of exempt firm

2.1 R This part defines an exempt firm for the purposes of the flow diagram in Part One of this annex.

2.2 R An *overseas firm* is an exempt *firm* if it:

(1) does not have; and

(2) does not have an *appointed representative* that has;

an establishment in the *United Kingdom*.

2.3 R An *incoming EEA firm* that is an *EEA pure reinsurer* is an exempt firm.

2.4 R A *UCITS qualifier* is an exempt firm (see section 266 of the *Act* (Disapplication of rules)).

2.5 R An *AIFM qualifier* is an exempt firm.

Part Three: Definition of insurance sector

3.1 R A *firm* is in the insurance sector for the purposes of the flow diagram in Part One of this annex if the *firm* is:

(1) a *Solvency II firm* (including a *large non-directive insurer*); or

(2) a *small non-directive insurer*.

3.2 R (1) A *firm* from which the Solvency II rules (as defined by the part of the *PRA Rulebook* described in this paragraph (1)) are disapplied by chapter 2 of the Solvency II Firms: Transitional Measures part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this annex.

(2) A *firm* defined as a small run-off firm in the Glossary part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this annex.

Part Four: Definition of limited scope core SMCR firm

4.1 R This part sets out the requirements for being a *limited scope core firm* for the purposes of the flow diagram in Part One of this annex.

4.2 R A *firm* listed in the table in *SYSC* 23 Annex 1 4.3R is a limited scope core *firm* if:

(1) its principal purpose is to carry on activities other than *regulated activities*; and

(2) it is not a *MiFID investment firm*.

4.3 R Table: List of limited scope core SMCR firms referred to in *SYSC* 23 Annex 1 4.2R

(1)	*Oil market participant*
(2)	*Service company*
(3)	*Energy market participant*
(4)	A wholly owned *subsidiary* of: (a) a *local authority*; or (b) a registered social landlord
(5)	A *firm* with *permission* to carry on *insurance distribution activity* in relation to *non-investment insurance contracts* but no other *regulated activity* (except *advising on P2P agreements*)

4.4 G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities*. If a *firm* wishes to rely on *SYSC* 23 Annex 1 4.2R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

4.5 R A *sole trader* is a *limited scope core firm*.

4.6 R A *firm* whose *permission* is limited to the carrying on of a relevant credit activity (as defined in paragraph 2G of Schedule 6 to the *Act*) (a *limited permission*) is a *limited scope core firm*.

4.7 R A *not-for-profit debt advice body* is a *limited scope core firm*.

4.8 R An *authorised professional firm* whose only *regulated activities* are *non-mainstream regulated activities* is a *limited scope core firm*.

4.9 R A *firm* is a *limited scope core firm* if it meets the following conditions:

(1) it is an *internally managed AIF*;

(2) it is a *body corporate*; and

(3) it is not a *collective investment scheme*.

Part Five: Exclusion from enhanced regime

5.1 R This part sets out which *firms* are excluded from the enhanced regime for the purposes of the flow diagram in Part One of this annex.

5.2 R A *non-UK SMCR firm* is excluded from the enhanced regime.

5.3 R A *firm* is excluded from the enhanced regime if its *permission* only covers being the *full-scope UK AIFM* of:

(1) an *unauthorised AIF*; or

(2) an *authorised AIF* only marketed to investors that are *professional clients*.

5.4 R A *firm* is excluded from the enhanced regime if:

(1) it is exempt from *MiFID* under article 2(1)(j); and

(2) its only *permission* is *bidding in emissions auctions*.

Part Six: Financial qualification condition for being an enhanced scope SMCR firm

6.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this annex if it meets one of the criteria set out in column (1) of the table in *SYSC* 23 Annex 1 6.2R.

6.2 R Table: Financial qualification conditions

Qualification condition	**Reporting requirement**
(1) The *firm* has (or has had at any time in the previous three years) assets under management of £50 billion or more	Assets under management are calculated in accordance with the method that must be used to calculate the amount to be recorded in *data element* 1A (Total funds under management) in *data item* FSA038 (Volumes and Type of Business)
(2) The *firm's* current total intermediary regulated business revenue is £35 million per annum or more	Total intermediary regulated business revenue is calculated in accordance with the method that must be used to calculate the amount to be recorded in *data element* 4E (Total regulated business revenue) in Section B (Profit and Loss account) of the *RMAR*
(3) The *firm's* annual revenue generated by	Annual revenue generated by regulated

regulated consumer credit lending is £100 million or more	consumer credit lending is calculated as follows: (a) calculate each amount that must be recorded in column B (Revenue) for the rows headed "Lending" in *data item* CCR002 (Consumer Credit data: Volumes); and (b) add those amounts together.
(4) The *firm* currently has 10,000 or more outstanding regulated mortgages	A *firm's* outstanding regulated mortgages are calculated as follows: (a) calculate the amount that must be recorded in row E4.5 (Total) in the box under the headings and sub-headings "Regulated Loans", "Balances outstanding" and "Number" in the *MLAR*; (b) calculate the amount that must be recorded in row G1.1(d) (total) under the headings and sub-headings "As PRINCIPAL administrator" and "Regulated loans" in the *MLAR*; and (c) add those amounts together.

6.3 G (1) Column (2) of the table in *SYSC* 23 Annex 1 6.2R refers to the *Handbook* versions of the relevant *data items*.

(2) The boxes referred to in row (4) (outstanding regulated mortgages) correspond to the online version of the *MLAR* as follows:

(a) paragraph (a) corresponds to *data item* c3; and

(b) paragraph (b) corresponds to *data item* G1.1 c1 (d).

6.4 R If the applicable financial reporting requirements in column (2) of the table in *SYSC* 23 Annex 1 6.2R have changed during the relevant period, the calculations must be made in accordance with whatever requirements applied for the applicable period.

6.5 R The calculations are made on a solo basis.

6.6 R (1) The calculation periods and dates in column (1) of the table in *SYSC* 23 Annex 1 6.2R are defined so as to be consistent with the financial reporting periods and dates used for the corresponding *data item* in column (2) of that table. The rest of this *rule* gives particular examples of this principle.

(2) If a calculation in column (1) of the table in *SYSC* 23 Annex 1 6.2R is on a per annum or annual basis, then:

(a) if the reporting period in column (2) is based on the *firm's* accounting period, so is the calculation period in column (1); and

(b) if the reporting period in column (2) is based on a calendar year, so is the calculation period in column (1).

(3) (a) Where row (2) or (3) of column (1) of the table in *SYSC* 23 Annex 1 6.2R refers to a *firm's* current financial figures it refers to the figures for its most recent calculation period in column (1).

(b) The most recent calculation period is the one ending on the end date of the reporting period for the *firm's* most recent *data item* in column (2).

(4) The current figure in row (1) or (4) of column (1) of the table in *SYSC* 23 Annex 1 6.2R is the one for the *firm's* most recent *data item* in column (2).

(5) A *firm's* most recent *data item* is the one whose required submission date has passed most recently.

6.7 R Where:

(1) the calculation in column (1) of the table in *SYSC* 23 Annex 1 6.2R is based on annual or per annum revenue; and

(2) the reporting period in column (2) is based on the *firm's* accounting period; but

(3) the *firm's* accounting period is not twelve months;

the *firm* must adjust the financial figure in column (1) proportionately.

6.8 R A qualification condition does not apply to a *firm* if:

(1) the corresponding reporting requirement referred to in column (2) of the table in *SYSC* 23 Annex 1 6.2R does not apply to the *firm*; or

(2) the *firm* has not been subject to the relevant reporting requirements for long enough for the calculation to be made for that qualification condition.

6.9 G (1) The financial reporting period in column (2) of the table in *SYSC* 23 Annex 1 6.2R may be shorter than the corresponding calculation period in column (1) of that table.

(2) For example, the calculation period in column (1) may be based on annual revenue but the *firm* may have to prepare the corresponding *data item* in column (2) for revenue arising in six-*month* periods.

(3) In this example, the calculation in column (1) is based on the most recently ended six-*month* period and the six-*month* period before that.

(4) This applies whether the financial reporting periods in column (2) are based on a *firm's* accounting periods or on the calendar year.

(5) See *SYSC* 23 Annex 1 6.7R for special requirements where a *firm* has an accounting period of more or less than a year, which might be caused, for example, by the *firm* changing its accounting reference date.

Part Seven: Other qualification conditions for being an enhanced scope SMCR firm

7.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this annex if it meets one of the following criteria:

(1) the *firm* is a *significant IFPRU firm*; or

(2) the *firm* is a *CASS large firm*.

7.2 G If a *firm* is subject to a *requirement* that it must comply with the *rules* in the *Handbook* applicable to one of the categories of *firm* in *SYSC* 23 Annex 1 7.1R it is to be treated as falling into that category of *firm* for the purpose of this Annex as well.

Part Eight: When a firm becomes an enhanced scope SMCR firm

Meeting the financial thresholds in Part 6

8.1 R A *firm* that:

(1) was not an *enhanced scope SMCR firm*; and

(2) then meets one of the qualification conditions in Part 6 of this Annex (financial qualification conditions);

must comply with the requirements for *enhanced scope SMCR firms* (and becomes an *enhanced scope SMCR firm*) from six *months* after the *data item* submission date for the calculation period in column 1 of the table in *SYSC* 23 Annex 1 6.2R for which the *firm* first meets that qualification condition.

8.2 R (1) The *data item* submission date for a calculation period in column (1) of the table in *SYSC* 23 Annex 1 6.2R is the date on which the *data item* for the corresponding financial reporting period in column (2) of that table should be submitted.

(2) Where a *firm* must use *data items* from more than one financial reporting period to make a calculation required by column (1) of the table, the *data item* submission date is the due date for submission of the *data item* for the most recent such financial reporting period.

Meeting the qualification conditions in Part 7

8.3 R A *firm* that:

(1) was not an *enhanced scope SMCR firm*; and

(2) then meets one of the qualification conditions in Part 7 of this annex (other qualification conditions);

must comply with the requirements for *enhanced scope SMCR firms* (and becomes an *enhanced scope SMCR firm*) from six *months* after the date that the status in *SYSC* 23 Annex 1 7.1R becomes effective.

8.4 G *SYSC* 23 Annex 1 8.3R means that a *firm* becomes an *enhanced scope SMCR firm* on the date in column (2) of the table in *SYSC* 23 Annex 1 8.5G.

8.5 G Table: Date firm becomes an enhanced scope firm

Qualification condition	**Date firm becomes an enhanced scope SMCR**
The *firm* is a *significant IFPRU firm*	Six *months* after the date in *IFPRU* 1.2.6R(2).
The *firm* is a *CASS large firm* This includes a *firm* that has elected to be treated as a *CASS large firm*	Six *months* after the date in *CASS* 1A.2.12R.

8.6 G (1) The purpose of the six-*month* period between meeting the conditions for being an *enhanced scope SMCR firm* and the *firm* becoming subject to the requirements for such *firms* is to allow it to make preparations to comply with the new requirements.

(2) For example, a *firm* that used to be a *core SMCR firm* should use this period to apply for approval for its personnel to perform the new *designated senior management functions* that will apply because it has become an *enhanced scope SMCR firm*.

8.7 G (1) A *firm* retains its old status during the six-*month* period described in this Part.

(2) For example, a *core SMCR firm* that meets one of the qualification conditions for being an *enhanced scope SMCR firm* will remain as a *core SMCR firm* for six *months* after it meets the qualification condition.

Part Nine: When a firm stops being an enhanced scope SMCR firm

Introduction

9.1 R A *firm* that:

(1) was an *enhanced scope SMCR firm*; and

(2) then meets none of the qualification conditions in this Annex,

ceases to be subject to the requirements for *enhanced scope SMCR firms* (and ceases to an *enhanced scope SMCR firm*) on the date set out in this Part.

Ceasing to meet the financial thresholds in Part 6

9.2 R Where the last qualification condition that an *enhanced scope SMCR firm* meets is one of the conditions in Part 6 of this annex (financial qualification conditions), a *firm* ceases to be subject to the requirements for *enhanced scope SMCR firms* one year after the *data item* submission date for the calculation period in column (1) of the table in *SYSC* 23 Annex 1 6.2R for which the *firm* first ceases to meet that qualification condition.

9.3 G See *SYSC* 23 Annex 1 8.2R for what *data item* submission date means.

Ceasing to meet the qualification conditions in Part 7

9.4 R Where the last qualification condition that an *enhanced scope SMCR firm* meets is one of the conditions in Part 7 of this annex (other qualification conditions), a *firm* ceases to be subject to the requirements for *enhanced scope SMCR firms* one year after the date that the status in *SYSC* 23 Annex 1 7.1R ceases to apply.

Remaining as an enhanced scope firm

9.5 R If:

(1) the one year period in *SYSC* 23 Annex 1 9.2R or *SYSC* 23 Annex 1 9.4R is still running; and

(2) the *firm* again meets a qualification condition in Part Six or Seven of this annex;

then:

(3) the *firm* remains an *enhanced scope SMCR firm*; and

(4) the six-*month* period in Part 8 of this annex does not apply.

Amend the following as shown. In accordance with paragraph F to this instrument, cross references amended in column A in the tables of Annex A are so changed in the text of the following provisions. These changes are not shown.

24 Senior managers and certification regime: Allocation of prescribed responsibilities

24.1 Application

Main application rules

24.1.1 ~~4.7.1~~	R	This ~~section~~ chapter applies to ~~*UK relevant authorised persons*~~ an *SMCR firm*, except to the extent that this chapter applies a narrower scope to a particular provision. However, this chapter does not apply to: (1) a *limited scope core SMCR firm*; or (2) an *EEA SMCR firm*.
24.1.2 ~~4.7.3~~	R	This ~~section~~ chapter is not limited to *regulated activities* or other specific types of activities.

Territorial scope

24.1.3 ~~4.7.2~~	R	There is no territorial limitation on the application of this ~~section~~ chapter, subject to *SYSC* 24.1.5R.
24.1.4	R	When this chapter applies to a *non-UK SMCR firm*, it applies in relation to the activities of the *firm's branch* in the *United Kingdom*.

24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

Allocation of FCA-prescribed senior management responsibilities

24.2.1 ~~4.7.5(1)~~	R	A *firm* must allocate each of the *FCA-prescribed senior management responsibilities* in ~~Part 1 of~~ the table in *SYSC* 24.2.6R that apply to it to one or more *SMF managers* of the *firm*.
24.2.2	G	(1) Subject to (2), *SYSC* 24 Annex 1 (Which prescribed responsibilities apply to which kind of firm) sets out which *FCA-prescribed senior management responsibilities* apply to which kind of *SMCR firm*.

(2) Each *FCA-prescribed senior management responsibility* in Part Four of the table in *SYSC* 24.2.6R (functions applying in specified situations) is subject to further restrictions on the types of *firm* and circumstances to which it applies, as set out in that Part.

24.2.3 ~~4.7.5(5)~~ R (1) A *firm* may not allocate an *FCA-prescribed senior management responsibility* to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function* for that *firm*, subject to ~~(6)~~ (2).

~~4.7.5(6)~~ (2) A *firm* may allocate ~~the~~ *FCA-prescribed senior management responsibility* (z) in ~~row (11) of~~ the table in *SYSC* 24.2.6R (functions in relation to *CASS*) to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function*.

24.2.4 ~~4.7.5(7)~~ R A *firm* must make the allocations of *FCA-prescribed senior management responsibilities* in this ~~*rule*~~ chapter in such a way that it is clear who has which of those responsibilities.

What the FCA-prescribed senior management responsibilities are

24.2.5 ~~4.7.6~~ R The *FCA-prescribed senior management responsibilities* are set out in the table in *SYSC* 24.2.6R.

24.2.6 ~~4.7.7~~ R Table: FCA-prescribed senior management responsibilities

Part One (applies to all firms)		
FCA-prescribed senior management responsibility	**Explanation**	~~**Equivalent PRA-prescribed senior management responsibility**~~ **Reference letter**
(1) Responsibility for the *firm's* performance of its obligations under the senior ~~management~~ managers regime	The senior ~~management~~ managers regime means the requirements of the *regulatory system* applying to ~~*relevant authorised persons*~~ *SMCR firms* insofar as they relate to *SMF managers* performing *designated senior management functions*,	~~*PRA-prescribed senior management responsibility* 4.1(1)~~ (a)

	including *SUP* 10C (FCA senior ~~management~~ managers regime for approved persons ~~in relevant authorised persons~~). This responsibility includes: (1) compliance with conditions and time limits on approval; (2) compliance with the requirements about the *statements of responsibilities* (but not the allocation of responsibilities recorded in them); (3) compliance by the *firm* with its obligations under section 60A of the *Act* (Vetting of candidates by ~~relevant~~ authorised persons); and (4) compliance by the *firm* with the requirements in *SYSC* 22 (Regulatory references) so far as they relate to the senior ~~management~~ managers regime, including the giving of references to another *firm* about an *SMF manager* or former *SMF manager*.	
(2) Responsibility for the *firm's* performance of its obligations under the employee certification regime	The employee certification regime means the requirements of sections 63E and 63F of the *Act* (Certification of employees) and all	~~*PRA-prescribed senior management responsibility* 4.1(2)~~ (b)

	other requirements of the *regulatory system* about the matters dealt with in those sections, including: (1) *SYSC* 27 (<u> Senior managers and certification regime:</u> Certification Regime); (2) the requirements in *SYSC* 22 (Regulatory references) so far as they relate to the employee certification regime, including the giving of references to another *firm* about a *certification employee* or former *certification employee*; and (3) the corresponding *PRA* requirements.	
~~(3) Responsibility for compliance with the requirements of the *regulatory system* about the *management responsibilities map*~~	~~This responsibility does not include allocating responsibilities recorded in it~~	~~*PRA-prescribed senior management responsibility* 4.1(3)~~
~~(4)~~ <u>(3)</u> ~~Overall responsibility~~ <u>Responsibility </u>for the *firm's* policies and procedures for countering the risk that the *firm* might be used to further *financial crime*	(1) This includes ~~the function in~~<u>:</u> <u>(a) responsibility for the *firm's* policies and procedures in relation to the matters in *SYSC* 3.2.6R (Systems and controls in relation to compliance, financial crime and money laundering);</u> <u>(b) the function in</u> *SYSC* 6.3.8R (*firm* must allocate to a *director* or *senior manager* overall responsibility within	~~None~~ <u>(d)</u>

	the *firm* for the establishment and maintenance of effective anti-*money laundering* systems and controls); ~~,~~ if ~~that~~ any of those ~~*rule*~~ *rules* ~~applies~~ apply to the *firm*. (2) The *firm* may allocate this *FCA-prescribed senior management responsibility* to the *MLRO* but does not have to. (3) If the *firm* does not allocate this *FCA-prescribed senior management responsibility* to the *MLRO*, this *FCA-prescribed senior management responsibility* includes responsibility for supervision of the *MLRO*.	
(4) Responsibility for the *firm's* obligations in relation to conduct rules for: (a) training; and (b) reporting	(1) The *firm's* training obligations means its obligations under section 64B of the *Act* (Rules of conduct: responsibilities of authorised persons). (2) The *firm's* reporting obligations means its obligations under section 64C of the *Act* (Requirement for authorised persons to notify regulator of disciplinary action). (3) Conduct rules means the *rules* in	(b-1)

	COCON and the corresponding *rules* made by the *PRA* under section 64A of the *Act* (Rules of conduct).	
~~(4A) Acting as the *firm's whistleblowers' champion*~~	~~The *whistleblowers' champion's* allocated responsibilities are set out in *SYSC* 18.4.4R~~	

Part Two (only applies to ~~all firms except for small CRR firms and credit unions~~ certain banks and insurance sector firms)		
FCA-prescribed senior management responsibility	**Explanation**	**Reference letter**
~~(5)~~ (1) Responsibility for: (a) leading the development of; and (b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all members of the *firm's governing body*.		~~*PRA-prescribed senior management responsibility* 4.1(13)~~ (f)
~~(6)~~ (2) Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all persons performing *designated senior management functions* on behalf of the *firm* other than members of		~~*PRA-prescribed senior management responsibility* 4.1(5)~~ (g)

the *governing body*.		

Part Three (only applies to certain solo-regulated firms)		
FCA-prescribed senior management responsibility	**Explanation**	**Reference letter**
(1) Responsibility for the development and maintenance of the *firm's* business model by the *governing body*.	Business model means the same thing as it does in Schedule 6 to the *Act* (Threshold Conditions). This responsibility applies even if the business model *threshold condition* does not apply to it.	(t)
(2) Responsibility for ensuring the *firm's* *governing body* is informed of its legal and regulatory obligations.		(dd)

Part Four (functions applying in specified situations)		
FCA-prescribed senior management responsibility	**Explanation**	**Reference letter**
(1) Responsibility for compliance with the requirements of the *regulatory system* about the *management responsibilities map*	This responsibility does not include allocating responsibilities recorded in it. This responsibility does not apply to a *firm* to which the requirements about *management responsibilities maps* in *SYSC* 25 (Senior managers and certification regime: Management responsibilities maps	(c)

	and handover procedures and material) do not apply.	
(2) Acting as the *firm's whistleblowers' champion*	The *whistleblowers' champion's* allocated responsibilities are set out in *SYSC* 18.4.4R. This responsibility does not apply to a *firm* that is not required to have a *whistleblowers' champion.*	(n)
~~(7)~~ (3) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the internal audit function, in accordance ~~with *SYSC* 6.2 (Internal Audit) or article 24 of the *MiFID Org Regulation*~~ the *internal audit requirements for SMCR firms*.	(1) In the case of a *PRA-authorised firm*, ~~This~~ this responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; a person approved to perform the *PRA's* Head of Internal Audit *designated senior management function* for the *firm* if that function applies to the *firm*. (2) This responsibility only applies if and to the extent that: (a) the *internal audit requirements for SMCR firms* or the *PRA* requirements listed in paragraph (1) of this column apply to the *firm*; and (b) the *firm* is required to ensure the things in column (1) or that paragraph.	~~*PRA-prescribed senior management responsibility* 4.1(15)~~ (j)
~~(8)~~ (4) Responsibility	(1) This responsibility	~~*PRA-prescribed senior*~~

for: (a) safeguarding the independence of; and (b) oversight of the performance of; the compliance function in accordance with ~~*SYSC* 6.1 (Compliance) or article 22 of the *MiFID Org Regulation*~~ the *compliance requirements for SMCR firms*.	includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the person performing the *compliance oversight function* for the *firm*. (2) This responsibility only applies if and to the extent that: (a) the *compliance requirements for SMCR firms* or the *PRA* requirements listed in paragraph (1) of this column apply to the *firm*; and (b) the *firm* is required to ensure the things in column (1) or that paragraph.	~~*management responsibility* 4.1(16)~~ (k)
~~(9)~~ (5) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the risk function, in accordance with ~~*SYSC* 7.1.21R and *SYSC* 7.1.22R (Risk control)~~ the *risk control requirements for SMCR firms*.	(1) In the case of a *PRA-authorised firm*, ~~This~~ this responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; a person approved to perform the *PRA's* Chief Risk *designated senior management function* for the *firm* if that function applies to the *firm*. (2) This responsibility only applies if and to the extent that: (a) the *risk control*	~~*PRA-prescribed senior management responsibility* 4.1(17)~~ (l)

	requirements for SMCR firms or the *PRA* requirements listed in paragraph (1) of this column apply to the *firm*; and (b) the *firm* is required to ensure the things in column (1) or that paragraph.	
~~(10)~~ (6) Responsibility for overseeing the development of and implementation of the *firm's* remuneration policies and practices in accordance with *SYSC* 19D (Dual-regulated firms Remuneration Code)	This responsibility does not apply to a *firm* to which *SYSC* 19D does not apply.	~~*PRA-prescribed senior management responsibility* 4.1(18)~~ (m)
~~(11) Overall responsibility~~ (7) Responsibility for the *firm's* compliance with *CASS*	~~(A)~~ (1) This responsibility only applies to a *firm* to which *CASS* applies. ~~(B)~~ (2) A *firm* may include in this *FCA-prescribed senior management responsibility* whichever of the following functions apply to the *firm*: (a) *CASS* 1A.3.1R (certain *CASS* compliance functions for a *CASS small firm*); (b) *CASS* 1A.3.1AR (certain *CASS* compliance functions for a *CASS medium firm* or a *CASS large firm*); (c) *CASS* 11.3.1R (certain *CASS* compliance functions for certain *CASS small*	~~None~~ (z)

	debt management firms); or (d) *CASS* 11.3.4R (certain *CASS* compliance functions for a *CASS large debt management firm*); but it does not have to. ~~(C)~~ (3) If the *firm* does not include the functions in ~~(B)~~ (2) in this *FCA-prescribed senior management responsibility*, this *FCA-prescribed senior management responsibility* includes responsibility for supervision of the person performing the functions in ~~(B)~~ (2) that apply to the *firm*.	
(8) Responsibility for taking reasonable steps to ensure that every *person* involved in the performance of the *firm's* internal audit function is independent from the *persons* who perform external audit, including: (a) supervision and management of the work of outsourced internal auditors; and (b) management of potential conflicts of interest between the provision of external audit and internal audit services.	This only applies if the *firm* outsources its internal audit function	(j-3)
(9) Responsibility for: (a) managing the *firm's* internal stress tests; and	Stress testing refers to stress testing under *SYSC* 20 (Reverse	(s)

(b) ensuring the accuracy and timeliness of information provided to the *FCA* and other *regulatory bodies* for the purposes of stress testing.	stress testing). This responsibility only applies to a *firm* to which *SYSC* 20 applies.	
(10) Responsibility for: (a) providing for an effective internal audit function in accordance with one of the sections of the *PRA Rulebook* listed in paragraph (2) of column (2); and (b) overseeing the performance of the internal audit function.	(1) Only applies to a *firm*: (a) that outsources its internal audit function to an external third party service provider; and (b) to which one of the following internal audit *PRA-prescribed senior management responsibilities* applies: (i) the responsibility in rule 3.3(1) in the Insurance – Allocation of Responsibilities Part of the *PRA Rulebook*; or (ii) the responsibility in rule 3.2(1) in the Large Non-Solvency II Firms – Allocation of Responsibilities Part of the *PRA Rulebook*. (2) The parts of the *PRA Rulebook* referred to in column (1) are: (a) Solvency II firms - Conditions Governing Business 5; and (b) Non-Solvency II Firms – Governance 9.2. (3) Terms used in column (1) have the same meaning as they do for the corresponding *PRA-prescribed senior*	(j-2)

	management responsibility described in paragraph (1) of this column.	
(11) The responsibilities allocated under *COLL* 6.6.27R or *COLL* 8.5.22R (Allocation of responsibility for compliance to an approved person).	Only applies to a *firm* to which the *rules* in column (1) apply.	(za)

Part Five (only applies to branches)		
FCA-prescribed senior management responsibility	**Explanation**	**Reference letter**
(1) Responsibility for management of the *firm's* risk management processes in the *UK*		(aa)
(2) Responsibility for the *firm's* compliance with the *UK regulatory system* applicable to the *firm*		(ff)
(3) Responsibility for the escalation of correspondence from the *PRA*, *FCA* and other regulators in respect of the *firm* to the *governing body* and/or the *management body* of the *firm* or, where appropriate, of the *parent undertaking* or *holding company* of the *firm's group*	This includes taking steps to ensure that the *senior management* of the *firm* and, where applicable, the *group*, are made aware of any views expressed by the *regulatory bodies* and any steps taken by them in relation to the *branch*, *firm* or *group*.	(ee)

24.3 Who ~~functions~~ prescribed responsibilities should be allocated to

Seniority and authority

24.3.1 G ~~In general, the~~ The *FCA* expects that a *person* who has responsibility for an *FCA-prescribed senior management responsibility* ~~in (2)~~:

~~4.7.24 (3)~~

(1) will generally (in the case of the *FCA-prescribed senior management responsibilities* in *SYSC* 24.3.3G(1)) be the most senior employee or officer responsible for managing that area (or the most senior below the *chief executive*); and

(2) will:

(a) be sufficiently senior and credible; and

(b) have sufficient resources and authority;

to be able to exercise their management and oversight responsibilities effectively.

Executive or non-executive

24.3.2 G The *FCA* expects that normally a *firm* will allocate the *FCA-prescribed senior management responsibility* ~~in rows~~ with the following *FCA* reference letters ~~(5), (7), (8), (9) and (10)~~ (see column three of the table in *SYSC* 24.2.6R) to an *SMF manager* who is a *non-executive director* of the *firm* (or, in the case of a partnership, a partner without management responsibilities):

~~4.7.24(1)~~

(1) (f) (development of members of *governing body*);

(2) (j) (internal audit oversight);

(3) (k) (compliance oversight);

(4) (l) (risk control oversight);

(5) (m) (remuneration code oversight); and

(6) (n) (whistleblower's champion).

24.3.3 G (1) ~~The~~ Subject to (2), the *FCA* expects that normally a *firm* will allocate~~: (a)~~ the other *FCA-prescribed senior management responsibilities*~~; and (b) functions under *SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions);~~ to an *SMF manager* who performs executive functions for the *firm*.

~~4.7.24 (2)~~

(2) The relevant *rules* in *COLL* deal with the persons to whom a *firm* should allocate *FCA-prescribed senior management responsibility* (za) (*COLL* value for money assessment and independent director requirements).

Exceptions for small non-complex firms

24.3.4 ~~4.7.24 (5)~~ G The *FCA* accepts that it may not be practical for a small non-complex *firm* ~~(see *SYSC* 4.5.13G)~~ to comply with the parts of ~~(1), (2) and (3)~~ *SYSC* 24.3.1G(1), *SYSC* 24.3.2G and *SYSC* 24.3.3G(1) that would otherwise apply to it.

24.3.5 ~~4.5.13(2)~~ G (1) A ~~*firm*~~ *UK SMCR dual regulated banking sector firm* is likely to be small ~~and non-complex~~ for ~~these~~ the purposes in *SYSC* 24.3.4G if ~~:~~ ~~(a)~~ it is:

(a) ~~(i)~~ a small CRR firm as defined in the part of the ~~*PRA's* rulebook~~ *PRA Rulebook* called "Allocation of responsibilities"; or

(b) ~~(ii)~~ a *credit union* that meets the *PRA's* size requirements for small CRR firms as defined ~~under the *PRA's* requirements~~ in (a)~~(i);~~ .

(2) A *firm* is likely to be non-complex for these purposes if:

(a) it conducts a limited number of simple business lines; ~~and~~

~~(b)~~

(b) it does not rely on group governance arrangements; and

~~(c)~~

(c) (in the case of a *branch*) it does not rely on governance arrangements for other parts of the *firm*.

Not assigning too many responsibilities to one person

24.3.6 G When deciding how to allocate *FCA-prescribed senior management responsibilities*, a *firm* should avoid assigning such a wide range of responsibilities to a particular *SMF manager* that they are not able to carry out those responsibilities effectively.

Dividing and sharing management functions between different people

24.3.7 ~~4.7.25(1)~~ G The *FCA* expects that a *firm* will not normally split an *FCA-prescribed senior management responsibility* between several *SMF managers*, with each only having responsibility for part.

24.3.8 ~~4.7.25(2)~~ G The *FCA* expects that a *firm* will not normally allocate responsibility for~~:~~

~~(a)~~ an *FCA-prescribed senior management responsibility*~~; or~~

~~(b) a function under *SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions);~~

to two or more *SMF managers* jointly.

24.3.9 ~~4.7.26~~ G (1) Although the norm should be for a *firm* to have a single individual performing each *FCA-prescribed senior management responsibility* ~~or function allocated under *SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~, there may be circumstances in which responsibilities can be divided or shared (see (2)).

(2) A *firm* should only divide or share a responsibility where this is appropriate and can be justified.

(3) For example, it would be justified to share a ~~function or~~ responsibility if that is done:

(a) as part of a job share; or

(b) where departing and incoming senior managers work together temporarily as part of a handover

(4) A *firm* may have co-heads of a department or business unit if this can be justified under (1) to (3).

24.3.10 ~~4.7.27~~ G (1) The *FCA* expects a *firm* to divide and allocate responsibilities under~~:~~ this chapter

~~(a) *SYSC* 4.7.5R (Allocation of FCA-prescribed senior management responsibilities); and~~

~~(b) *SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions);~~

between its *SMF managers* so that responsibilities are grouped together appropriately.

(2) The *firm* should make the judgement:

(a) in (1); and

(b) about whether and how responsibilities ~~and functions~~ should be shared;

under:

(c) *SYSC* 4.1.1R (robust governance arrangements); ~~and~~

(d) any other applicable *Handbook* requirements, including ~~*SYSC* 4.7.25G and *SYSC* 4.7.26G~~ *SYSC* 2 (Apportionment of Responsibilities) and *SYSC* 24.3.7G to *SYSC* 24.3.9G; and

(e) article 21 of the *MiFID Org Regulation* (General organisational requirements) or other similar relevant and directly applicable *EU* legislation.

(3) The *firm* should take into account the way it is organised, the business it carries out and the need not to allocate too many responsibilities to one individual (see ~~*SYSC* 4.7.23G~~ *SYSC* 24.3.6G).

(4) The *FCA* expects a *firm* to allocate *FCA-prescribed senior management responsibilities* ~~and responsibilities allocated under *SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ to the *SMF managers* they are most closely linked to.

24.3.11 ~~4.7.28~~ G *SUP* 10C.11.31G to *SUP* 10C.11.33G (Statements of responsibilities) contains material about:

(1) how to prepare *statements of responsibilities* where a responsibility ~~or function~~ is shared or divided between several *SMF managers*; and

(2) dividing and sharing responsibilities.

24.3.12 ~~4.7.29~~ G (1) A *firm* may allocate more than one *FCA-prescribed senior management responsibility* to the same *SMF manager*.

(2) This is subject to:

(a) ~~*SYSC* 4.7.23G~~ *SYSC* 24.3.6G (should not give too many responsibilities to one person); and

(b) *SYSC* 24.3.10G (what responsibilities should be grouped together).

Allocation of responsibilities and territorial scope~~.~~

24.3.13 ~~4.7.30~~ G (1) As explained in *SYSC* 24.1.3R, there is no territorial limitation to the application of this ~~section~~ chapter.

(2) This means that a *firm* should allocate~~:~~

~~(a)~~ the *FCA-prescribed senior management responsibilities*~~; and~~

~~(b) overall responsibilities under *SYSC* 4.7.8R;~~

so that they cover activities, transactions, business areas and management functions that are located or take place wholly or partly outside, as well as ones in, the *United Kingdom*.

24.3.14 ~~4.8.8~~ G ~~The~~ In the case of a *non-UK SMCR firm*, the *FCA-prescribed senior management responsibilities* relate to the activities of the ~~*third-country relevant authorised person's*~~ *firm's branch* in the *United Kingdom* (see *SYSC* 24.1.5R).

After SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities) insert a new SYSC 24 Annex 1. The text is not underlined.

24 Annex 1 Which FCA-prescribed senior management responsibilities apply to which kind of firm

Introduction and exclusions

1.1 G This annex sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR firm*.

1.2 R In this annex:

(1) a ✓ means that the *FCA-prescribed senior management responsibility* does apply;

(2) a × means that the *FCA-prescribed senior management responsibility* does not apply; and

(3) a reference letter refers to the reference letters in the table in *SYSC* 24.2.6R (Table: FCA-prescribed senior management responsibilities).

1.3 G If an *FCA-prescribed senior management responsibility* is not included in the table for a particular class of *firm* that means that *FCA-prescribed senior management responsibility* does not apply to any *firm* in that class.

1.4 R The following *FCA-prescribed senior management responsibilities* do not apply to a *full-scope UK AIFM* in relation to its *managing an AIF*:

(1) responsibility (j) (internal audit oversight);

(2) responsibility (k) (compliance oversight);

(3) responsibility (l) (risk oversight);

(4) responsibility (j-3) (independence of outsourced internal audit);

(5) responsibility (t) (business model); and

(6) responsibility (dd) (informing *governing body* of obligations).

Banking sector firms

2.1 R (1) The table in *SYSC* 24 Annex 1 2.3R sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR dual regulated banking sector firm*.

(2) *SMCR firms* in (1) are divided into the following categories for the purposes of in (1):

(a) a *UK SMCR dual regulated banking sector firm* (excluding *firms* in (b));

(b) a small *UK SMCR dual regulated banking sector firm*; and

(c) a *third-country SMCR dual regulated banking sector firm*.

2.2 R A small *UK SMCR dual regulated banking sector firm* means a *UK SMCR dual regulated banking sector firm* that is:

(1) a small CRR firm as defined in the part of the *PRA Rulebook* called "Allocation of responsibilities"; or

(2) a *credit union*.

2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

Brief description of responsibility	**Reference letter of responsibility**	**UK firm**	**Small UK firm**	**Third-country firm**
Responsibility for the *firm's* performance of its obligations under the senior managers regime	(a)	✓	✓	✓
Responsibility for the *firm's* performance of its obligations under the employee certification regime	(b)	✓	✓	✓
Financial crime	(d)	✓	✓	✓
COCON	(b-1)	✓	✓	✓
Training *governing body*	(f)	✓	×	×
Training of staff performing *designated senior management*	(g)	✓	×	×

responsibilities				
Management responsibilities maps	(c)	✓	✓	✓
Whistleblowers' champion	(n)	✓	✓	×
Internal audit oversight	(j)	✓	×	×
Compliance oversight	(k)	✓	×	×
Risk oversight	(l)	✓	×	×
Remuneration	(m)	✓	×	×
CASS	(z)	✓	✓	✓
UK risk management	(aa)	×	×	✓
Compliance with *UK regulatory system*	(ff)	×	×	✓
Escalation of correspondence	(ee)	×	×	✓
Note: the categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in *SYSC* 24 Annex 1 2.1R. Therefore: (1) Column three (UK firm) refers to *SYSC* 24 Annex 1 2.1R(2)(a); (2) Column four (Small UK firm) refers to *SYSC* 24 Annex 1 2.1R(2)(b); and (3) Column five (Third-country firm) refers to *SYSC* 24 Annex 1 2.1R(2)(c).				

Insurance sector firms

3.1 R (1) The table in *SYSC* 24 Annex 1 3.2R sets out which *FCA-prescribed senior management responsibilities* apply to which type of *Solvency II firm* (including a *large non-directive insurer*) and to a *small non-directive insurer*.

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

(a) a *Solvency II firm* (excluding *firms* in any other paragraph);

(b) a *firm* falling within paragraph (b) of the definition of *Solvency II firm* (third country branch);

(c) a *small non-directive insurer*;

(d) a *firm* in *SYSC* 23 Annex 1 3.2R (*firms* in run-off); and

(e) an *insurance special purpose vehicle*.

(3) An *insurance special purpose vehicle* only falls into paragraph (2)(e). Subject to that a *firm* in (2)(d) does not fall into any other paragraph.

3.2 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

Brief description of responsibility	**Reference letter of responsibility**	**Solvency II firm**	**Third country branches**	**Other insurance sector**	**ISPV**
Responsibility for the *firm's* performance of its obligations under the senior managers regime	(a)	✓	✓	✓	✓
Responsibility for the *firm's* performance of its obligations under the employee certification regime	(b)	✓	✓	✓	✓
Financial crime	(d)	✓	✓	✓	✓
COCON	(b-1)	✓	✓	✓	✓
Training *governing body*	(f)	✓	×	×	×
Training of staff performing *designated senior management responsibilities*	(g)	✓	×	×	×
Management responsibilities maps	(c)	✓	✓	×	×
Whistleblowers' champion	(n)	✓	×	×	×
CASS	(z)	✓	✓	✓	×
Internal audit for non-significant insurers	(j-2)	✓	×	×	×
Compliance with *UK regulatory system*	(ff)	×	✓	×	×
Escalation of	(ee)	×	✓	×	×

correspondence					

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in *SYSC* 24 Annex 1 3.1R. Therefore:

(1) Solvency II firm (column three) refers to *SYSC* 24 Annex 1 3.1R(2)(a);

(2) Third country branches (column four) refers *SYSC* 24 Annex 1 3.1R(2)(b);

(3) Other insurance sector (column five) refers to *SYSC* 24 Annex 1 3.1R(2)(c) and (d); and

(4) ISPV (column six) refers *SYSC* 24 Annex 1 3.1R(2)(e).

Solo regulated firms

4.1 R (1) The table in *SYSC* 24 Annex 1 4.2R sets out which *FCA-prescribed senior management responsibilities* apply to which type of *core SMCR firm* and *enhanced scope SMCR firm*.

(2) *SMCR firms* in (1) are divided into the following categories for the purposes of in (1):

(a) *UK core SMCR firm*;

(b) *non-UK core SMCR firm* (excluding an *EEA SMCR firm*); and

(c) *enhanced scope SMCR firm*.

4.2 R Table: FCA-prescribed senior management responsibility applying to solo regulated firms

Brief description of responsibility	**Reference letter of responsibility**	**UK core firm**	**Third country core firm**	**Enhanced scope firm**
Responsibility for the *firm's* performance of its obligations under the senior managers regime	(a)	✓	✓	✓
Responsibility for the *firm's* performance of its obligations under the employee certification regime	(b)	✓	✓	✓
Financial crime	(d)	✓	✓	✓
COCON	(b-1)	✓	✓	✓

Management responsibilities maps	(c)	×	×	✓
Internal audit oversight	(j)	×	×	✓
Compliance oversight	(k)	×	×	✓
Risk oversight	(l)	×	×	✓
CASS	(z)	✓	✓	✓
Independence of outsourced internal audit	(j-3)	×	×	✓
Business model	(t)	×	×	✓
Stress tests	(s)	×	×	✓
Informing *governing body* of obligations	(dd)	✓	×	×
COLL value for money assessment and independent director requirements)	(za)	✓	✓	✓
UK risk management	(aa)	×	✓	×
Compliance with *UK regulatory system*	(ff)	×	✓	×
Escalation of correspondence	(ee)	×	✓	×
Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in *SYSC* 24 Annex 1 4.1R. Therefore: (1) UK core firm (column three) refers to *SYSC* 24 Annex 1 4.1R(2)(a); (2) Third country core firm (column four) refers to *SYSC* 24 Annex 1 4.1R(2)(b); and (3) Enhanced scope firm (column five) refers to *SYSC* 24 Annex 1 4.1R(2)(c).				

Amend the following as shown.

25 Senior managers and certification regime: Management responsibilities maps and handover procedures and material

25.1 Application and purpose

Main application rules

25.1.1 ~~4.5.1~~	R	This ~~section~~ chapter applies to: ~~*UK relevant authorised persons*.~~ (1) an *SMCR dual regulated banking sector firm*; (2) an *enhanced scope SMCR firm*; and (3) a *Solvency II firm* (including a *large non-directive insurer*) but excluding: (a) an *insurance special purpose vehicle*; and (b) a *firm* in *SYSC* 23 Annex 1 3.2R (*firms* in run-off); except to the extent that this chapter applies a narrower scope to a particular provision.
25.1.2 ~~4.5.3~~	R	This ~~section~~ chapter is not limited to *regulated activities* or other specific types of activities.
	Territorial scope	
25.1.3 ~~4.5.2~~	R	Subject to *SYSC* 25.1.4R, ~~There~~ there is no territorial limitation on the application of this ~~section~~ chapter.
25.1.4 ~~4.6.1~~	R	This ~~section~~ chapter applies to a *non-UK SMCR firm*~~:~~ ~~(1) *EEA relevant authorised persons*; and~~ ~~(2) *third-country relevant authorised persons*;~~ in relation to the activities of a *branch* maintained by ~~them~~ the *firm* in the *United Kingdom*.
	How this chapter applies to non-UK SMCR firms	
25.1.5 ~~4.6.9(2)~~	R	Unless the context requires otherwise, the following terms in ~~*SYSC* 4.5.7R~~ this chapter are modified as follows in relation to a *non-UK SMCR firm*:

Reference in ~~*SYSC* 4.5.7R~~ this chapter	Modification
firm	treated as a reference to the *branch*
governing body, *management body*, *senior management* and *senior personnel*	(a) treated as a reference to the *branch's governing body*, *management body*, *senior management* or *senior*

	personnel; (b) the *Glossary* definitions of these terms are adjusted so as to refer to the *branch* rather than the *firm* as a whole
group	treated as including the rest of the *firm*
~~*PRA-prescribed senior management responsibilities*~~	~~treated as a reference to *PRA-prescribed UK branch senior management responsibilities*~~
~~functions allocated under *SYSC* 4.7.8R (Allocation of overall responsibility for a *firm's* activities, business areas and management functions)~~	~~treated as a reference to functions allocated under *SYSC* 4.8.10R (Local responsibility for a branch's activities, business areas and management functions)~~

Purpose

25.1.6 G (1) One purpose of the *management responsibilities map* is to help the *firm* and the *FCA* satisfy themselves that the *firm* has a clear organisational structure (as required by ~~*SYSC*~~ the *regulatory system*).

~~4.5.6(1)~~

(2) It also helps the *FCA* to identify who it needs to speak to about particular issues ~~and who is accountable if something goes wrong~~.

~~4.5.6(2)~~

(3) The *management responsibilities map* helps the *FCA* to operate its powers and requirements for individuals. For example it helps the *FCA*:

~~4.6.17(3)~~

(a) to identify who is accountable if something goes wrong;

(b) to understand the role of the *approved person* (or *candidate*) in the ~~*branch*~~ *firm* and therefore to judge how to use its powers under the ~~*approved persons*~~ regime for *SMCR firms*, such as the power to grant or refuse approval of an *SMF manager*.

25.2 Management responsibilities maps: Main rules

General rule

25.2.1 R (1) A *UK SMCR firm* must, at all times, have a comprehensive and up-to-date ~~document~~ *document* (the *management responsibilities map*) that describes its management and governance arrangements. ~~, including:~~

~~4.5.4~~

(2) A *non-UK SMCR firm* must, at all times, have a comprehensive and up-to-date *document* (the *management responsibilities map*) that describes the management and governance arrangements for any *branch* it maintains in the *United Kingdom*.

(3) A *management responsibilities map* must include:

(a) ~~(1)~~ details of the reporting lines and the lines of responsibility; and

(b) ~~(2)~~ reasonable details about:

(i) ~~(a)~~ the *persons* who are part of those arrangements; and

(ii) ~~(b)~~ their responsibilities.

(See further requirements in *SYSC* 25.2.3R.)

25.2.2 ~~4.5.5~~ R The *firm's management responsibilities map* must show clearly how any responsibilities covered by a *firm's management responsibilities map* are shared or divided between different *persons*.

Specific requirements

25.2.3 ~~4.5.7~~ R A *management responsibilities map* must include:

(1) (a) the names of all the *firm's*:

(i) *approved persons* (including *PRA approved persons*);

(ii) members of its *governing body* and (if different) *management body* who are not *approved persons*;

(iii) *senior management*;

(iv) *senior personnel*; and

(b) details of the responsibilities which they hold;

(2) all responsibilities described in any current *statement of responsibilities*;

(3) details of the management and governance arrangements relating to:

(a) the *FCA-prescribed senior management responsibilities*; and

(b) the *PRA-prescribed senior management responsibilities*;

including the identity of the *persons* to whom those functions are allocated;

(4) the reasons why (if it has done any of these things) the *firm*:

(a) allocates responsibility for an *FCA-prescribed senior management responsibility* to more than one *person* jointly; or

(b) divides responsibility for an *FCA-prescribed senior management responsibility* between different *persons*;

(5) details about the functions allocated under ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a *firm's* activities, business areas and management functions)~~ *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility), including:

(a) what ~~those~~ the activities, business areas and management functions allocated under that chapter are;

(b) the management and governance arrangements relating to them;

(c) ~~details about whether and how they are shared or divided up;~~ [deleted]

(d) the reasons why (if it has done this) the *firm* allocates responsibility for any such function to more than one *person* jointly; and

(e) the identity of the *persons* to whom those functions are allocated;

(6) matters reserved to the *governing body* (including the terms of reference of its committees) and, if different, the *management body*;

(7) details of how the *firm's* management and governance arrangements fit together with:

(a) its *group*; and

(a) any other *person* in (8);

(8) details of the extent to which the *firm's* management and governance arrangements are provided by, or shared with, other members of its *group* or others;

(9) details of the reporting lines and the lines of responsibility (if any) between the *firm* and those who carry out functions in relation to

~~them~~ <u>it</u> and:

(a) other members of its *group* or other third parties;

(b) *persons* acting as employees or officers of, or otherwise acting for, anyone in (a); or

(c) committees or other bodies of anyone in (a);

(10) reasonable information about the *persons* described or identified in the *management responsibilities map*, including:

(a) whether they are *employees* of the *firm* and, if not, by whom they are employed;

(b) if they are *certification employees* of the *firm*; and

(c) the responsibilities they have in relation to other *group* members or any other *person* in (8); and

(11) details of how (1) to (10) fit together and fit into the *firm's* management and governance arrangements as a whole.

25.2.4 ~~4.5.8~~ R ~~*SYSC* 4.5.7R(1)~~ <u>*SYSC* 25.2.3R(1)</u> does not require the *firm* to include the names of *approved persons* under *SUP* 10A.1.16BR (Appointed representatives).

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

<u>25.3 Management responsibilities maps: Exclusion of non-financial services activities for some firms</u>

<u>25.3.1</u> <u>R</u> <u>An *enhanced scope SMCR firm* may prepare its *management responsibilities map* so that (subject to *SYSC* 25.3.4R) it only includes its management and governance arrangements to the extent that they cover, support or otherwise relate to its *SMCR financial activities*.</u>

<u>25.3.2</u> <u>G</u> <u>Support functions that should be covered by a *management responsibilities map* under *SYSC* 25.3.1R might include:</u>

<u>(1)</u> <u>human resources;</u>

<u>(2)</u> <u>the *firm's* information technology; and</u>

<u>(3)</u> <u>compliance and legal services.</u>

<u>25.3.3</u> <u>G</u> <u>(1)</u> <u>A *firm* may have a non-financial services business in addition to carrying on its *SMCR financial activities*. Its support services may support both aspects of its business and its *management responsibilities map* may therefore still need to cover the support</u>

services even though they also cover the *firm's* non-financial services business.

(2) Take for example human resources. If the *firm's* human resources function covers the *firm's* entire workforce without separating the parts that deal with the *firm's* financial services and its other business, the *management responsibilities map* should cover the entire human resources function.

(3) On the other hand, the *firm* may separate the part of its human resources function that deals with those working in its financial services business from the part that deals with the other part of its business. In that case the *management responsibilities map* may leave out the part of the human resources function that covers its non-financial services business.

25.3.4 R If a *firm* uses the exclusion in *SYSC* 25.3.1R it must include sufficient information about the excluded management and governance arrangements to show how the included management and governance arrangements fit in with the *firm's* management and governance arrangements as a whole.

25.4 Guidance about what should be in a management responsibilities map

Material applicable to all firms

25.4.1 ~~4.5.9(1)~~ G The *management responsibilities map* should be consistent with the *statements of responsibilities*.

25.4.2 ~~4.5.9(2)~~ G The *statements of responsibilities* and the *management responsibilities map* should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular *statement of responsibilities* fit into the overall system of management and governance of the *firm*.

25.4.3 ~~4.5.10~~ G The *management responsibilities map* should include functions that are:

(1) included in a *PRA controlled function* under:

(a) rules 2.3 to 2.5 in the part of the *PRA Rulebook* titled 'Senior Management Functions';

(b) rules 2.5 to 2.6 in the part of the *PRA Rulebook* titled 'Insurance - Senior Insurance Management Functions'; or

(c) rules 2.5 to 2.6 in the part of the *PRA Rulebook* titled 'Large Non-Solvency II Firms – Senior Insurance Management Functions';

(*PRA rules* complementing *SUP* 10C.9 (Minimising overlap with the

PRA approved persons regime)); or

(2) excluded from the *other overall responsibility function* under *SUP* 10C.7.1R(2) (Exclusion for *approved person* with approval to perform other *designated senior management functions*); or

(3) excluded from the *other local responsibility function* under *SUP* 10C.8.1R (Exclusion for *approved person* with approval to perform other *designated senior management functions*).

25.4.4 ~~4.5.11~~ G A *firm's management responsibilities map* should demonstrate that there are no gaps in the allocation of responsibilities among its management.

25.4.5 ~~4.5.12(2)~~ G A *firm* need only include summary details of the *persons* in ~~*SYSC* 4.5.7R(1)~~ *SYSC* 25.2.3R(1).

25.4.6 ~~4.5.12(3)~~ G A *firm's SMF managers* and members of its governing body may overlap with its *senior management* and *senior personnel*. If so, the *firm* does not have to give the same details twice.

25.4.7 ~~4.5.12(4)~~ G A *firm* should include details of individuals in addition to those in ~~*SYSC* 4.5.7R(1) (3) and (5)~~ *SYSC* 25.2.3R(1), (3) and (5) if they are needed to make the *management responsibilities map* clear. For example, it may be necessary to include these details if the same individual has responsibilities in a number of different areas of the *firm*.

25.4.8 ~~4.5.12(5)~~ G A *firm* should only include summary details about *statements of responsibilities* under ~~*SYSC* 4.5.7R(2)~~ *SYSC* 25.2.3R(2). There is no need to duplicate the *statements of responsibilities*. The main aim of including material about *statements of responsibilities* in the *management responsibilities map* is to show how the material:

(1) ~~(a)~~ fits into the *firm's* overall governance structure; and

(2) ~~(b)~~ for each *statement of responsibilities*, fits with the others.

25.4.9 ~~4.5.12(7)~~ G A *management responsibilities map* should include a checklist confirming that all *FCA-prescribed senior management responsibilities* have been allocated or, if some have not been allocated, the reason why.

25.4.10 ~~4.5.12(8)~~ G If:

(1) ~~(a)~~ any *designated senior management function* is performed by; or

(2) any *FCA-prescribed senior management responsibility* is allocated

~~(b)~~ to;

more than one *person*, a *firm's management responsibilities map* should give details of how the performance or discharge of the responsibilities is to be carried out by those *persons*.

25.4.11 ~~4.5.12(6)~~ G The ~~executive~~ *executive director function*, the *other local responsibility function*, the *group entity senior manager function*, the *partner function* and the *other overall responsibility function* are defined generally and generically and can be performed by several people. Therefore, there is no need to explain why several people perform one of the functions.

25.4.12 ~~4.5.12(9)~~ G The material in *SUP* 10C.11.31G and *SUP* 10C.11.32G (recording sharing and splitting of responsibilities in *statements of responsibilities*) also applies to a *management responsibilities map*.

Branches of non-UK firms

25.4.13 G One effect of *SYSC* 25.1.5R is that a *non-UK SMCR firm* should draw up its *management responsibilities map* as if the rest of the *firm* outside the *UK branch* were a separate company in its *group*. This means, for example, that the map should include:

(1) details of how the *branch's* management and governance arrangements fit together with the wider *firm*;

(2) details of the extent to which the *branch's* management and governance arrangements are provided by, or shared with, the wider *firm*; and

(3) details of the reporting lines and the lines of responsibility between the *branch* and those who carry out functions in relation to it and the wider *firm* and *persons* acting for it.

Small firms

25.4.14 ~~4.5.13(1)~~ G (1) The *FCA* expects that the *management responsibilities map* of a small and non-complex *firm* is likely to be simple and short. It may be no more than a single sheet of paper.

(2) See *SYSC* 24.3.5G for what small and non-complex mean.

25.5 ~~Single~~ Management responsibilities map should be a single document

25.5.1 ~~4.5.14~~ R A *management responsibilities map* must be a single ~~document~~ *document*.

25.5.2 ~~4.5.15(1)~~ G (1) The requirement for a *management responsibilities map* to be a single ~~document~~ *document* does not mean that it has to be a single sheet of paper or must be capable of being reproduced as one.

~~4.5.15(2)~~ (2) A *management responsibilities map* may be made up of a folder with several files or items in it. <u>The folder may be electronic.</u>

~~4.5.15(3)~~ (3) However, a *firm* that creates a *management responsibilities map* in this way should ensure that its approach is compatible with it being a single ~~document~~ <u>*document*</u>. In particular:

(a) there should be a single item that identifies every item making up the *management responsibilities map* and shows where each item can be found;

(b) for example, this could be a contents list of the items making up the *management responsibilities map* with electronic links to each of them;

(c) the *management responsibilities map* should be complete by itself and should not refer to documents not forming part of it;

(d) every item in the *management responsibilities map* should only contain material about the matters required by this ~~section~~ <u>chapter to be included in *management responsibilities maps*</u>;

(e) for example, if there is relevant material in the *firm's* report and accounts, the folder should only contain the relevant parts or a link to those parts.

~~4.5.15(4)~~ (4) The folder and its contents should be easily identifiable as the *firm's management responsibilities map*

25.5.3 ~~4.5.15(5)~~ G Although a *management responsibilities map* can be large and complex, ~~*SYSC* 4.5.13G~~ <u>*SYSC* 25.4.14G</u> explains that, for small non-complex *firms*, it may be small and simple.

<u>25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms</u>

<u>Application</u>

<u>25.6.1 R This section applies to an *EEA SMCR firm*.</u>

<u>Purpose</u>

25.6.2 ~~4.6.17(1)~~ G (1) The *management responsibilities map* is an important support to the *FCA's* functions as *Host State competent authority*.

~~4.6.17(2)~~ (2) Having requirements and powers that apply directly to individuals helps to make the requirements on *firms* that the *FCA* is required or entitled to impose as *Host State competent authority* more effective.

(3) As explained in *SYSC* 25.1.6G (Purpose), the *management responsibilities map* also helps the *FCA* to operate its powers and requirements for individuals.

~~4.6.17(4)~~ (4) By helping the *FCA* to better understand how the *branch* is structured, the *management responsibilities map* also helps the *FCA* to carry out more effective supervision of conduct of business, money laundering and other *Host State* responsibilities.

25.6.3 ~~4.6.5(2)~~ G This ~~section~~ chapter is not intended to extend the application of the *common platform requirements* or other parts of *SYSC* to matters which are reserved by an *EU* instrument to the *firm's Home State regulator* in relation to *EEA* ~~*relevant authorised persons*~~ *SMCR firms*.

FCA-prescribed senior management responsibilities

25.6.4 G *SYSC* 25.2.3R (Specific requirements) requires a *management responsibilities map* to cover the allocation of *FCA-prescribed senior management responsibilities*. This is not relevant to an *EEA SMCR firm* as *FCA-prescribed senior management responsibilities* do not apply to it.

~~Responsibilities maps for EEA relevant authorised persons: leaving~~ Leaving out information already supplied

25.6.5 ~~4.6.20~~ R An *EEA* ~~*relevant authorised person*~~ *SMCR firm* may exclude from its *management responsibilities map*:

(1) any information contained in its *requisite details*;

(2) any information contained in any notice of changes to its *requisite details* under the *EEA Passport Rights Regulations*; and

(3) any other information that has been supplied by the *firm* to the *FCA* or the *PRA* (including through the *firm's Home State competent authority*) if:

(a) that information was supplied to the *FCA* or the *PRA* as a *Host State competent authority* ~~for *credit institutions* or *investment firms*~~; and

(b) the *Single Market Directives* or any other *EU* legislation provides for the supply of that information to the *FCA* or the *PRA* as described in (a).

25.6.6 ~~4.6.21~~ G Information contained in ~~*SYSC* 4.6.20R (1) and (2)~~ *SYSC* 25.6.5R(1) and (2) covers:

(1) details about the *branch* contained in the notice given by the *firm's Home State competent authority* as part of the process for establishing the *branch* in the *United Kingdom*; and

(2) any updates to that information under the *EEA Passport Rights Regulations*.

25.6.7 ~~4.6.22~~ G The *management responsibilities map* of an *EEA* ~~*relevant authorised person*~~ *SMCR firm* may therefore consist of information:

(1) that has changed since its *requisite details* were supplied or were last changed; or

(2) that is not covered in the *firm's Home State competent authority's* passport notification.

25.6.8 ~~4.6.23~~ G The *FCA* expects that an *EEA* ~~*relevant authorised person*~~ *SMCR firm* that excludes information from its *management responsibilities map* under *SYSC* 25.6.5R will identify in its *management responsibilities map* the documents supplied to the *FCA* or the *PRA* where the omitted information can be found.

25.6.9 ~~4.6.24~~ G In practice an *EEA* ~~*relevant authorised person*~~ *SMCR firm* may find it easier to prepare its *management responsibilities map* without omitting any information under *SYSC* 25.6.5R so that all the information referred to in ~~*SYSC* 4.6.15R to *SYSC* 4.6.19R~~ *SYSC* 25.2 (Management responsibilities maps: Main rules) can be found in a single integrated ~~document~~ *document*.

25.6.10 ~~4.6.26~~ G ~~*SYSC* 4.6.27G and *SYSC* 4.6.28G do~~ *SYSC* 25.3 (Guidance about what should be in a management responsibilities map) does not take into account the right of a *firm* to omit information under *SYSC* 25.6.5R. ~~They assume~~ It assumes that the *firm* will prepare a single ~~document~~ *document* under *SYSC* 25.6.9G. However *SYSC* ~~4.6.27G and *SYSC* 4.6.28G are~~ 25.3 is not intended to take away the right to omit information under *SYSC* 25.6.5R.

25.7 Guidance about SYSC 25 Annex 1G

25.7.1 G This section gives *guidance* about *SYSC* 25 Annex 1G (Examples of the business activities and functions of an *SMCR firm*).

Purpose of SYSC 25 Annex 1G ~~(The main business activities and functions of a relevant authorised person)~~

25.7.2 ~~4.5.16(2)~~ G (1) A *firm* may use ~~it~~ *SYSC* 25 Annex 1G as a ~~checklist~~ prompt to see whether its *management responsibilities map* covers all its business activities.

~~4.5.16(3)~~ (2) A *firm* may wish to prepare its *management responsibilities map* using the same split of activities, where this is appropriate.

25.7.3 G As mentioned in *SYSC* 26.11.2G, a *firm* may also use ~~it~~ *SYSC* 25 Annex 1G as a ~~checklist~~ prompt when allocating responsibilities under *SYSC* ~~4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ 26 (Senior managers and certification regime: Overall and local responsibility).

~~4.5.16(5)~~

25.7.4 G If a *firm* uses *SYSC* 25 Annex 1G to help it prepare its *management responsibilities map* or when allocating responsibilities under *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility), it should bear in mind that it is not comprehensive and that there may be other business activities and functions that are relevant to that *firm* (see *SYSC* 25.7.8G).

~~4.5.16(4)~~

25.7.5 G There is no direct link between *SYSC* 25 Annex 1G and the senior ~~management~~ managers regime for ~~*relevant authorised persons*~~ *SMCR firms*.

~~4.5.17~~

Contents of *SYSC* 25 Annex 1G ~~(The main business activities and functions of a relevant authorised person)~~

25.7.6 G *SYSC* 25 Annex 1G sets out examples of the ~~main~~ business activities and functions that the *FCA* thinks ~~are likely to~~ could be relevant to most large or complex *firms*, although the *FCA* does not require *firms* to organise themselves in this way.

~~4.5.18~~

25.7.7 G Most or all of these activities and functions will normally apply to a complex *firm*. Many of them may not apply to a non-complex *firm*.

~~4.5.19~~

25.7.8 G (1) *SYSC* 25 Annex 1G is not comprehensive. While it is intended to cover most front-line business activities of ~~a *relevant authorised person*~~ an *SMCR firm*, it does not cover all internal oversight and monitoring functions.

~~4.5.20~~

(2) For example, it does not cover compliance or internal audit or the *firm's governing body* or its *committees.*

25.8 Management responsibilities maps: Records

25.8.1 G A *firm* should consider past versions of its *management responsibilities map* as an important part of its records and as an important resource for the *FCA* in supervising the *firm*.

~~4.5.21~~

25.8.2 G Past versions of a *firm's management responsibilities map* form part of its records under ~~*SYSC* 9.1 (General rules on record-keeping)~~ the *regulatory system*.

~~4.5.22~~

25.9 Handover procedures and material

Application

25.9.1 R This section applies to <u>a *firm* that meets the following conditions:</u>

~~4.9.1(1)~~

<u>(1)</u> <u>it falls within *SYSC* 25.1.1R (Application and purpose); and</u>

<u>(2)</u> <u>it falls within one of the following categories:</u>

<u>(a)</u> <u>it is a</u> *UK* ~~*relevant authorised persons*~~ <u>*SMCR firm*;</u> ~~and~~ <u>or</u>

<u>(b)</u> <u>it is a</u> *third-country* ~~*relevant authorised persons*~~ <u>*SMCR dual regulated banking sector firm*</u>.

25.9.2 R For ~~*third-country relevant authorised persons*~~ <u>*non-UK SMCR firms*</u>, references in this section to an *SMF manager* are references to the *SMF manager* when acting as an *SMF manager* for the *firm's branch* in the *United Kingdom*.

~~4.9.1(2)~~

<u>25.9.3</u> <u>R</u> <u>This section does not apply to a *full-scope UK AIFM* in relation to its *managing an AIF*.</u>

Rules about handover material

25.9.4 R A *firm* must take all reasonable steps to ensure that:

~~4.9.4~~

(1) a *person* who is becoming an *SMF manager*;

(2) an *SMF manager*:

(a) taking on a new job or new responsibilities; or

(b) whose responsibilities or job are being changed; and

(3) anyone who has management or supervisory responsibilities for the *SMF manager* in (1) or (2);

has, when the *SMF manager* starts to perform ~~his~~ <u>their</u> new or revised responsibilities or job, all information and material that a *person* in (1) to (3) could reasonably expect to have to perform those responsibilities or that job effectively and in accordance with the requirements of the *regulatory system*.

25.9.5 R (1) A *firm* must have a policy about how it complies with *SYSC* 25.9.4R, including the systems and controls it uses.

~~4.9.5~~

(2) A *firm* must make and maintain adequate records of the steps taken to comply with *SYSC* 25.9.4R.

25.9.6 ~~4.9.6~~ G The information and material in *SYSC* 25.9.4R that should be made available includes details:

(1) about unresolved or possible breaches of the requirements of the *regulatory system*; and

(2) of any unresolved concerns expressed by the *FCA*, the *PRA* or another *regulatory body*.

25.9.7 ~~4.9.7~~ G (1) The main purpose of *SYSC* 25.9.4R is to help the *SMF manager* with ~~his~~ <u>their</u> new or revised responsibilities or job and to help the managers of *SMF managers*.

(2) It should be a practical and helpful document and not just a record.

(3) The material should include an assessment of what issues should be prioritised.

(4) It should include judgement and opinion, not just facts and figures.

Handover arrangements and certificates

25.9.8 ~~4.9.8~~ G (1) Where the responsibilities or job in *SYSC* 25.9.4R are being taken over from another *person*, the *firm* should have arrangements for an orderly transition.

(2) As part of these arrangements, the *firm* should take reasonable steps to ensure that the predecessor contributes to the information and material in *SYSC* 25.9.4R all that would be reasonable to expect the predecessor to know and consider relevant, including the predecessor's opinions.

(3) One way of doing this could be for the predecessor to prepare a handover certificate.

(4) However, the *FCA* accepts that there will be cases in which it will be impractical to ask the predecessor to prepare a handover certificate.

Application of this section to other parts of a firm's management

25.9.9 ~~4.9.9~~ G A *firm* should consider whether to apply the procedures in this section to other parts of its management.

25 Annex 1G **~~The main~~ <u>Examples of the</u> business activities and functions of ~~a relevant authorised person~~ <u>an SMCR firm</u>**

~~4 Annex 1G~~

Business areas and management functions	Explanation
(1) Payment services	This means: (1) *payment services*; (2) issuing and administering other means of payment (for example, cheques and bankers' drafts); (3) issuing *electronic money*; and (4) current accounts.
(2) Settlement	This means clearing and settlement of any transactions described in rows (3) and (6) to (9) of this annex, in relation to the assets covered by (9). It also includes clearing and settlement of any transactions described in row (10).
(3) Investment management	This has the same meaning as *managing investments* with the following adjustments: (a) it covers all types of assets; and (b) the exclusions in the *Regulated Activities Order* do not apply. It also covers fund management.
(4) Financial or investment advice	This includes *advising on investments*.
(5) Mortgage advice	This has the same meaning as *advising on regulated mortgage contracts* but is expanded to cover land anywhere in the world and to cover security of any kind over land.
(6) Corporate investments	This means acquiring, holding, managing and disposing a *firm's* investments made for its own account.
(7) Wholesale sales	This means the *selling* of any *investment* to a *person* other than a *retail customer*. It does not include the activities in (1).
(8) Retail sales	This means the *selling* of any *investment* to a *retail customer*.

	It includes savings accounts. It does not include the activities in (1).
(9) Trading for clients	This means *dealing in investments as agent* and *execution of orders on behalf of clients* but the list of products includes money market instruments and foreign exchange.
(10) Market making	This has the same meaning as it does in *MIFID* (see the definition of market maker in article 4.1~~(8)~~(7)).
(11) *Investment research*	
(12) Origination/syndication and underwriting	Origination and syndication include: (1) entering into or acquiring (directly or indirectly) any commitment or *investment* with a view to transferring some or all of it to others, or with a view to others investing in the same transaction; (2) sub-participation; and (3) any transaction described in the *Glossary* definition of *originator*. Underwriting includes underwriting that is not on a firm commitment basis. A commitment or *investment* includes an economic interest in some or all of it. This activity also includes the provision of services relating to such transactions.
(13) Retail lending decisions	Deciding whether, and on what terms, to lend to *retail customers*. Lending includes granting credit, leasing and hire (including finance leasing).
(14) Wholesale lending decisions	Deciding whether, and on what terms, to lend to *persons* who are not *retail customers*. Lending includes granting credit, leasing and hire (including finance leasing).
(15) Design and manufacturing of products intended for wholesale customers	Wholesale customers mean *persons* who are not *retail customers*
(16) Design and manufacture of products	

intended for *retail customers*	
(17) Production and distribution of marketing materials and communications	This includes *financial promotions*
(18) Customer service	This means dealing with *clients* after the point of sale, including queries and fulfilment of *client* requests
(19) Customer complaints handling	This includes the *firm's* compliance with *DISP*. It also includes: (1) any similar procedures relating to activities that do not come under the jurisdiction of the *Financial Ombudsman Service*; (2) activities that take place outside the *UK*; and (3) activities that are not subject to any ombudsman service.
(20) Collection and recovering amounts owed to a *firm* by its customers Dealing with customers in arrears	'Customer' means any *person* falling into any of the definitions of *client* in the *Glossary* so far as they apply to the *FCA's Handbook*. The definition is extended to cover all services provided by the *firm* and not just those that are provided in the course of carrying on a *regulated activity* or an *ancillary service*.
(21) Middle office	This means risk management and controls in relation to, and accounting for, transactions in *securities* or *derivatives*
(22) ~~The *firm's* information technology~~ Issuing commitments	This means the activity described in *SYSC* 27.7.6R(1)(i) (examples of what the significant management *FCA-specified significant-harm function* can cover).
(23) ~~Business continuity planning~~ Processing	~~This means the functions described in *SYSC* 4.1.6R and *SYSC* 4.1.7R~~ This means the activity described in *SYSC* 27.7.6R(1)(j) (examples of what the significant management *FCA-specified significant-harm function* can cover).
(24) Human resources	This includes recruitment, training and competence and performance monitoring
(25) Incentive schemes for the *firm's* staff	This is not limited to schemes based on sales~~.~~

(26) *Providing information in relation to a specified benchmark*	
(27) *Administering a specified benchmark*	
(29) Administration of insurance	This means the activity described in *SYSC* 27.7.6R(1)(k) (examples of what the significant management *FCA-specified significant-harm function* can cover).
Note (1): The purpose of this annex is explained in ~~*SYSC* 4.5 (Management responsibilities maps for UK relevant authorised persons)~~ *SYSC* 25.7 (Guidance about SYSC 25 Annex 1G) and *SYSC* 26.11.2G. ~~This annex is also referred to in *SYSC* 4.6 (Management responsibilities maps for non-UK relevant authorised persons) and *SYSC* 4.8 (Senior management responsibilities for third-country relevant authorised persons: allocation of responsibilities) (see *SYSC* 4.6.14 and *SYSC* 4.8.35).~~	
Note (2): A *firm* does not have to use the split of example activities in this annex for the purposes in Note (1). If a *firm* does decide to use it, ~~it may~~ the *firm* should adapt it to suit ~~its~~ the *firm's* management arrangements better. For example, a *firm* may find the split of activities into retail and wholesale activities unsuitable. If so, the *firm* might: (a) treat retail and wholesale activities together; or (b) use its own definition of retail and wholesale activities.	

26 Senior managers and certification regime: Overall and local responsibility

26.1 Application

Main application rules

26.1.1 R This chapter applies to:

(1) an *SMCR dual regulated banking sector firm*;

(2) an *enhanced scope SMCR firm*; and

(3) a *Solvency II firm* (including a *large non-directive insurer*) but excluding:

(a) an *insurance special purpose vehicle*; and

(b) a *firm* in *SYSC* 23 Annex 1 3.2R (*firms* in run-off);

except to the extent that this chapter applies a narrower scope to a particular provision.

26.1.2 R ~~*SYSC* 4.8~~ This chapter is not limited to *regulated activities* or other specific

~~4.8.4~~ types of activities.

Exclusions

26.1.3 R This chapter does not apply to an *EEA SMCR firm*.

Territorial scope

26.1.4 ~~4.8.3~~ R There is no territorial limitation on the application of ~~*SYSC* 4.8~~ this chapter, save as set out in *SYSC* 26.1.5R.

26.1.5 ~~4.8.2~~ R ~~This section relates~~ When this chapter applies to ~~the activities of~~ a ~~*third-country relevant authorised person's*~~ *non-UK SMCR firm*, it applies in relation to the *firm's* *branch* in the *United Kingdom*.

26.1.6 R Unless the context requires otherwise, the terms in the first column of the table in *SYSC* 26.1.7R are modified as described in the second column of that table in relation to a *non-UK SMCR firm*.

26.1.7 R Table: Application of this chapter to a third-country SMCR firm

Reference in this chapter	**Modification**
firm	treated as a reference to the *branch*
governing body	(a) treated as a reference to the *branch's governing body*; (b) the *Glossary* definition of this term is adjusted so as to refer to the *branch* rather than the *firm* as a whole
group	treated as including the rest of the *firm*
chief executive	*branch* manager or the *person* performing the *head of third country branch function* or the *PRA's* Head of Overseas Branch *designated senior management function*

26.2 Purpose

26.2.1 ~~4.8.5~~ G The purpose of this ~~section~~ chapter is to ensure, together with the equivalent *PRA* requirements and the requirements about *FCA-prescribed senior management responsibilities* in *SYSC* 24 (Senior managers and certification regime: Allocation of prescribed responsibilities), that:

(1) an *SMF manager* is responsible and accountable for every area of a

~~*branch's*~~ *firm's* activities;

(2) the allocation of responsibilities is done systematically and explicitly; and

(3) the process of allocation of responsibilities under this chapter covers every part of a *firm's* activities, business areas and management functions (subject to the exclusions in *SYSC* 26.4 (Exclusions) without any gaps in what is allocated in this process.

26.2.2 G The purpose of this chapter is not primarily to ensure that formal responsibility for everything a *firm* does is allocated amongst its senior management. Even without the requirements of this chapter, responsibilities that have not been allocated explicitly would fall to the *chief executive* by default. However, one of the purposes of this chapter is to avoid responsibilities being allocated by implication or by default.

26.2.3 G (1) The allocation of responsibilities under this chapter does not replace the responsibilities of the *chief executive*.

(2) If a *firm* allocates responsibilities under this chapter to an *SMF manager* other than the *chief executive*, the *chief executive* will be responsible for managing that *person's* performance of those responsibilities in the same way that the *chief executive* manages that *person's* other responsibilities.

(3) A *firm* may allocate responsibilities under this chapter to the *chief executive*.

26.3 Main rules

26.3.1 R A *UK SMCR firm* must ensure that, at all times, one or more of its *SMF managers* have overall responsibility for each of the activities, business areas and management functions of the *firm*.

~~4.7.8(1)~~

26.3.2 R (1) A *non-UK SMCR firm* must ensure that, at all times, one or more of its *SMF managers* has overall responsibility (subject to the *branch's governing body*) for each of the activities, business areas and management functions of the *branch* that are under the management of the *branch's governing body*.

~~4.8.10(1)~~

~~4.8.10(2)~~ (2) A *non-UK SMCR firm* must ensure that, at all times, one or more of its *SMF managers* has responsibility for each of the activities, business areas and management functions of the *branch* not covered by (1).

~~4.8.10(3)~~ (3) An *SMF manager* in (2) must be directly involved in the management of the activity, business area or management function for which they have responsibility under (2).

26.3.3 ~~4.8.10(4)~~ R An *SMF manager* who has responsibility for an activity, business area or management function under ~~(1) or (2)~~ this section:

(1) (in the case of a *UK SMCR firm*) has "overall responsibility";

(2) (in the case of a *non-UK SMCR firm*) has "local responsibility";

for that activity, business area or management function.

26.3.4 ~~4.7.8(3)~~ R A *firm* must make the allocations of responsibilities in this ~~*rule*~~ chapter in such a way that it is clear who has which of those responsibilities.

26.4 Exclusions

Exclusions where other requirements apply

26.4.1 R *SYSC* 26.3 (Main rules) does not require a *firm* to ensure that *SMF managers* have local or overall responsibility for any activity, business area or management function that is included in an *FCA-prescribed senior management responsibility*.

26.4.2 ~~4.7.8(2)~~ R ~~This *rule*~~ *SYSC* 26.3 (Main rules) does not require a ~~*firm*~~ *PRA-authorised person* to ensure that *SMF managers* have local or overall responsibility for any activity, business area or management function that is:

~~(a)~~ ~~included in an *FCA-prescribed senior management responsibility*; or~~

(1) ~~(b)~~ included in ~~an~~ a *PRA-prescribed senior management responsibility*; or

(2) ~~(c)~~ managed (as part of the *PRA-designated senior management function* concerned) by any of the *firm's SMF managers* approved to perform any of the following *PRA-designated senior management functions* for the *firm*:

(a) ~~(i)~~ the Chief Finance function;

(b) ~~(ii)~~ the Chief Risk function;

(c) ~~(iii)~~ the Head of Internal Audit function; ~~or~~

(d) ~~(iv)~~ the Head of Key Business Area function; ~~or~~

(e) the Chief Operations function; or

(f) ~~(v)~~ the Group Entity Senior Manager function or the Group Entity Senior Insurance Manager function.

Exclusion of the governing body and non-executive directors

26.4.3 ~~4.8.10(6)~~ R ~~This *rule*~~ *SYSC* 26.3 (Main rules) does not require a *firm* to allocate overall or local responsibility for the running of the ~~*branch's*~~ *firm's governing body*.

26.4.4 ~~4.8.13(2)~~ G ~~This~~ *SYSC* 26.4.3R means that a *person* does not have overall or local responsibility for a function under ~~*SYSC* 4.8.10R~~ this chapter just by being a member of a ~~*branch's*~~ *firm's governing body* or equivalent.

26.4.5 ~~4.7.18~~ G (1) A *person* who just provides oversight of a function does not have overall or local responsibility for that function under ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ this chapter.

(2) Paragraph (1) and ~~*SYSC* 4.7.17G~~ *SYSC* 26.4.4G mean that a *non-executive director* acting as such does not have overall or local responsibility for a function under ~~*SYSC* 4.7.8R~~ *SYSC* 26.3 or perform the *other overall responsibility function* or the *other local responsibility function*.

(3) Paragraph (1) and ~~*SYSC* 4.7.17G~~ *SYSC* 26.4.4G mean that a *non-executive director*:

(a) providing oversight of a function; or

(b) being responsible for the independence of a function;

does not have overall or local responsibility for that function under ~~*SYSC* 4.7.8R~~ this chapter or perform the *other overall responsibility function* or the *other local responsibility function*.

Exclusion of non-financial services activities

26.4.6 R *SYSC* 26.3 (Main rules) only requires an *enhanced scope SMCR firm* to allocate responsibility for activities, business areas and management functions to the extent that they support, form part of or otherwise relate to its *SMCR financial activities*.

26.4.7 G *SYSC* 25.3.2G and *SYSC* 25.3.3G (Management responsibilities maps: Exclusion of non-financial services activities for some firms) are relevant to when an *enhanced scope SMCR firm* may exclude support services from the allocation of responsibilities under this chapter.

Exclusion where the 12-week rule applies

26.4.8 R (1) This *rule* applies where:

(a) a *firm* appoints someone to perform a function in order to provide cover as described in *SUP* 10C.3.13R(1) (The 12-week rule) or the *PRA* equivalent; and

(b) the *firm* has allocated any responsibilities (the "Responsibilities") under *SYSC* 26.3 (Main rules) to the *SMF manager* (the absent manager) who is absent as described in *SUP* 10C.3.13R(2) or the *PRA* equivalent.

(2) While the disapplication of the *designated senior management function* provided for in *SUP* 10C.3.13R(1) or the *PRA* equivalent is still in force the *firm* may allocate the Responsibilities to an *employee* who is not an *SMF manager*.

(3) For the purposes of this *rule*, the *PRA* equivalent of:

(a) *SUP* 10C.3.13R is:

(i) rule 2.3 in the "Senior Management Functions" part of the *PRA Rulebook*;

(ii) rule 2.4 in the "Insurance - Senior Insurance Management Functions" part of the *PRA Rulebook*; and

(iii) rule 2.4 in the "Large Non-Solvency II Firms – Senior Insurance Management Functions" part of the *PRA Rulebook.*

(b) *SUP* 10C.3.13R(1) and (2) are:

(i) rules 2.3(1) and (2) in the "Senior Management Functions" part of the *PRA Rulebook*;

(ii) rules 2.4(1) and (2) in the "Insurance - Senior Insurance Management Functions" part of the *PRA Rulebook*; and

(iii) rules 2.4(1) and (2) in the "Large Non-Solvency II Firms – Senior Insurance Management Functions" part of the *PRA Rulebook.*

26.4.9 G A *firm* need not allocate the Responsibilities referred to in *SYSC* 26.4.8R(1)(b) to the person who is providing cover for the absent *SMF manager*.

26.4.10 G *SYSC* 26.4.8R and *SUP* 10C.3.13R apply to a person performing the *other overall responsibility function* or the *other local responsibility function* as well as to a person performing one of the other *designated senior* *management functions*.

Exclusion for AIFMD

26.4.11 R A *full-scope UK AIFM* may treat *managing an AIF* as not being part of its *SMCR financial activities* for the purposes of this chapter.

26.5 Guidance on territorial scope

Allocation of responsibilities and territorial scope

26.5.1 G *SYSC* 26.1.4R (territorial scope) means that a *firm* should allocate overall responsibilities under this chapter so that they cover activities, transactions, business areas and functions that are located or take place wholly or partly outside, as well as ones in, the *United Kingdom*.

Allocation of responsibility for transactions in branches

26.5.2 G There is an exception to *SYSC* 26.5.1G for a *non-UK SMCR firm*. This is that *SYSC* 26.1.5R limits this chapter to the activities of its *UK branch*.

26.5.3 ~~4.8.30~~ G (1) It is common for a *branch* to carry out only part of a transaction. For instance, a transaction may be booked in a *branch* but negotiated and arranged elsewhere or vice versa.

(2) When allocating responsibility to an *SMF manager* for activities in relation to transactions under ~~*SYSC* 4.8.10R~~ *SYSC* 26.3 (Main rules), a *firm* should not exclude a transaction which is arranged, booked or negotiated in the *branch* merely because other elements of the transaction occur outside the *United Kingdom*.

26.6 Meaning of local and overall responsibility: General

UK firms

26.6.1 G The meaning in practice of overall responsibility for a function depends on whether that function is under the management of the *firm's governing body* or not.

26.6.2 G (1) Certain *EU* legislation requires the *governing body* of a *firm* to have ultimate responsibility for, and the prime and leading role in, managing the *firm*.

(2) In particular this is the case under:

(a) article 88 of the *CRD* (Governance arrangements);

(b) article 9 of *MiFID* (management body); and

(c) article 40 of the *Solvency II Directive* (Responsibility of the administrative, management or supervisory body).

(3) This means that the *governing body* of a *UK SMCR firm* subject to these requirements will manage the conduct of the whole of the business of the *firm*. In turn that means that the parts of this chapter dealing with a function that is not managed by the *firm's governing body* will not be relevant to it.

26.6.3 G The *FCA* recognises that for some *UK SMCR firms* not subject to the requirements in *SYSC* 26.6.2G, some activities, business areas and functions of a *firm* may not be under the management of its *governing body*. This may be the case where, for example:

(1) the *firm* does not have a *governing body*; or

(2) the *firm's* shareholders play a key role in managing it through, for example, a *group* management committee.

Branches of non-UK firms

26.6.4 ~~4.8.11(2)~~ G (1) ~~*SYSC* 4.8.10R(1)~~ *SYSC* 26.3.2R(1) refers to the activities, business areas and management functions of the *branch* that are under the management of the *branch's governing body*. However, the *FCA* recognises that for some *branches*, some activities, business areas and functions of the ~~branches~~ *branches* may not be under the management of the *branch's governing body*. This may be the case where the *branch* does not have its own *governing body* or where it is organised in such a way that certain functions are under the management of a *person* or body outside the *branch's* management structure. In those circumstances, it would not be appropriate to require the *firm* to allocate overall responsibility for that matter to a *person* who is part of the management structure of the *branch*.

~~4.8.11(3)~~ (2) The requirements to allocate responsibility for activities, business areas and functions of a *branch* under ~~*SYSC* 4.8.10R(1) and (2)~~ *SYSC* 26.3.2R(1) and (2) respectively are intended to allow for the difference described in ~~(2)~~ (1). In particular:

(a) ~~*SYSC* 4.8.10R(1)~~ *SYSC* 26.3.2R(1) is intended to cater for the situation where a particular activity, business area or function of the *branch* is under the management of the *branch's governing body*. In that situation, the *firm* should allocate ~~overall~~ responsibility for that matter under ~~*SYSC* 4.8.10R(1)~~ *SYSC* 26.3.2R(1); and

(b) ~~*SYSC* 4.8.10R(2)~~ *SYSC* 26.3.2R(2) is intended to cater for the situation where a particular activity, business area or function of the *branch* is not under the management of *branch's governing body*. In that situation, the *firm* should allocate responsibility for that matter under ~~*SYSC* 4.8.10R(2)~~ *SYSC*

26.3.2R(2).

Further guidance

26.6.5 G *SYSC* 26.7 gives *guidance* on the effect of *SYSC* 26.3 (Main rules) when a function is under the *governing body's* management. *SYSC* 26.8 gives *guidance* on the effect of *SYSC* 26.3 when the function is not.

Day-to-day or ultimate control

26.6.6 ~~4.8.12~~ G ~~*SYSC* 4.8.10R(4) states that a *person* who has responsibility for an activity, business area or management function under *SYSC* 4.8.10R(1) or (2) will have local responsibility for that matter.~~ Having overall or local responsibility under this chapter for a matter does not necessarily mean:

(1) having ultimate authority over it; or

(2) having day-to-day management control of that function.

26.6.7 ~~4.7.12~~ G ~~Having overall responsibility for a matter does not mean having ultimate authority over it. The~~ In particular, the ultimate decision-making body of ~~a *firm*~~ many *UK SMCR firms* is ~~its~~ their *governing body*, acting collectively.

26.7 Meaning of local and overall responsibility: Reporting to the governing body

26.7.1 G This section gives *guidance* on what overall and local responsibility for a function means when the *governing body* manages the function in question under *SYSC* 26.3 (Main rules).

26.7.2 ~~4.7.11~~ G When ~~*SYSC* 4.7~~ this chapter refers to a *person* having overall or local responsibility for a function as described in *SYSC* 26.7.1G, it means a *person* who has:

(1) ultimate responsibility (under the *governing body* and the *chief executive*) for managing or supervising that function; and

(2) primary and direct responsibility for:

(a) briefing and reporting to the *governing body* about that function; and

(b) putting matters for decision about that function to the *governing body*.

26.7.3 ~~4.8.17~~ G In general, the *FCA* expects that a person to whom overall responsibility for a function is allocated ~~under *SYSC* 4.8.10R(1)~~ as described in *SYSC* 26.7.1G will be the most senior employee or officer responsible for managing or supervising that function under the management of the ~~*branch's*~~ *governing body*.

26.7.4 ~~4.7.13~~	G	(1)	A *person* with overall or local responsibility for a matter will either be a member of the *governing body* or will report directly to the *governing body* for that matter.
		(2)	For example, a *firm* appoints A to be head of sales. A is not on the *governing body*. A reports to an executive director (B) and B reports to the *governing body* about the sales function. In this example B, rather than A, has overall responsibility for sales.
26.7.5 ~~4.7.14~~	G	(1)	A *person* who reports to another, or is subject to oversight by another, may still have overall or local responsibility for a function.
		(2)	For example, a head of compliance may report direct to the *governing body* but be subject to performance appraisal by the ~~chief executive~~ *chief executive*. In this example, the head of compliance will still have overall responsibility for compliance.
		(3)	If a *person* (A): (a) reports directly to the *firm's governing body* about a particular matter; but (b) is not a member of the *governing body*; and (c) reports to a member of the *governing body* (B) about that matter, who also reports to the *governing body* about that matter; B has overall or local responsibility for that matter.
		(4)	If: (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter; (b) A also reports to another *person* (B) about that matter; (c) neither A nor B is a member of the *governing body*; and (d) B also reports directly to the *firm's governing body* about that matter; B has overall responsibility for that matter.
		(5)	A member of the *governing body* who reports to the chief executive may still have overall or local responsibility for a function.
		(6)	If: (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter; and

(b) A's function is subject to oversight by a *non-executive director* (B) or by a committee of the *firm's governing body* chaired by B;

A (not B) has overall or local responsibility for that matter.

26.7.6 ~~4.8.18~~ G A *person* may have ~~overall~~ local responsibility for a function ~~under *SYSC* 4.8.10R(1)~~ for a *branch* of a *non-UK SMCR firm* even though that *person* also reports to a *person* outside the *branch*.

26.8 Meaning of local and overall responsibility: Not reporting to the governing body

Scope of this section

26.8.1 ~~4.8.20(1)~~ G ~~*SYSC* 4.8.10R(2)~~ This section relates to the allocation of overall or local responsibility for any activities, business areas and functions of the ~~*branch*~~ *firm* which are not under the management of ~~the *branch's*~~ its *governing body* (see *SYSC* 26.3 (Main rules)).

Branches: Responsibility held outside the management structure of branch

26.8.2 ~~4.8.20(3)~~ G A *person* having local responsibility for a function ~~under *SYSC* 4.8.10R(2)~~ for a *branch* does not need to be part of the management structure of the *branch* in order to have local responsibility for the function.

Branches: Setting overall strategy for a branch

26.8.3 ~~4.8.27~~ G (1) Generally, where a *non-UK SMCR firm* allocates responsibility ~~under *SYSC* 4.8.10R~~ as described in *SYSC* 26.8.1G to one of the *firm's SMF managers* who is not based in the *branch* the *FCA* would expect:

(a) that the responsibility would not be allocated to a manager whose responsibilities for the *branch* are limited to setting overall strategy for the *branch*; and

(b) that, instead, the *firm* would allocate it to a manager who is the most senior *person* responsible for implementing the strategy for the *branch*.

(2) See *SUP* 10C.1.5AG for more about how the difference between strategic and implementing responsibilities affects the *FCA* senior ~~management~~ managers regime for *approved persons* in ~~*third-country relevant authorised persons*~~ *non-UK SMCR firms*.

26.8.4 ~~4.8.26~~ G (1) In some cases, a *person* who has local responsibility for a particular function may be very senior within the *firm* as a whole.

(2) For instance, in some *branches*, an individual with local responsibility for a function may also be the head of the *firm's* Europe and Middle East division for a business line and may be more senior within the *firm* as a whole than the *person* performing the *PRA's* Head of Overseas Branch *designated senior management function*.

UK firms

26.8.5 G Having overall responsibility for a function as described in *SYSC* 26.8.1G means being the most senior employee or officer responsible for managing or supervising that function.

26.9 Who functions should be allocated to

Seniority

26.9.1 ~~4.7.21(2)~~ G ~~However, the~~ The *FCA* expects that anyone who has overall or local responsibility for a matter:

(1) ~~(a)~~ will be sufficiently senior and credible; and

(2) ~~(b)~~ will have sufficient resources and authority;

to be able to exercise ~~his~~ their management and oversight responsibilities effectively.

26.9.2 ~~4.8.22~~ G (1) The *FCA* would not consider it unusual if a *person* who has overall or local responsibility for a particular function was not a member of the ~~*branch's*~~ *firm's governing body* or equivalent.

(2) For example, in some ~~*branches*~~ *firms*, the head of compliance may report directly to the ~~*branch's*~~ *firm's governing body* even though the head of compliance is not a member of the *governing body*.

26.9.3 G Other parts of this chapter dealing with seniority are:

(1) *SYSC* 26.7.3G (seniority of someone with overall responsibility for a function under the management of a *firm's governing body*);

(2) *SYSC* 26.8.3G (seniority of someone from elsewhere in the *firm* having local responsibility in a *branch*); and

(3) *SYSC* 26.8.5G (seniority of someone within a *UK SMCR firm* with overall responsibility for a function not under the management of a *firm's governing body*).

Not giving too much responsibility to one individual

26.9.4 ~~4.7.23(1)~~ G (1) It will be common for a small non-complex *firm* to divide overall or local responsibility for its activities under the management of its *governing body* between members of its *governing body* and not to assign overall or local responsibility for any activity to someone who is not a member.

~~4.7.23(2)~~ (2) However, when deciding how to divide up overall or local responsibility for its activities, a *firm* should avoid assigning such a wide range of responsibilities to a particular *person* ~~so~~ that the *person* is not able to carry out those responsibilities effectively.

~~4.7.23(3)~~ (3) Therefore, in a large or complex *firm*, the *FCA* expects overall or local responsibility for some functions to be assigned to *persons* in the layer of management below the *governing body*. Anyone in that layer having overall or local responsibility for an activity will be performing a *designated senior management function*.

26.9.5 ~~4.8.28(5)~~ G ~~Paragraph (2)~~ *SYSC* 26.9.4G(2) also applies to allocating responsibility for functions that are not under the management of the *firm's* or *branch's* *governing body*.

Dividing and sharing management functions between different people

26.9.6 G The following provisions of *SYSC* 24.3 (Who prescribed responsibilities should be allocated to) also apply to allocations under this chapter so far as those provisions deal sharing responsibilities:

(1) *SYSC* 24.3.8G (responsibilities should generally not be shared);

(2) *SYSC* 24.3.9G (when responsibilities may be shared); and

(3) *SYSC* 24.3.11G (*statements of responsibilities*);

26.9.7 G (1) The material in *SYSC* 24.3 (Who prescribed responsibilities should be allocated to) about splitting of responsibilities is not directly relevant to this chapter. This is because *SYSC* 24 deals with functions that have been defined in the *Handbook* whereas this chapter does not define the areas into which a *firm's* activities should be divided when allocating responsibilities to its *SMF managers*.

(2) However *SYSC* 24.3.10G (responsibilities should be grouped together appropriately) is also relevant for deciding whether responsibility for a particular set of matters should be allocated to one *SMF manager* or allocated between several.

26.10 Group management arrangements and outsourcing

26.10.1 ~~4.7.31~~ G (1) ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ This chapter requires overall or local responsibility for various aspects of a *firm's* affairs to be allocated to an *SMF manager*.

(2) This requirement does not prevent a *firm* from relying on an employee of a company in the same group to perform the function.

(3) A *firm* has two main choices about how to fit such arrangements into the senior ~~management~~ managers regime for ~~*relevant authorised persons*~~ *SMCR firms*.

(a) The group employee is appointed by the ~~*firm's*~~ *firm* (usually by its *governing body* if it has one) to perform the function. This means that the *firm* will have entered into an arrangement with that *person*. As explained in *SUP* 10C.3.9G, an arrangement with the *firm* is one of the factors that makes the senior ~~management~~ managers regime for ~~*relevant authorised persons*~~ *SMCR firms* apply. The result is that the group official will be performing a *controlled function* and will need to be approved as an *SMF manager*.

(b) The *firm* appoints someone (A) to oversee what the group employee does (so far as it concerns the *firm*) and ~~to take overall~~ allocates responsibility for the function to A, leaving day-to-day activities to the group employee. A will need to be approved as an *SMF manager*.

26.10.2 ~~4.7.34~~ G *SYSC* 26.10.1G ~~and *SYSC* 4.7.33G~~ also ~~apply~~ applies to a *firm* that outsources functions to a third party and is relying on an individual from the outsourced services provider to carry out the functions in those paragraphs.

26.10.3 ~~4.7.32~~ G (1) ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ This chapter does not cover responsibility for an aspect of a ~~*firm's*~~ *PRA-authorised person's* affairs managed by an individual approved to perform the Group Entity Senior Manager or the Group Entity Senior Insurance Manager *PRA-designated senior management function* (see *SYSC* 26.4.1R (Exclusions where other requirements apply)).

(2) Where a responsibility is held by someone approved to perform ~~the Group Entity Senior Manager~~ one of those *PRA-designated senior management* ~~*function*~~ *functions* for the ~~*firm*~~ *PRA-authorised person*, there is no need to appoint that person under this chapter and apply the arrangements in *SYSC* 26.10.1G.

(3) (a) The *statement of responsibilities* for the individual performing the ~~Group Entity Senior Manager~~ *PRA-designated senior management function*; and

(b) the *firm's management responsibilities map*;

should clearly show what responsibilities are held by that individual.

26.11 Link between this chapter and other parts of the senior managers regime

Link between ~~the~~ designated senior management ~~regime~~ functions and this ~~section~~ chapter

26.11.1 ~~4.7.36(1)~~ G (1) Having overall or local responsibility for an activity under ~~*SYSC* 4.7.8R~~ this chapter requires approval as an *SMF manager*. This is because a *person* who has overall or local responsibility for an activity will be:

(a) performing the *other overall responsibility function* or the *other local responsibility function*; or

(b) approved to perform another *designated senior management function*.

~~4.7.36(2)~~ (2) The *other overall responsibility function* applies because this is the effect of *SUP* 10C.7.1R (definition of *other overall responsibility function*).

~~4.7.36(3)~~ (3) *SUP* 10C.7.1R says that the *other overall responsibility function* does not apply to a person who is approved to perform another *designated senior management function*.

~~4.8.33(2)~~ (4) The other local responsibility function applies because this is the effect of *SUP* 10C.8.1R (Definition of the other local responsibility function (SMF22)).

~~4.8.34~~ (5) *SUP* 10C.8.1R(2) says that the *other local responsibility function* does not apply to a *person* who is approved to perform another *designated senior management function* in relation to the *branch*.

Link between SYSC 25 Annex 1G and this ~~section~~ chapter

26.11.2 ~~4.7.37~~ G (1) The purpose of *SYSC* 25 Annex 1G (~~The main~~ Examples of the business activities and functions of ~~a relevant authorised person~~ an SMCR firm) is to help a *firm* to prepare its *management responsibilities map* (see *SYSC* 25.7.2G).

(2) There is no direct link between *SYSC* 25 Annex 1G and this ~~section~~ chapter.

(3) However, a *firm* may find *SYSC* 25 Annex 1G useful as a ~~checklist~~ prompt to help it make sure that it has not failed to allocate overall or local responsibility under ~~*SYSC* 4.7.8R~~ this chapter for a particular

activity of the *firm*.

(4) If a *firm* uses *SYSC* 25 Annex 1G ~~to help it check whether it has allocated~~ as a prompt when it allocates overall or local responsibility as described in (3), it should bear in mind that it is not comprehensive (see *SYSC* 25.7.8G).

26.11.3 ~~4.7.38~~ G ~~*SYSC* 4.7.26G (a *firm* should normally allocate responsibility for particular areas to a single *SMF manager*) does not mean that the~~ The *FCA* ~~expects~~ does not require there to be a separate *person* with overall responsibility for each individual business area in *SYSC* 25 Annex 1G (~~The main~~ Examples of the business activities and functions of ~~a relevant authorised person~~ an SMCR firm).

27 Senior managers and certification regime: Certification regime

27.1 Application and purpose

Application

27.1.1 ~~5.2.1~~ R This ~~section~~ chapter applies to ~~a *relevant authorised person*~~ an *SMCR firm*.

27.1.2 ~~5.2.2~~ G This ~~section~~ chapter is also relevant to *employees* of ~~*relevant authorised persons*~~ *SMCR firms* performing functions specified as *FCA-specified significant-harm functions*.

Exclusions

27.1.3 R This chapter does not apply to a *firm* that meets the following conditions:.

(1) it is an *internally managed AIF*;

(2) it is a *body corporate*; and

(3) it is not a *collective investment scheme*.

Purpose

27.1.4 ~~5.2.3~~ G (1) This ~~section~~ chapter is about the *FCA's* certification regime.

(2) Under this regime, a *firm* should ensure that its employees only perform an *FCA-specified significant-harm function* if they have a certificate issued by that *firm* to perform that function.

(3) The purpose of this ~~section~~ chapter is to specify '*FCA-specified significant-harm functions*' and to give *guidance* on the *FCA's* certification regime.

27.2 Requirements of the certification regime

General

27.2.1 G Most of the requirements of the certification regime are in the *Act*. This section summarises and gives *guidance* on them.

27.2.2 ~~5.2.5~~ G (1) [The requirement in *SYSC* 5.2.4G comes into force on 7 March 2017.]

(2) [*SYSC* TP 5 explains how the certification regime applies before then.]

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

~~General~~ Basic requirement~~s~~

27.2.3 ~~5.2.4~~ G Under section 63E(1) of the *Act*, a *firm* must take reasonable care to ensure that no *employee* of the *firm* performs an *FCA-specified significant-harm function* under an arrangement entered into by the *firm* in relation to the carrying on by that *firm* of a *regulated activity*, unless the *employee* has a valid certificate issued by that *firm* to perform the function to which certificate relates.

Fitness to act

27.2.4 ~~5.2.6~~ G Under section 63F of the *Act*, a *firm* may issue a certificate to a *person* only if the *firm* is satisfied that the *person* is a fit and proper *person* to perform the *FCA-specified significant-harm function* to which the certificate relates.

27.2.5 ~~5.2.7~~ G Under section 63F of the *Act*, in assessing if a *person* is fit and proper to perform an *FCA-specified significant-harm function*, a *firm* must have regard, in particular, to whether that person:

(1) has obtained a qualification;

(2) has undergone, or is undergoing, training;

(3) possesses a level of competence; or

(4) has the personal characteristics,

required by general *rules* made by the *FCA*.

27.2.6 ~~5.2.8~~ G *FIT* 1.3 provides guidance to *firms* about the criteria that the *FCA* would expect the *firm* to consider in assessing if a *person* is fit and proper to perform an *FCA-specified significant-harm function*.

27.2.7 ~~5.2.9~~ G *SYSC* 22 (Regulatory references) deals with obtaining references from a previous *employer* when a *firm* is planning to appoint someone to perform a *specified significant-harm function* as part of its assessment of whether that *person* is fit and proper.

27.2.8 ~~5.2.10~~ G (1) A *person* seconded from a contractor may fall into the certification regime. The material in *SYSC* 27.4.1G is relevant to when this is the case.

(2) In deciding if a *person* seconded from a contractor is fit and proper, the *firm* may take into account information and references from the contractor.

(3) In deciding how much reliance to put on the contractor, the *firm* should take into account:

(a) the familiarity of the contractor with the obligations of *firms* under ~~*SYSC* 27~~ <u>this chapter</u>, the corresponding *PRA* requirements and the requirements of the *Act* described in this ~~section~~ <u>chapter</u>;

(b) whether any reference directly addresses the criteria in *FIT*; and

(c) the degree to which the *firm* believes it can rely on the contractor's judgement about the secondee's fitness and properness and the grounds for that belief.

Issuing and renewing certificates

27.2.9 ~~5.2.11~~ G Under section 63F of the *Act*, a certificate issued by a *firm* to a *person* must:

(1) state that the *firm* is satisfied that the *person* is fit and proper to perform the function to which the certificate relates; and

(2) set out the aspects of the affairs of the *firm* in which the *person* will be involved in performing the function.

27.2.10 ~~5.2.12~~ G (1) The *Act* says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.

(2) The *FCA* believes that the *Act* allows a *firm* to draft a certificate to expire after fewer than 12 months. The *FCA* interprets the *Act* in this way because to require a *firm* to make a certificate last longer than the *firm* thinks best is likely to make it harder for the *firm* to ensure the fitness of its *certification employees*. That would undermine the purpose of the certification regime in the *Act*.

(3) A certificate cannot be drafted to last more than 12 months.

27.2.11 ~~5.2.13~~ G Under section 63F of the *Act*, if, after having considered if a *person* is fit and proper to perform an *FCA-specified significant-harm function*, a *firm* decides not to issue a certificate to that *person*, the *firm* must give the *person* a notice in writing stating:

(1) what steps (if any) the *firm* proposes to take in relation to the *person* as a result of the decision; and

(2) the reasons for proposing to take those steps.

27.2.12 ~~5.2.14~~ G If, after having considered whether a *person* is fit and proper to perform an *FCA-specified significant-harm function*, a *firm* decides not to issue a certificate to that *person*, it should consider if the circumstances warrant making a notification to the *FCA* for a breach of the *rules* in *COCON* pursuant to *SUP* 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).

27.2.13 ~~5.2.15~~ G Under section 63F of the *Act*, a *firm* must maintain a record of every *employee* who has a valid certificate issued by it.

27.2.14 ~~5.2.16(1)~~ G (1) ~~The *FCA's* approach to specifying *FCA-specified significant-harm functions* has the effect that several elements of a *person's* job may involve an *FCA-specified significant-harm function* or that a *person* may~~ <u>A *firm* need not issue multiple certificates for one of its *employees* even if they</u> perform several *FCA-specified significant-harm functions* as part of the same job.

<u>(2)</u> <u>Similarly, a *firm* need not issue multiple certificates for one of its *employees* who performs an *FCA-specified significant-harm function* that is made up of a number of different functions.</u>

<u>(3)</u> <u>An example of an *FCA-specified significant-harm function* in (2) is the material risk taker *FCA-specified significant-harm* function described in *SYSC* 27.7.15R. *SYSC* 27.7.15R says that each function carried out by someone who is covered by that *rule* is an *FCA-specified significant-harm function*.</u>

~~5.2.16(2)~~ (4) ~~However, this does not mean that the *FCA* expects a *firm* to issue multiple certificates to each *certification employee*.~~ Rather <u>than having to issue multiple certificates</u>, ~~in a certificate,~~ a *firm* may<u>, in a certificate,</u> describe the *employee's* functions that involve an *FCA-specified significant-harm function* in broad terms, and without listing all the activities that the function may involve.

~~5.2.16(3)~~ (5) A *firm* should assess whether the *employee* is fit and proper to perform all aspects of the *employee's* functions that involve an *FCA-specified significant-harm function* as described by a certificate.

27.2.15 ~~5.2.17(1)~~ G (1) In cases where a *certification employee's* role changes to involve a new ~~function involving an~~ *FCA-specified significant-harm function* part way through the ~~twelve~~ 12-month period for which their certificate is valid, ~~and that new function has may have different requirements relating to:~~ the *firm* may need to reissue the certificate.

(2) If that new function has different requirements relating to:

(a) personal characteristics;

(b) the level of competence, knowledge and experience;

(c) qualifications; or

(d) training;

the *FCA* would expect the *firm* to assess whether the *employee* is fit and proper to perform that new function before they start it.

~~5.2.17(2)~~ (3) ~~A~~ In such a case, the *firm* should not wait until the point of annual reassessment to determine whether the *employee* is fit and proper for the new function.

~~5.2.17(3)~~ (4) ~~Paragraphs (1) and (2) also apply if a *certification employee's* role changes to involve a new *FCA-specified significant-harm function* part way through the twelve-month period.~~ A *firm* may not need to issue a new certificate if:

(a) applying the conditions in paragraph ~~(1) are met~~ (2), the *firm* concludes that no re-assessment is required; and

(b) the certificate is drafted broadly enough to cover the new *FCA-specified significant-harm function*.

(5) Paragraphs (1) to (4) also apply if a *certification employee's* role changes part way through the 12-month period without the new role involving a new *FCA-specified significant-harm function*.

27.2.16 ~~5.2.17A~~ G (1) This paragraph gives further *guidance* on the flexibility a *firm* has in drafting its certificates.

(2) A certificate may cover functions that a *certification employee* is not currently performing, as long as the *firm* has assessed the *employee's* fitness for these additional functions. This is subject to (3).

(3) When a *firm* is deciding what a certificate can cover beyond the functions that the *certification employee* is currently performing, it should take the factors in ~~*SYSC* 5.2.17G(1)~~ *SYSC* 27.2.15G(2) into account. A certificate should not normally cover an additional function if ~~*SYSC* 5.2.17G(1)~~ *SYSC* 27.2.15G(2) would require the *firm* to consider the *employee's* fitness before allowing them to perform it.

(4) A *firm* may, if it wishes, restrict a certificate to the functions that the *certification employee* is currently performing rather than drafting the certificate more widely as described in (2) and (3).

(5) *SYSC* 27.2.10G deals with the flexibility a *firm* has in choosing the period for which a certificate lasts.

27.3 Territorial scope

~~Scope: territorial scope~~

27.3.1 ~~5.2.19~~ R (1) A function is an *FCA-specified significant-harm function* for a ~~*UK relevant authorised person*~~ *UK SMCR firm* only to the extent:

(a) it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*; or

(b) the *person* performing that function is dealing with a *client* of the *firm* in the *United Kingdom* from an establishment of the *firm* (or its *appointed representative*) overseas.

(2) A function is an *FCA-specified significant-harm function* for a *non-UK* ~~*relevant authorised person*~~ *SMCR firm*, only to the extent that it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*.

(3) Paragraph (1) does not apply to *FCA-specified significant-harm function* (7) (material risk takers). For a *UK* ~~*relevant authorised person*~~ *SMCR firm*, *FCA-specified significant-harm function* (7) applies without any territorial limitation.

27.3.2 ~~5.2.20~~ G The *FCA* interprets the phrase 'dealing with' in *SYSC* 27.3.1R as including having contact with *clients* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the *Act* to describe in general terms the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.

27.3.3 ~~5.2.20A~~ G The *FCA* interprets the phrase 'a *client* of the *firm* in the *United Kingdom*' in *SYSC* 27.3.1R as referring to:

(1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or

(2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.

<u>27.4 General material about the scope of the certification regime</u>

~~Scope: employees~~ <u>Employees</u>

27.4.1 G (1) The certification regime only applies to an *employee*.

~~5.2.21~~

(2) This definition includes a *person* who:

(a) personally provides, or is under an obligation personally to provide, services to the *firm* in question under an arrangement made between the *firm* and the *person* providing the services or another *person*; and

(b) is subject to (or to the right of) supervision, direction or control by the *firm* as to the manner in which those services are provided.

27.4.2 G (1) A *person* who works for an *appointed representative* of a *firm* may fall into the certification regime. In practice, however, they may not meet the conditions for the certification regime to apply.

~~5.2.22~~

(2) One condition for the certification regime to apply to a *person* is that the *person* performs a *specified significant-harm function* under an arrangement entered into by the *firm* (see *SYSC* 27.2.3G). However, unlike the equivalent parts of the *Act* for the *approved persons* regime, the *Act* does not say that the certification regime applies if the function is performed under an arrangement entered into by the employee with a contractor of the *firm* instead of the *firm*.

(3) The certification regime only applies if the *person* concerned is an *employee*. This is defined in *SYSC* 27.4.1G. In many cases, a *person* working for an *appointed representative* will not fall into this definition as they may not:

(a) provide services to the *firm*; or

(b) be subject to (or to the right of) supervision, direction or control by the *firm*.

(4) If none of these limitations on the scope of the certification regime apply, a *person* working for an *appointed representative* will be subject to the certification regime, as long as the other conditions in this ~~section~~ <u>chapter</u> are met.

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

~~Scope: effect~~ <u>Effect</u> of PRA requirements

27.4.3 G A *specified significant-harm function* does not cease to be an *FCA-specified*

~~5.2.23~~ *significant-harm function* if the *PRA* also specifies that function as a *specified significant-harm function*.

~~Scope: exclusions~~ Exclusions

27.4.4 ~~5.2.24~~ G Under section 63E(7) of the *Act*, ~~*SYSC* 27~~ this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under any of the *Single Market Directives* or the *auction regulation* to an authority in a country or territory outside the *United Kingdom*.

27.4.5 ~~5.2.25~~ R This ~~section~~ chapter does not apply to a function performed by a *person* acting as:

(1) an insolvency practitioner under section 388 of the Insolvency Act 1986;

(2) a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;

(3) an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or

(4) a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

27.4.6 ~~5.2.26~~ R A function performed by a *non-executive director* of a *firm* acting as such is not an *FCA-specified significant-harm function* for that *firm*.

27.4.7 G (1) An individual *sole trader* will not themselves be a *certification employee*.

(2) However members of a *sole trader's* staff may be.

(3) Therefore the certification regime does not apply to a *sole trader* with no *employees*.

27.5 Exclusions for emergency and temporary appointments

~~Scope: emergency~~ Emergency appointments

27.5.1 ~~5.2.27~~ R (1) If:

(a) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA-specified significant-harm function*;

(b) the appointment is to provide cover for a *certification employee* whose absence is reasonably unforeseen; and

(c) the appointment is for less than four weeks;

then the performance by that individual of such function does not constitute an *FCA-specified significant-harm function*.

(2) This *rule* does not apply to *FCA-specified significant-harm function* (5) (functions requiring qualifications).

27.5.2 ~~5.2.28~~ G *SYSC* 27.5.1R does not apply to *FCA-specified significant-harm function* (5) (functions requiring qualifications). Where there is an unforeseen absence of an *employee* performing a function for which there is a qualification requirement:

(1) the *firm* should take reasonable care to ensure that no *employee* of that *firm* performs that function without a valid certificate; and

(2) the certificate should be issued before the *person* starts to perform the function.

~~Scope: temporary~~ Temporary UK role (the 30-day rule)

27.5.3 ~~5.2.28A~~ R (1) None of the *FCA-specified significant-harm functions* extend to an individual ("P") in relation to a *firm* if:

(a) P is based outside the *United Kingdom* for the *firm*; and

(b) in a 12-*month* period, P spends no more than 30 days performing what would otherwise be an *FCA-specified significant-harm function* for that *firm* within the territorial scope of this ~~section~~ chapter as described in *SYSC* 27.3.1R.

(2) Paragraph (1) only applies to the extent that P is appropriately supervised by:

(a) one of the *firm's SMF managers*; or

(b) one of the *firm's certification employees* whose certificate covers the *FCA-specified significant-harm function* that is to be disapplied under (1).

(3) This *rule* does not apply to any *FCA-specified significant-harm function* to the extent that it involves:

(a) giving advice or performing related activities in connection with *pension transfers*, *pension conversions* or *pension opt-outs* for *retail clients*; or

(b) giving advice to a *person* to become, or continue or cease to be, a member of a particular Lloyd's syndicate.

(4) In the case of a *UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u>, this *rule* does not apply to *FCA-specified significant-harm function* (7) (material risk takers).

27.5.4 ~~5.2.28B~~ G *SYSC* 27 Annex 1G gives examples of how *SYSC* 27.5.3R works.

27.5.5 ~~5.2.28C(1)~~ G The *FCA* would expect an individual from overseas using the temporary *UK* role *rule* in *SYSC* 27.5.3R to be accompanied on a visit to a *customer* in the *United Kingdom*.

27.5.6 ~~5.2.28C(2)~~ G An individual benefiting from the temporary *UK* role *rule* in *SYSC* 27.5.3R may still be subject to the requirements of *TC* (Training and competence). However, *TC* 2.1.9R gives an exemption from certain qualification requirements in *TC* to an individual benefiting from the temporary *UK* role *rule*.

<u>27.6 Specification of functions</u>

~~Scope: general~~ <u>General</u> requirements

27.6.1 ~~5.2.18~~ R In accordance with section 63E of the *Act* (Certification of employees by ~~relevant~~ authorised persons), a function is an *FCA-specified significant-harm function* only if, in relation to the carrying on of a *regulated activity* by a *firm*, that function:

(1) is not a *controlled function* in relation to the carrying on of that *regulated activity* by that *firm*; and

(2) will require the *person* performing it to be involved in one or more aspects of the *firm's* affairs, so far as relating to that *regulated activity*.

~~Scope:~~ FCA-specified significant-harm functions

27.6.2 ~~5.2.29~~ R In accordance with section 63E(3) of the *Act*, the functions in the table in *SYSC* 27.6.3R are *FCA-specified significant-harm functions*.

27.6.3 ~~5.2.30~~ R Table: FCA-specified significant-harm functions

Function	Where defined
(1) CASS oversight	SYSC 27.7.1R

(2) Benchmark submission and administration	SYSC 27.7.3R
(3) Proprietary trader	SYSC 27.7.4R
(4) Significant management	SYSC 27.7.5R
(5) Functions requiring qualifications	SYSC 27.7.11R
(6) Managers of certification employees	SYSC 27.7.13R
(7) Material risk takers	SYSC 27.7.14R
(8) Client-dealing	*SYSC* 27.7.18R
(9) Algorithmic trading	*SYSC* 27.7.23R

27.6.4 ~~5.2.31~~ G (1) If a function falls into more than one of the *FCA-specified significant-harm functions* in the table in *SYSC* 27.6.3R, all of those *FCA-specified significant-harm functions* apply to it.

(2) For example, if a *person's* job involves both *FCA-specified significant-harm function* (5) (functions requiring qualifications) and (7) (material risk takers), the emergency appointments *rule* (*SYSC* 27.5.1R) does not apply to that job.

(3) Another example is the *rule* about the territorial scope of this section (*SYSC* 27.3.1R)) for a *UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u>. For example, if a *person's* job involves both *FCA-specified significant-harm function* (5) (functions requiring qualifications) and (7) (material risk takers), the territorial restriction in that *rule* does not apply to that job. Instead, this ~~section~~ <u>chapter</u> applies without any territorial limitation.

(4) The reason for (3) is that ~~*SYSC* 5.2.19R(3))~~ <u>*SYSC* 27.3.1R(3)</u> says that there is no territorial limitation on *FCA-specified significant-harm function* (7) for a *UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u>. As explained in (1), it does not matter that the job also involves *FCA-specified significant-harm function* (5), to which the territorial limitation does apply.

<u>27.7 Definitions of the FCA-specified significant-harm functions</u>

CASS oversight function

27.7.1 ~~5.2.32~~ R (1) Each of the following is an *FCA-specified significant-harm function*:

(a) in relation to a *CASS medium firm* and a *CASS large firm* (other than a *CASS large debt management firm*), the function of acting in the capacity of a *person* who is allocated the function in *CASS* 1A.3.1AR (oversight of operational effectiveness);

(b) in relation to a *CASS large debt management firm*, the function of acting in the capacity of a *person* who is allocated the function in *CASS* 11.3.4R (oversight of operational effectiveness)<u>;</u>

<u>(c)</u> <u>in relation to a *CASS small firm*, the function of acting in the capacity of a *person* who is allocated the function in *CASS* 1A.3.1R (oversight of operational effectiveness)</u>.

(2) A function in (1) is not an *FCA-specified significant-harm function* for that *firm* if it is performed by an *SMF manager* of that *firm*.

27.7.2 ~~5.2.32A~~ G ~~*SYSC* 5.2.32R(1)~~ <u>*SYSC* 27.7.1R(1)</u> only applies to a *firm* to the extent that *CASS* applies to that *firm*.

Benchmark submission and administration function

27.7.3 ~~5.2.33~~ R Each of the following is an *FCA-specified significant-harm function*:

(1) acting in the capacity of a *person* who is allocated the function in *MAR* 8.2.3R(1) (benchmark manager); and

(2) acting in the capacity of a *person* who is allocated the function in *MAR* 8.3.5R(1) (benchmark administration manager).

Proprietary trader function

27.7.4 ~~5.2.34~~ R The function of acting as a *proprietary trader* whose activity involves, or might involve, a risk of significant harm to the *firm* or any of its *customers* is an *FCA-specified significant-harm function*.

Significant management function

27.7.5 ~~5.2.35~~ R (1) The function of acting as a *senior manager*, with significant responsibility for a significant business unit, is an *FCA-specified significant-harm function*.

(2) For a *non-UK* ~~*relevant authorised person's*~~ <u>*SMCR firm's*</u> *branch* in the *United Kingdom*, the significant management function is limited to business units of the *branch*.

27.7.6 ~~5.2.36~~ G A *senior manager* carrying on the significant management *FCA-specified significant-harm function* under *SYSC* 27.7.5R could, for example, be:

(1) the head of a unit carrying on the activities of:

(a) retail banking;

(b) personal lending;

(c) corporate lending;

(d) salvage or loan recovery; ~~or~~

(e) *proprietary trading*; ~~or~~

(f) *designated investment business*;

(g) *effecting contracts of insurance*;

(h) *credit-related regulated activity*;

(i) making material decisions on the commitment of the *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management or its overall cash and capital planning;

(j) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters;

(k) administration of *contracts of insurance*;

(l) complaints handling; or

(m) determining whether an applicant should be accepted for *credit* (including lending) and on what terms; or

(2) a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions.

27.7.7 G The examples in *SYSC* 27.7.6G are illustrative only. They are not intended to be exhaustive.

27.7.8 G A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can be an internal support department that has no contact with people outside the *firm*. It may include, for example, human resources, operations or information technology.

27.7.9 ~~5.2.37~~ G For the purposes of the definition of the significant management *FCA-specified significant-harm function*, the following additional factors about the *firm* should be considered:

(1) the size and significance of the *firm's* business in the *United Kingdom* – for example, a *firm* carrying on *designated investment business* may have a large number of *certification employees* (for example, in excess of 100 individuals);

(2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;

(3) its *group* structure (if it is a member of a *group*);

(4) its management structure (for example, matrix management); and

(5) the size and significance of its international operations, if any.

27.7.10 ~~5.2.38~~ G When considering whether a business unit is significant for the purposes of *SYSC* 27.7.5R, the *firm* should take into account all relevant factors in the light of the *firm's* current circumstances and its plans for the future, including:

(1) the risk profile of the unit;

(2) its use or commitment of the *firm's* capital;

(3) its contribution to the profit and loss account;

(4) the number of *employees*, *certification employees* or *SMF managers* in the unit;

(5) the number of *customers* of the unit; and

(6) any other factor which makes the unit significant to the conduct of the *firm's* affairs so far as relating to the *regulated activity*.

Functions requiring qualifications

27.7.11 ~~5.2.39~~ R (1) Each function involving an activity for which there is a qualification requirement as specified in *TC* App 1.1.1R (Activities and Products/Sectors to which *TC* applies) is an *FCA-specified significant-harm function*.

(2) For a *non-UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u>, each function involving an activity for which there would have been a qualification requirement, as specified in (1) if the *firm* had been a *UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u>, is an *FCA-specified significant-harm function*.

27.7.12 ~~5.2.40~~ G (1) *SYSC* 27.7.11R (Functions requiring qualifications) does not apply to a *UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u> where *TC* does not apply.

(2) *SYSC* 27.7.11R ~~(Functions requiring qualifications)~~ applies to a *non-UK* ~~*relevant authorised person*~~ *SMCR firm* irrespective of whether the function in *TC* App 1.1.1R (Activities and Products/Sectors to which *TC* applies) applies to *incoming EEA firms* or *overseas firms* for the purposes of *TC*.

(3) The extended territorial scope of qualification requirements as specified in *TC* App 2.1.1R (Territorial Scope subject to the limitation in TC Appendix 3) does not apply in full to the *FCA-specified significant-harm function* in *SYSC* 27.7.11R because *SYSC* 27.3.1R (Territorial scope) restricts the scope of this chapter outside the *United Kingdom*.

Managers of certification employees

27.7.13 ~~5.2.41~~ R (1) The function of managing or supervising a *certification employee*, directly or indirectly, is an *FCA-specified significant-harm function*.

(2) A function in (1) is not an *FCA-specified significant-harm function* for that *firm* if it is performed by an *SMF manager* of that *firm*.

Material risk takers

27.7.14 R Each function performed by a *person* in column (2) of the table in *SYSC* 27.7.15R is an *FCA-specified significant-harm function* with respect to a *firm* in the corresponding entry in column (1).

27.7.15 R Table: Definition of material risk taker

Type of SMCR firm	**Employees included**
(1) A *UK SMCR dual regulated banking sector firm* A *third-country SMCR dual regulated banking sector firm*	Each member of the *dual-regulated firms Remuneration Code staff* of the *firm* in column (1). This includes any *person* who meets any of the criteria set out in articles 3 to 5 of Commission Delegated Regulation (EU) No 604/2014 (criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile)).
(2) An *EEA SMCR dual regulated banking sector firm* For these purposes sub-paragraphs (i) and (ii) in *SYSC* 19D.1.1R(1)(d) (application of the dual-regulated firms	In relation to a *firm* in column (1), the definition of *dual-regulated firms Remuneration Code staff* is extended so that it includes *employees* of this kind of *firm* in the same way as it includes *employees* of a *third-country SMCR*

Remuneration Code) do not apply.	*dual regulated banking sector firm*.
(3) A *firm* falling within *SYSC* 19A.1 (application provisions for the remuneration code for IFPRU investment firms)	Each member of the *Remuneration Code staff* of the *firm* in column (1).
(4) A *firm* that would fall within *SYSC* 19A.1 if it applied to an *incoming EEA firm* For these purposes sub-paragraphs (i) and (ii) in *SYSC* 19A.1.1R(1)(d) (application of the Remuneration Code) do not apply.	In relation to a *firm* in column (1), the definition of *Remuneration Code staff* is extended so that it includes *employees* of this kind of *firm* in the same way as it includes *employees* of an *overseas firm* in row (3) of this table.
(5) A *firm* falling within *SYSC* 19B.1 (application provisions for the remuneration code for a full-scope UK AIFM)	Each member of the *AIFM Remuneration Code staff* of the *firm* in column (1).
(6) An *above-threshold non-EEA AIFM* or an *incoming EEA AIFM*	In relation to a *firm* in column (1), the definition of *AIFM Remuneration Code staff* is extended so that it includes *employees* of this kind of *firm* in the same way as it includes *employees* of *firms* in row (5) of this table.
(7) A *firm* falling within *SYSC* 19C.1 (application provisions for remuneration code for BIPRU firms)	Each member of the *BIPRU Remuneration Code staff* of the *firm* in column (1).
(8) A *firm* that would fall within *SYSC* 19C.1 if it applied to an *incoming EEA firm* or an *incoming Treaty firm*	In relation to a *firm* in column (1), the definition of *BIPRU Remuneration Code staff* is extended so that it includes *employees* of this kind of *firm* in the same way as it includes *employees* of a *third country BIPRU firm* in column (1) of row (7) of this table.
(9) A *firm* falling within *SYSC* 19E.1 (application provisions for remuneration code for UCITS management companies)	Each member of the *UCITS Remuneration Code staff* of the *firm* in column (1).
(10) An *EEA UCITS management*	In relation to a *firm* in column (1), the definition of *UCITS Remuneration*

company	*Code staff* is extended so that it includes *employees* of this kind of *firm* in the same way as it includes *employees* of *firms* in row (9) of this table.
(11) A *Solvency II firm*	*Persons* referred to in articles 275.1(c) and (d) of *Solvency II Regulation* 2015/35 (key functions and staff with a material impact).

27.7.16 G If the definitions or requirements in column (2) of the table in *SYSC* 27.7.15R (as adjusted) do not apply to a *firm* in the corresponding entry in column (1), that row of the table does not apply to the *firm*.

27.7.17 G One result of *SYSC* 27.7.16G is that a *credit union* is excluded from the table in *SYSC* 27.7.15R. Therefore the material risk taker *FCA-specified significant-harm function* does not apply to a *credit union*. However, it is subject to equivalent *PRA* requirements.

Client-dealing function

27.7.18 ~~5.2.44~~ R A *person* ("P") performs the client-dealing *FCA-specified significant-harm function* for a *firm* if:

(1) P is carrying out any of the activities in the table in *SYSC* 27.7.19R; and

(2) those activities will involve P dealing with:

(a) a *person* with or for whom those activities are carried out; or

(b) the property of any such *person*;

in a manner substantially connected with the carrying on of *regulated activities* by the *firm*.

27.7.19 ~~5.2.45~~ R Table: Activities covered by the client-dealing FCA-specified significant-harm function

Activity	**Comments**
(1) The following activities: (a) *advising on investments* other than a *non-investment insurance contract*; or	(a) does not include *advising on investments* in the course of carrying on the activity of giving *basic advice* on a *stakeholder product*.

(b) performing other functions related to this, such as *dealing* and *arranging*.	
(2) The following activities: (a) giving advice in connection with *corporate finance business*; or (b) performing other functions related to this.	
(3) If the *firm* does any of the following activities: (a) *dealing*, as principal or as agent; or (b) *arranging (bringing about) deals in investments*; taking part in those activities is included.	(a) and (b) do not include *dealing* or *arranging (bringing about) deals in investments* in a *non-investment insurance contract*. For the activity in this row (3), ~~*SYSC* 5.2.44R(2)(a) and (b)~~ <u>*SYSC* 27.7.18R(2)(a) and (b)</u> are expanded to cover also: (a) a *person* in connection with whom the activities in the first column of this row are carried out; and (b) the property of any such *person*.
(4) If the *firm* is acting in the capacity of an *investment manager* the following are included: (a) taking part in that activity; and (b) carrying on functions connected to this.	
(5) Acting as a 'bidder's representative' in relation to *bidding in emissions auctions*.	Acting as a 'bidder's representative' has the meaning in sub<u>-</u>paragraph 3 of article 6(3) of the *auction regulation*.

27.7.20 ~~5.2.46~~ G *SYSC* 27.3.2G (the *FCA* interprets the phrase 'dealing with' as including having contact with and extending beyond 'dealing' as used in 'dealing in investments') applies to *SYSC* 27.7.18R.

27.7.21 ~~5.2.47~~ G The client-dealing *FCA-specified significant-harm function* generally involves dealing with any *person* with or for whom the activities in the table in *SYSC* 27.7.19R are carried out (or their property). That *person* need not be a *client* of the *firm*.

27.7.22 ~~5.2.48~~ G The restrictions in *SYSC* 27.6.1R (*FCA-specified significant-harm function* should require the *person* performing it to be involved in one or more aspects of the *firm's* affairs so far as they relate to *regulated activities*) also applies to the client-dealing *FCA-specified significant-harm function*.

Algorithmic trading function

27.7.23 ~~5.2.49~~ R (1) Each of the following is an *FCA-specified significant-harm function*:

(a) approving the deployment of:

(i) a trading algorithm or a part of one; or

(ii) an amendment to a trading algorithm or a part of one; or

(iii) a combination of trading algorithms; and

(b) each of the following functions:

(i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and

(ii) deciding whether or not a trading algorithm;

is, or remains, compliant with the *firm's* obligations.

(2) The *firm's* obligations in (1)(b) include:

(a) the *firm's* regulatory obligations; and

(b) the rules and requirements of the *trading venues* to which the *firm's* trading systems are connected.

27.7.24 ~~5.2.50~~ R ~~(1)~~ A trading algorithm means a computer algorithm used in ~~algorithmic trading~~ <u>*algorithmic trading*</u>.

~~(2) Algorithmic trading has the meaning in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.~~

27.7.25 ~~5.2.51~~ G ~~Algorithmic trading~~ <u>*Algorithmic trading*</u> is not limited to high-frequency algorithmic trading.

27.7.26 ~~5.2.52~~	G	Deploying a trading algorithm includes deploying one on a *trading venue* on which the *firm* has not traded before where the *firm* is already using that trading algorithm on another *trading venue*.	
27.7.27 ~~5.2.53~~	G	~~*SYSC* 5.2.49R(1)(b)~~ <u>*SYSC* 27.7.23R(1)(b)</u> (monitoring or deciding whether or not a trading algorithm is compliant) includes testing, such as validation and stress testing.	
27.7.28 ~~5.2.54~~	G	(1)	Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.
		(2)	If this is the case, all will have given the approval or decision for the purposes of *SYSC* 27.7.23R.
27.2.29 ~~5.2.55~~	G	(1)	Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.
		(2)	If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of *SYSC* 27.7.23R.
		(3)	Where the *firm's* procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.
27.7.30 ~~5.2.56~~	G	A *firm* may have deployed an algorithm even though:	
		(1)	it has not yet actually been used in the generation or acceptance of orders; or
		(2)	it is not actually being used in the generation or acceptance of orders at the moment; or
		(3)	it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.
27.7.31 ~~5.2.57~~	G	In the examples in *SYSC* 27.7.30G the algorithm is capable of being used in the generation or acceptance of orders but is not actually generating or accepting them at the moment. However, a *firm* does not deploy an algorithm if the algorithm is not yet capable of generating or accepting orders because, for example, it is still in development.	

27 Annex **Examples of how the temporary UK role rule in SYSC 27.5.3<u>R</u> (the 30-day rule) works**

1G

~~5 Annex~~
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Example		How the temporary UK role rule applies
(1)	A spends 20 days in the *UK* performing the proprietary trader *FCA-specified significant-harm function* for Firm X and wishes to spend another 20 days in the *UK* performing the significant management *FCA-specified significant-harm function* for Firm X.	The *rule* does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each *FCA-specified significant-harm function*.
(2)	A spends 20 days in the *UK* performing an *FCA-specified significant-harm function* for Firm X (which is a ~~*UK relevant authorised person*~~ *UK SMCR firm*) and wishes to spend another 20 days dealing with Firm X's *clients* in the *UK* from the overseas office of Firm X in which A is based.	The *rule* does not allow this. There is a single 30-day limit for both types of contact with the *UK*.
(3)	A wishes to spend 40 days dealing with Firm X's *clients* in the *UK* from the overseas office of Firm X (which is a ~~*UK relevant authorised person*~~ *UK SMCR firm*) in which A is based. However the total time spent doing that will only be a few hours overall.	The *rule* does not allow this. If A deals with a *UK client* on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.
(4)	A spends 25 days in calendar year one for Firm X in the *UK* and 25 days in calendar year two. However A spends 40 days in the *UK* for Firm X between June in calendar year 1 and June in calendar year 2.	The *rule* does not allow this. This is because the 30-day annual allowance relates to any 12-*month* period and not just a calendar year.
(5)	Firm X is a ~~*non-UK relevant authorised person*~~ *non-UK SMCR firm*. A is *employed* by Firm X and is based in one of its offices outside the *UK*. A wants to work in the *UK branch* for 10 days.	The *rule* applies to ~~*non-UK relevant authorised persons*~~ *non-UK SMCR firms*. It does not matter that A is not *employed* by the *UK branch* and instead is *employed* by another part of Firm X. It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.

(6)	A is based in one of Firm X's overseas offices. Firm X then decides to relocate A to the *UK*, where A will be certified to perform an *FCA-specified significant-harm function* for Firm X. Firm X wants to rely on the temporary *UK* role *rule* for the first 30 days while Firm X goes through the certification process for A.	The *rule* does not allow this. A is no longer based in an overseas office and so the *rule* does not apply.
(7)	A is based in the overseas branch of a ~~*UK relevant authorised person*~~ *UK SMCR firm*. A is to be promoted, so that A will be performing the material risk taker *FCA-specified significant-harm function*. Firm X wants to rely on the temporary *UK* role *rule* for the first 30 days while Firm X goes through the certification process for A.	The *rule* does not allow this because it does not apply to the material risk taker *FCA-specified significant-harm function* when it is performed for a ~~*UK relevant authorised person*~~ *UK SMCR firm*.
	A reference in this table to an *FCA-specified significant-harm function* is to a function that would have been an *FCA-specified significant-harm function* but for SYSC 27.5.3R (temporary *UK* role).	

Annex D

Amendments to the Code of Conduct sourcebook (COCON)

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

1 Application and purpose

1.1 Application

1.1.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of certain *persons* working in *firms*.

To whom does it apply?

1.1.1A R *COCON* applies to the *persons* set out in the table in *COCON* 1.1.2R.

1.1.2 R Table: To whom does COCON apply?

Persons to whom COCON Applies	Comments
(1) An *SMF manager*.	
(2) An *employee* ("P") of ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u> who: (a) performs the function of an *SMF manager*; (b) is not an *approved person* to perform the function in question; and (c) is required to be an *approved person* at the time P performs that function.	
(3) An *employee* of ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u> who would be an *SMF manager* but for SUP 10C.3.13R (The 12-week rule).	
(4) A *certification employee* employed by ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>.	This applies even if the *certification employee* has not been notified that *COCON* applies to them or notified of the *rules* that apply to them.
(5) An *employee* of ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>	

who would be a *certification employee* but for ~~*SYSC* 5.2.27R(1)~~ *SYSC* 27.5.1R(1) (~~Scope: emergency~~ Emergency appointments) or ~~*SYSC* 5.2.28AR~~ *SYSC* 27.5.3R (~~Scope: temporary~~ Temporary UK role).	
(6) Any *employee* of ~~a *relevant authorised person*~~ an *SMCR firm* not coming within another row of this table, except one listed in column (2) of this table.	This row does not apply to an *employee* of ~~a *relevant authorised person*~~ an *SMCR firm* who only performs functions falling within the scope of the following roles: (a) receptionists; (b) switchboard operators; (c) post room staff; (d) reprographics/print room staff; (e) property/facilities management; (f) events management; (g) security guards; (h) invoice processing; (i) audio visual technicians; (j) vending machine staff; (k) medical staff; (l) archive records management; (m) drivers; (n) corporate social responsibility staff; (o) data controllers or processors under the Data Protection Act 1998; (p) cleaners; (q) catering staff; (r) personal assistant or secretary; (s) information technology support (ie, helpdesk); and (t) human resources administrators /processors.
(7) ~~An *FCA-approved person* or *PRA-approved person* approved to perform~~	~~This row does not apply to *approved persons* approved to~~

~~a *controlled function* in a *Solvency II firm* or a *small non-directive insurer*.~~ [deleted]	~~perform a *controlled function* in *SUP* 10A.1.15R to *SUP* 10A.1.16BR (appointed representatives).~~
(8) A *board director* of a *UK SMCR firm* ~~(a) a *relevant authorised person*;~~ ~~(b) a *Solvency II firm*; or~~ ~~(c) a *small non-directive insurer*.~~	~~This row only applies to a *UK domestic firm*.~~
~~**Note**: In accordance with the *Glossary*, *Solvency II firm* includes a *large non-directive insurer*.~~	

1.1.2A R For *Swiss general insurers*, references in this sourcebook to parts of the *PRA Rulebook* for 'Solvency II firms' are to be read as references to the corresponding parts of the *PRA Rulebook* applying to *large non-directive insurers*.

1.1.3 R *Rules* 1 to 5 in *COCON* 2.1 apply to all *conduct rules staff*.

1.1.4 R (1) *Rules* SC1 to SC4 in *COCON* 2.2 apply to all *senior conduct rules staff members* (subject to (2)).

(2) SC1 to SC3 in *COCON* 2.2 ~~do~~ does not apply to a ~~*standard non-executive director*~~ *board director* who is not an *approved person* (P) unless~~,~~ P also satisfies ~~as well as being a *standard non-executive director*, they also fall into~~ one of the other categories of a *senior conduct rules staff member*.

1.1.5 G (1) The *guidance* in *COCON* 2.3 applies to ~~*relevant authorised persons*~~ *SMCR firms*.

(2) [deleted]

(3) *SYSC* 27.4.6R provides that a function performed by a *non-executive director* of a *firm* acting as such is not an *FCA-specified significant-harm function* for that *firm*.

To what conduct does it apply?

1.1.6 R For a *person* (P) who is an *approved person*, *COCON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by the *firm* (Firm A) on whose application approval was given to P.

[**Note:** sections 64A(4) and (5)(a) of the *Act* (Rules of conduct)]

1.1.6A R For a *person* (P) who is a *board director* of a *firm* (Firm A) but is not an *approved person* of Firm A, *COCON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by Firm A.

[**Note:** sections 64A(4) and (5)(ab) of the *Act* (Rules of conduct)]

1.1.7 R (1) For a *person* (P) subject to *COCON* who is not an *approved person*, *COCON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by P's employer (Firm A).

(2) This *rule* does not apply where *COCON* 1.1.6A applies.

[**Note:** sections 64A(4) and (5)(b) of the *Act* (Rules of conduct)]

1.1.7A R (1) Where Firm A in *COCON* 1.1.6R to *COCON* 1.1.7R is an *SMCR firm* other than an *SMCR dual regulated banking sector firm*, the application of *COCON* is further restricted by this *rule*.

(2) *COCON* only applies to any conduct that forms part of or is for the purpose of any of the following:

(a) the *SMCR financial activities* of Firm A; or

(b) any activities of Firm A that have, or might reasonably be regarded as likely to have, a negative effect on:

(i) the integrity of the *UK financial system*; or

(ii) the ability of Firm A to meet the "fit and proper" test in threshold condition 2E and 3D (Suitability); or

(iii) the ability of Firm A to meet the applicable requirements and standards under the *regulatory system* relating to Firm A's financial resources.

1.1.8 G (1) *COCON* 1.1.6R ~~and~~ to *COCON* ~~1.1.7R~~ 1.1.7AR may apply to the same individual performing several roles.

(2) For example, say that an individual (A) is an *approved person* for *firm* X and is employed by *firm* Y in a role that does not involve a *controlled function* or being a director. ~~Say that *firm* X is a *Solvency II firm* or a *small non-directive insurer* and that *firm* Y is a *relevant authorised person*.~~

(3) *COCON* 1.1.6R applies to A's role with *firm* X and *COCON* 1.1.7R applies to A's role with *firm* Y.

Where does it apply?

1.1.9 R (1) *COCON* applies to the conduct of *conduct rules staff* set out in (2) wherever it is performed.

(2) This *rule* applies to:

(a) a *senior conduct rules staff member*; and

(b) a *certification employee* performing *FCA-specified significant-harm function* (7) (material risk takers) in the table in *SYSC* 5.2.30R for a ~~*UK relevant authorised person*~~ *UK SMCR firm*.

1.1.10 R (1) This *rule* applies to members of a *firm's conduct rules staff* apart from *conduct rules staff* in *COCON* 1.1.9R.

(2) Subject to (3), *COCON* only applies to the conduct of *persons* to whom this *rule* applies (as set out in (1)) if that conduct:

(a) is performed from an establishment maintained in the *United Kingdom* by~~:~~ an *SMCR firm*; or

~~(i) (for a *relevant authorised person*)~~ that *person's employer*; or

~~(ii) (for a *Solvency II firm* or a *small non-directive insurer*) the *firm* in relation to whom that *person* carries out *controlled functions*; or~~

(b) involves dealing with a *client* of the *firm* in the *United Kingdom* from an establishment overseas.

(3) Paragraph (2)(b) only applies to a *UK* ~~*relevant authorised person*~~ *SMCR firm*.

1.1.11 G The *FCA* interprets the phrase 'dealing with' in *COCON* 1.1.10R as including having contact with *customers* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the *Act* to describe, in general terms, the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.

1.11A G The *FCA* interprets the phrase 'a *client* of the *firm* in the *United Kingdom*' in *COCON* 1.1.10R as referring to:

(1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or

(2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.

1.1.12 R A *person* will not be subject to *COCON* to the extent that it would be contrary to the *UK's* obligations under a *Single Market Directive* or the *auction regulation*.

Purpose

1.1.13 G The purpose of this chapter is to set out *rules* for *conduct rules staff* and to provide *guidance* about those *rules* to *firms* whose staff are subject to them.

1.1.14 G *COCON* 1 Annex 1 has *guidance* on the role and responsibilities of *non-executive directors* to whom *COCON* applies.

1.2 Investments

1.2.1 G *COCON* refers in a number of places to '*investments*'. The *Glossary* meaning of *investment* is wide and is not just limited to the ordinary dictionary meaning.

1.2.2 G Therefore, for example, an *approved person* performing *controlled functions* in a *Solvency II firm* or a *small non-directive insurer* should note that that term includes rights under a contract of insurance, meaning they should also take into account those parts of *COCON* which provide *guidance* on individual conduct rules that refer to '*investments*'.

1.2.3 G Where *guidance* refers to risks associated with *investments* that will include risks applicable to rights under a contract of insurance including for example the risk of inadequate cover.

…

1 Annex 1G Guidance on the role and responsibilities of ~~NEDs~~ non-executive directors of SMCR firms subject to COCON

1 Introduction

1.1 This annex applies to *non-executive directors* (NEDs) of~~:~~ an *SMCR firm.*

~~(1) a *relevant authorised person*;~~

~~(2) a *Solvency II firm* (including a *large non-directive insurer*); or~~

~~(3) a *small non-directive insurer*.~~

1.2 This annex covers the role of a NED in performing the roles in (1) to (4), below:

(1) the role of chairman of the board of *directors*;

(2) the role of chairman of the nomination committee;

(3) the role of chairman of any other committee (irrespective of whether performing that role is itself a *designated senior management function*);

(4) the general NED role.

1.3 The *FCA's* view of the role of a NED is consistent with the duties of directors included in *UK* company law and the description of the role of a NED in the *UK Corporate Governance Code*.

2 The general role of a NED

2.1 The role of a NED performing the general NED role is to:

(1) provide effective oversight and challenge; and

(2) help develop proposals on strategy.

2.2 To deliver this, their responsibilities include:

(1) attending and contributing to board and committee meetings and discussions;

(2) taking part in collective board and committee decisions, including voting and providing input and challenge; and

(3) ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions.

2.3 Other key roles of a NED include:

(1) scrutinising the performance of management in meeting agreed goals and objectives;

(2) monitoring the reporting of performance;

(3) satisfying themselves on the integrity of financial information;

(4) satisfying themselves that financial controls and systems of risk management are robust and defensible;

(5) scrutinising the design and implementation of the remuneration policy;

(6) providing objective views on resources, appointments and standards of conduct; and

(7) being involved in succession planning.

3 Role of a NED as chair of the board or a committee

3.1 Subject to any specific governance arrangements, *rules* or requirements applicable to the board or particular committees, a NED's responsibility as chairman of the board or a committee includes:

(1) ensuring that the board or committee meets with sufficient frequency;

(2) fostering an open, inclusive discussion which challenges executives, where appropriate;

(3) ensuring that the board or committee devotes sufficient time and attention to the matters within its remit;

(4) helping to ensure that the board or committee and its members have the information necessary to its and their tasks;

(5) reporting to the main board on the committee's activities; and

(6) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions;

(7) in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.

3.2 The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:

(1) the requirements in *SYSC* 4.3A about the nomination committee (if that part of *SYSC* applies to the *firm*); and

(2) any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.

3.3 ~~*SYSC* 4.3A.8R and *SYSC* 4.3A.9R deal with the nomination committee for *relevant authorised persons*. There is no equivalent material for *Solvency II firms*. Although being the chair of the nomination committee is not a *controlled function* for a *small non-directive insurer*, paragraph~~ Paragraph 3.2 of this annex is still relevant to a ~~*small non-directive insurer*~~ *firm*:

(1) that is not required by the *Handbook* to have a nomination committee; or

(2) for which being the chair of such a committee is not a *controlled function*;

if it has such a committee.

4 General approach to the role of a NED

4.1 The *FCA* recognises that NEDs individually do not manage a *firm's* business in the same way as executive *directors*. Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.

4.2 A NED is neither required nor expected to assume executive responsibilities.

4.3 Although NEDs who are subject to the senior management regime for *SMF managers* or the *approved persons* regime for insurers have individual duties under that regime, the *FCA* views the regime and its application as consistent with the principle of collective decision-making.

4.4 The standard of care, skill and diligence that the *FCA* would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:

(1) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the firm, taking into account the standards in the *Handbook* (especially *COCON* and *DEPP*); and

(2) the general knowledge, skill and experience that the NED has.

2 Individual conduct rules

2.1 Individual conduct rules

2.1.1 R *Rule* 1: You must act with integrity.

2.1.2 R *Rule* 2: You must act with due skill, care and diligence.

2.1.3 R *Rule* 3: You must be open and cooperative with the *FCA*, the *PRA* and other regulators.

2.1.4 R *Rule* 4: You must pay due regard to the interests of *customers* and treat them fairly.

2.1.5 R *Rule* 5: You must observe proper standards of market conduct.

2.2 Senior management conduct rules

2.2.1 R SC1: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.

2.2.2 R SC2: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.

2.2.3 R SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

2.2.4 R SC4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

2.3 Firms: Training and breaches

2.3.1 G Under section 64B of the *Act*, ~~a *relevant authorised person*~~ an *SMCR firm* must:

(1) ensure that all *persons* subject to the *rules* in *COCON* are notified of the *rules* that apply to them; and

(2) take all reasonable steps to ensure that those *persons* understand how the *rules* in *COCON* apply to them.

2.3.2 G (1) The steps that ~~a *relevant authorised person*~~ an *SMCR firm* must take to ~~secure~~ ensure that its *conduct rules staff* understand how the *rules* in *COCON* apply to them include the provision of suitable training.

(2) Suitable training should always ensure that those who are subject to the *rules* in *COCON* have an awareness and broad understanding of all of the *rules* in *COCON*, and that they also have a deeper understanding of the practical application of the specific rules which are relevant to their work.

(3) For example:

(a) for individuals who trade in the markets, *rule* 5 in *COCON* 2.1.5R may apply in various circumstances arising in the individual's day-to-day activities and additional training may be appropriate to ensure that the individual knows how that *rule* applies to those activities in those various circumstances; or

(b) for individuals who deal directly with customers, *rule* 4 in *COCON* 2.1.4R may apply in various circumstances which makes additional training appropriate for such individuals.

2.3.3 G There are *rules* and *guidance* in *SUP* 15.3 (General notification requirements) and *SUP* 15.11 (Notification of *COCON* breaches and disciplinary action) that deal with reporting by ~~a *relevant authorised person*~~ an *SMCR firm* of *COCON* breaches to the *FCA*.

3 General factors for assessing compliance

3.1 General factors for assessing compliance

3.1.1 G Where descriptions of conduct are provided in this chapter which exemplify breaches of the *rules* in *COCON*, they are not intended to be an exhaustive list of the kind of conduct that may contravene the relevant *rule*.

3.1.2 G In assessing compliance with, or a breach of, a *rule* in *COCON*, the *FCA* will have regard to the context in which a course of conduct was undertaken, including:

(1) the precise circumstances of the individual case;

(2) the characteristics of the particular function performed by the individual in question; and

(3) the behaviour expected in that function.

3.1.3 G Without prejudice to section 66A of the *Act*, a *person* will only be in breach of any of the *rules* in *COCON* where they are personally culpable. Personal culpability arises where:

(1) a *person's* conduct was deliberate; or

(2) the *person's* standard of conduct was below that which would be reasonable in all the circumstances.

3.1.4 G In determining whether or not the particular conduct of a *person* complies with the *rules* in *COCON*, factors the *FCA* would expect to take into account include:

(1) whether that conduct relates to activities that are subject to other provisions of the *Handbook*;

(2) whether that conduct is consistent with the requirements and standards of the *regulatory system* relevant to the *person's firm*.

3.1.5 G In determining whether or not the conduct of a *senior conduct rules staff member* complies with *rules* SC1 to SC4 in *COCON*, factors the *FCA* would expect to take into account include:

(1) whether they exercised reasonable care when considering the information available to them;

(2) whether they reached a reasonable conclusion upon which to act;

(3) the nature, scale and complexity of the *firm's* business;

(4) their role and responsibility as determined by reference to the relevant *statement of responsibility*;

(5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities.

3.1.6 G In assessing whether a *senior conduct rules staff member* may have breached a *rule* in *COCON*, the nature, scale and complexity of the business and the role and responsibility of the individual undertaking the activity in question within the *firm* will be relevant in assessing whether that *person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be.

3.1.7 G *UK domestic firms* listed on the *London Stock Exchange* are subject to the *UK Corporate Governance Code*, whose internal control provisions are explained in the publication entitled 'Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)' issued by the Financial Reporting Council. Therefore, *firms* in this category will be subject to that code, as well as to the *rules* in *COCON*. In forming an opinion as to whether a *senior conduct rules staff member* has complied with the *rules* in *COCON*, the *FCA* will give due credit if they followed corresponding provisions in the *UK Corporate Governance Code* and related guidance.

4 Specific guidance on individual conduct rules

…

4.2 Specific guidance on senior manager conduct rules

…

4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* SC2.

…

(8) For a *senior conduct rules staff member* who is responsible for the compliance function, failing to ensure that:

…

(e) the method of determining the remuneration complies, where applicable, with the *Remuneration Code* or for a *Solvency II firm* or a *small non-directive insurer*, other relevant requirements in relation to remuneration<u>, as well as those remuneration codes applicable to *firms* as set out in *SYSC* 19B – 19E.</u>

…

4.2.28 G (1) If a *senior conduct rules staff member* comes across a piece of information that is something of which they think the *FCA* or *PRA* could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities~~:~~ <u>which</u> ~~(~~for an *SMF manager*~~)~~ <u>is</u> by virtue of that *person's statement of responsibilities.*

~~(a)~~ ~~; or~~

~~(b)~~ ~~(for an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *small non-directive insurer*) including by reference to their scope of responsibilities document.~~

(2) If it does, then they should ensure that, if it is otherwise appropriate to do so, it is disclosed to the *appropriate regulator*.

Annex E

Amendments to the ~~Fit and Proper test for Approved Persons and Specified Significant-harm Functions~~ Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

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

1 General

1.1 Application and purpose

1.1.1 G ~~FIT~~ *FIT* applies to:

(1) ~~a *firm*~~ an *SMCR firm* ~~(including a *relevant authorised person*)~~;

(2) an applicant for *Part 4A permission*;

(3) an *EEA firm*~~,~~ or a *Treaty firm* ~~or a *UCITS qualifier*~~ that wishes to establish a *branch* into the *United Kingdom* using *EEA rights*~~,~~ or *Treaty rights*; ~~or *UCITS directive* rights (see *SUP* 10A.1.10G and *SUP* 10A.1.11R),~~ or apply for a top-up permission ~~(see *SUP 10A.1.13R*)~~;

(4) an *approved person* performing an *FCA controlled function*;

(5) a *candidate* for an *FCA controlled function*;

(6) a *certification employee* performing an *FCA specified significant-harm function*; ~~and~~

(7) a *person* whom ~~a *firm*~~ an *SMCR firm* is proposing to certify to perform an *FCA specified significant-harm function*; and

(8) a *board director* as set out in *FIT* 1.1.2(e).

1.1.2 G The purpose of *FIT* is to set out and describe the criteria that:

(1) ~~a *relevant authorised person*~~ an *SMCR firm* should consider when:

(a) assessing the fitness and propriety of a *candidate* whom the *firm* is proposing to put forward for approval as an *FCA-approved SMF manager*;

(b) assessing the continuing fitness and propriety of a *person* approved to perform the function of an *FCA-approved SMF manager*, including for formulating an opinion about whether there are any grounds on which the regulator could withdraw the approval given to that individual to perform that function under section 63(2A) of the *Act*;

(c) assessing the fitness and propriety of a *person* whom the *firm* is proposing to certify to perform an *FCA specified significant-harm function*; ~~and~~

(d) assessing the continuing fitness and propriety of a *person* whom the *firm* has certified to perform an *FCA specified significant-harm function*; and

(e) (in the case an *FCA-authorised person* that is not a *limited scope core SMCR firm*) assessing the fitness of a *non-SMF board director subject to competence requirements* under the *competent employees rule*, any directly applicable *EU* legislation or any other requirement of the *regulatory system*.

(2) the *FCA* will consider when assessing the fitness and propriety of a *candidate* for a *controlled function*, including a *designated senior management function* (see generally *SUP* 10A and *SUP* 10C on *approved persons*), and may consider when assessing the continuing fitness and propriety of *approved persons*.

1.1.3 G ~~The table in *FIT* 1.1.4G summarises the situations to which *FIT* applies.~~ [deleted]

1.1.4 G ~~Table: Situations to which *FIT* applies~~ [deleted]

~~What FIT applies to~~	~~Does it apply to relevant authorised persons?~~	~~Does it apply to firms that are not relevant authorised persons?~~	~~Comment~~
~~(1) A *firm* assessing the fitness and propriety of a *candidate* whom the *firm* is proposing to put forward for approval~~	~~Yes~~	~~No~~	~~However, the answer to Question 11 in *SUP* 10A Annex 1 (Frequently asked questions) says that the *FCA's* approval process is not a substitute for the checks that a *firm* should be carrying out on its prospective recruits. *FIT* may be a useful guide to matters that a *firm* that is not a relevant authorised person should take into account.~~
~~(2) A *firm* assessing the continuing fitness and propriety of an *approved*~~	~~Yes~~	~~No~~	~~However, a *firm* should employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (*SYSC* 5.1). *FIT* may be a~~

~~*person*~~			~~useful guide to matters which a *firm* should take into account if it is not a relevant authorised person.~~
~~(3) The *FCA* assessing the fitness and propriety of a *candidate* for approval as an *approved person*~~	~~Yes~~	~~Yes~~	
~~(4) The *FCA* assessing the continuing fitness and propriety of an *approved person*~~	~~Yes~~	~~Yes~~	
~~(5) A *firm* assessing the fitness and propriety of a *person* whom a firm is proposing to certify to perform an *FCA specified significant-harm function*~~	~~Yes~~	~~No~~	~~See the comment on row (2)~~
~~(6) A *firm* assessing the continuing fitness and propriety of a *person* whom a *firm* has certified to perform an *FCA specified significant-harm function*~~	~~Yes~~	~~No~~	~~See the comment on row (2)~~

1.2 Introduction

1.2.-1 G Under section 60A(1) of the *Act*, before ~~a *relevant authorised person*~~ a *firm* may make an application for the *FCA's* approval of a ~~*designated senior management function*,~~ *controlled function* the ~~*relevant authorised person*~~ *firm* must be satisfied that the *person* for whom the application is made is a fit and proper *person* to perform that function.

1.2.1 G Under section 61(1) of the *Act* (Determination of applications), the *FCA* may grant an application for approval made under section 60 (Applications for approval) of the *Act* only if it is satisfied that the *candidate* is fit and proper to perform the *controlled function* to which the application relates.

1.2.1A G Under section 63F of the *Act*, ~~a *relevant authorised person*~~ a *firm* may issue a certificate to a *person* to perform a *specified significant-harm function* only if it is satisfied that the *person* is a fit and proper *person* to perform that function.

1.2.1B G Under sections 60A and 63F 7of the *Act*, in assessing whether a *person* is a fit and proper person to perform an *FCA designated senior management function* or an *FCA specified significant-harm function*, ~~a *relevant authorised person*~~ a *firm* must have particular regard to whether that *person*:

(1) has obtained a qualification; or

(2) has undergone, or is undergoing, training; or

(3) possesses a level of competence; or

(4) has the personal characteristics;

required by general *rules* made by the *FCA*.

1.2.1C G The key general *rules* relating to the criteria listed in *FIT* ~~1.2.1B~~ 1.2.1BG include:

(1) in the case of very senior *employees*, *SYSC* 4.2 (*persons* who effectively direct the business) and *SYSC* 4.3A.3R (*management body*);

(2) for ~~*employees*~~ personnel of *firms* generally, *SYSC* 5.1.1R (the *competent employees rule*); ~~and~~

(3) in relation to retail activities, ~~*TC* 2.1.12R~~ *TC* 2.1.1R (employees' competence); and

(4) for those who are *employees* of insurance firms, *SYSC* 3.1.6R.

1.2.3A G Under section 63(1) of the *Act* (Withdrawal of approval), the *FCA* may withdraw an approval under section 59 given by the *FCA* or the *PRA* in relation to the performance by a person of a function if it considers that the *person* is not a fit and proper *person* to perform the function.

1.2.4 G The *Act* does not prescribe the matters which the *FCA* should take into account when determining fitness and propriety. However, section 61(2) states that the *FCA* may have regard (among other things) to whether the *candidate* or *approved person*:

(1) has obtained a qualification; or

(2) has undergone, or is undergoing, training; or

(3) possesses a level of competence; or

(4) has the personal characteristics;

required by general *rules* made by the *FCA*.

1.2.4A G (1) Under Article 21(1)(d) of the *MiFID Org Regulation* and articles 34 and 35 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of:

(a) a *person* to perform a *controlled function*; or

(b) a *certification employee*;

solely in relation to the *MiFID business* of an *incoming EEA firm*, the *FCA* will not have regard to that *person's* competence and capability.

(2) Where the function relates to:

(a) matters outside the scope of *MiFID*, for example activities related to a *specified benchmark* (see the *benchmark submission function* (CF 40), the *benchmark administration function* (CF 50) and the benchmark submission and administration *FCA-specified significant-harm functions* (see *SYSC* 5.2.33R); or

(b) business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example ~~*insurance mediation activities*~~ <u>*insurance distribution activities*</u> in relation to *life policies*; or

(c) matters within the responsibility of the *FCA* as the *Host State regulator*, for example *money laundering* responsibilities (see the *money laundering reporting function* (CF11 and SMF17)) or (3) below;

the *FCA* will have regard to a *person's* competence and capability as well as their honesty, integrity, reputation and financial soundness.

(3) The *FCA* will have regard to a natural *person's* competence and capability to the extent they give a *personal recommendation* or

information about *financial instruments*, *structured deposits*, *investment services* or *ancillary services* on behalf of a *UK branch* of:

(a) an *investment firm* authorised under *MiFID*;

(b) an *AIFM investment firm* carrying out activities under article6(4) of the *AIFMD* (provision of additional services);

(c) a *UCITS investment firm* carrying out activities under article 6(3) of the *UCITS Directive* (provision of additional services); or

(d) a *credit institution*.

(4) (3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of *MiFID*.

(5) (1) to (4) are also relevant to the matters an ~~*EEA relevant authorised person*~~ *EEA SMCR firm* should take into account when assessing any *staff being assessed under FIT*. Where, under (1) to (4):

(a) the *FCA* will have regard to a *person's* competence and capability, so should a *firm* when assessing any *staff being assessed under FIT*; and

(b) the *FCA* will not have regard to a *person's* competence and capability, a *firm* need not do so either when assessing any *staff being assessed under FIT*.

1.2.4B G Where the application relates to a function within a *Solvency II firm* and is for an *FCA controlled function* which is also a *Solvency II Directive* 'key function' as defined in the PRA Rulebook: Glossary, then the *FCA* will also have regard to the assessment made by the *firm* as required in article 273 of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014; Rules 2.1 and 2.2 of the PRA Rulebook: Solvency II Firms: Insurance - Fitness and Propriety, and other factors, as set out in *EIOPA* Guidelines on system of governance dated 28 January 2015 (see Guideline 16).

1.3 Assessing fitness and propriety

1.3.1 G The *FCA* will have regard to a number of factors when assessing the fitness and propriety of a *person* to perform a particular *controlled function*, as more particularly described in *FIT* 2 (Main assessment criteria).

1.3.1A G The *FCA* would expect *firms* that are required to assess the fitness and propriety of *staff being assessed under FIT* to have regard to substantially the same factors as those outlined in *FIT* 2.

1.3.1B G In the *FCA's* view, the most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

1.3.2 G In assessing fitness and propriety, the *FCA* will also take account of the activities of the *firm* for which the *controlled function* is or is to be performed, the *permission* held by that *firm* and the markets within which it operates.

1.3.2A G A ~~*relevant authorised person*~~ <u>*firm*</u> assessing the fitness and propriety of *staff being assessed under FIT* should consider:

(1) the nature, scale and complexity of its business, the nature and range of financial services and activities undertaken in the course of that business; and

(2) whether the *candidate* or *person* has the knowledge, skills and experience to perform the specific role that the *candidate* or *person* is intended to perform.

1.3.2B G A ~~*relevant authorised person*~~ <u>*firm*</u> is reminded that, in assessing a *candidate* for a position within the *management body* of the *firm*, *SYSC* 4.3A.3R(3) requires the *firm* to ensure that the management body, as a collective, possesses adequate knowledge, skills and experience to understand the *firm's* activities.

1.3.3 G The criteria listed in *FIT* 2.1 to *FIT* 2.3 are *guidance* and will be applied in general terms when the *FCA* is determining a *person's* fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. A ~~*relevant authorised person*~~ <u>*firm*</u> assessing the fitness and propriety of *staff being assessed under FIT* should be guided by substantially the same criteria in *FIT* 2.1 to *FIT* 2.3 (to the extent applicable to the *firm*), recognising that this is not intended to be a definitive list of matters to be considered.

1.3.4 G If a matter comes to the *FCA's* attention which suggests that the *person* might not be fit and proper, the *FCA* will take into account how relevant and how important it is. In the same way, if a matter comes to the attention of a ~~*relevant authorised person*~~ <u>*firm*</u> which suggests that any *staff being assessed under FIT* might not be fit and proper, the *firm* should take into account how relevant and how important that matter is.

1.3.4A G A ~~*relevant authorised person*~~ <u>*firm*</u> assessing the continuing fitness and propriety of an *approved person* is required to notify the *FCA* under section 63(2A) of the *Act* if it forms the opinion that there are grounds on which the *FCA* could withdraw its approval (see *SUP* 10C.14.24R). In discharging its obligation to notify the *FCA*, a ~~*relevant authorised person*~~ <u>*firm*</u> should take into account how relevant and how important the matter is that comes to its attention which suggests an *approved person* might not be fit and proper before determining that a notification should be made.

1.3.4B G A ~~*relevant authorised person*~~ *firm* assessing the continuing fitness and propriety of *staff being assessed under FIT* should assess the role that the individual is actually performing at the time the assessment is done. For this purpose, the assessor(s) should be provided with an up-to-date job description for that individual in advance of the assessment.

1.3.5 G During the application process for a *controlled function*, the *FCA* may discuss the assessment of the *candidate's* fitness and propriety informally with the *firm* making the application and may retain any notes of those discussions.

2 Main assessment criteria

2.1 Honesty, integrity and reputation

2.1.1 G In determining a *person's* honesty, integrity and reputation, the *FCA* will have regard to all relevant 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 *FCA* should be informed of these matters (see ~~*SUP* 10A.14.17R and~~ *SUP* 10C.14.18R), 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 *FCA* 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.

2.1.1A G A ~~*relevant authorised person*~~ *firm* determining the honesty, integrity and reputation of *staff being assessed under FIT*, should consider all relevant matters, including those set out in *FIT* 2.1.3G, which may have arisen either in the *United Kingdom* or elsewhere. *Firms* should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that *candidate* or *person*. If any *staff being assessed under FIT* has a conviction for a criminal offence, the *firm* should consider the seriousness of and circumstances surrounding the offence, the explanation offered by that *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.

2.1.2 G In considering the matters in *FIT* 2.1.1G, the *FCA* will look at whether the *person's* reputation might have an adverse impact upon the *firm* for which the *controlled function* is or is to be performed and at the *person's* responsibilities.

2.1.2A G In considering the reputation of *staff being assessed under FIT* 2.1.1AG a ~~*relevant authorised person*~~ *firm* should have regard to whether that *person's* reputation might have an adverse impact upon the *firm* for which the function is to be performed and the *person's* responsibilities.

2.1.3 G The matters referred to in *FIT* 2.1.1G to which the *FCA* will have regard, and to which a ~~*relevant authorised person*~~ *firm* should also have regard, include, but are not limited to:

(1) whether the *person* has been convicted of any criminal offence; this *must* include, where provided for by the *Rehabilitation Exceptions Orders* to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit *companies*, insurance, consumer protection, *money laundering*, market manipulation and *insider dealing*, whether or not in the *United Kingdom*;

(2) whether the *person* has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a *body corporate*;

(3) whether the *person* has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the *appropriate regulator*, by other regulatory authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies;

(4) whether the *person* is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;

(5) whether the *person* has contravened any of the requirements and standards of the *regulatory system* or the equivalent standards or requirements of other regulatory authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies;

(6) whether the *person* has been the subject of any justified complaint relating to *regulated activities*;

(7) whether the *person* has been involved with a *company*, *partnership* or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence

revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;

(8) whether, as a result of the removal of the relevant licence, registration or other authority, the *person* has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;

(9) whether the *person* has been a *director*, *partner*, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the *person* has been connected with that organisation or within one year of that connection;

(10) whether the *person*, or any business with which the *person* has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately;

(11) whether the *person* has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;

(12) whether the *person* has ever been disqualified from acting as a *director* or disqualified from acting in any managerial capacity;

(13) whether, in the past, the *person* has been candid and truthful in all ~~his~~ <u>their</u> dealings with any *regulatory body* and whether the *person* demonstrates a readiness and willingness to comply with the requirements and standards of the *regulatory system* and with other legal, regulatory and professional requirements and standards.

2.2 Competence and capability

2.2.1 G In determining a *person's* competence and capability, the *FCA*<u>, in accordance with *FIT* 1.1.2G,</u> will have regard to all relevant matters including but not limited to:

(1) whether the *person* satisfies the relevant *FCA* training and competence requirements in relation to the *controlled function* the *person* performs or is intended to perform;

(2) whether the *person* has demonstrated by experience and training that they are suitable, or will be suitable if approved, to perform the *controlled function*;

(3) whether the *person* has adequate time to perform the *controlled function* and meet the responsibilities associated with that function.

2.2.1A G In determining a *person's* competence and capability to perform an *FCA designated senior management function* or an *FCA-specified significant-*

harm function, a ~~relevant authorised person~~ *firm*, in accordance with *FIT* 1.1.2G, should have regard to all relevant matters including but not limited to:

(1) whether the *person* satisfies any applicable training and competence requirements (in relation to the function that the *person* performs or is intended to perform);

(2) whether the *person* has demonstrated by experience and training that they are suitable to perform the function they are intended to perform;

(3) whether the *person* has adequate time to perform the function in question and meet the responsibilities associated with that function.

2.2.2 G A *person* may have been convicted of, or dismissed or suspended from employment for, drug or alcohol abuses or other abusive acts. This will be considered by the *FCA* only in relation to a *person's* continuing ability to perform the particular *controlled function* for which the *person* is or is to be employed.

2.2.2A G The *FCA* would expect a ~~*relevant authorised person*~~ *firm* determining the competence and capability of *staff being assessed under FIT* to consider convictions, dismissals and suspensions from employment for drug or alcohol abuses or other abusive acts only in relation to a *person's* continuing ability to perform the particular *FCA designated senior management function* or an *FCA-specified significant-harm function* for which the *person* is, or is to be, employed.

2.3 Financial soundness

2.3.1 G In determining a *person's* financial soundness, the *FCA* will have regard, and a ~~relevant authorised person~~ *firm* should also have regard, to any factors including, but not limited to:

(1) whether the *person* has been the subject of any judgment debt or award, in the *United Kingdom* or elsewhere, that remains outstanding or was not satisfied within a reasonable period;

(2) whether, in the *United Kingdom* or elsewhere, the *person* has made any arrangements with ~~his~~ their creditors, filed for bankruptcy, had a bankruptcy petition served on ~~him~~ them, been adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.

2.3.2 G The *FCA* will not normally require a *candidate* to supply a statement of assets or liabilities. The fact that a *person* may be of limited financial means will not, in itself, affect their suitability to perform a controlled function. The *FCA* would expect a ~~*relevant authorised person*~~ *firm* to take a similar view in assessing whether *staff being assessed under FIT*, are fit and proper.

[*Editor's note*: For this Consultation Paper: provisions about the type of forms to be used, significant influence functions, appointed representatives or chapter 10A of the Supervision manual may be amended in the second consultation.]

Annex F

Amendments to the Supervision manual (SUP)

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

Chapter 10A is revoked.

[*Editor's note*: The second Consultation Paper will consider whether chapter 10A is to be retained for some purposes]

10C FCA senior ~~management~~ <u>managers</u> regime for approved persons in ~~relevant authorised persons~~ <u>SMCR firms</u>

10C.1 Application

General

10C.1.1 R This chapter applies to every ~~*relevant authorised person*~~ <u>*SMCR firm*</u>.

10C.1.2 G This chapter is also relevant to *FCA-approved SMF managers* of ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>.

<u>10C.1.2A</u> <u>G</u> <u>*SUP* 10C Annex 1 (What functions apply to what type of firm) sets out:</u>

<u>(1)</u> <u>how this chapter applies to different types of *SMCR firm*; and</u>

<u>(2)</u> <u>the *SMCR firms* to which this chapter does not apply.</u>

Non-UK ~~relevant authorised persons~~ <u>firms</u>: UK services

10C.1.3 R This chapter does not apply to a *non-UK* ~~*relevant authorised person*~~ <u>*SMCR firm*</u> ~~in relation to *regulated activities* which are carried on in the *United Kingdom*,~~ other than in relation to an establishment maintained by it or its *appointed representative* in the *United Kingdom*.

EEA ~~relevant authorised persons~~ <u>firms</u>: general application

10C.1.4 R This chapter does not apply to an *EEA* ~~*relevant authorised person*~~ <u>*SMCR firm*</u> if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* under:

(1) the *Single Market Directives*;

(2) the *Treaty*;

(3) the *auction regulation*.

10C.1.5 G (1) *SUP* 10C.1.4R reflects the provisions of section 59(8) of the *Act* and, where relevant, the *Treaty*.

(2) It preserves the principle of *Home State* prudential regulation.

(3) For an *EEA* ~~*relevant authorised person*~~ *SMCR firm*, the effect is to reserve to the *Home State regulator* the assessment of fitness and propriety of a *person* performing a function in the exercise of an *EEA right*. A member of the *governing body*, or the notified *UK branch manager*, of an *EEA* ~~*relevant authorised person*~~ *SMCR firm*, acting in that capacity, will not, therefore, have to be approved by the *FCA* under the *Act*.

(3A) For example, *persons* in *Solvency II firms* which are *incoming EEA firms* are not expected to be carrying out *FCA* functions to the extent that the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* 'key function'.

(4) Aside from (1) to ~~(3)~~ (3A) an *EEA* ~~*relevant authorised person*~~ *SMCR firm* should have:

(a) considered the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or a *Treaty activity* through a *branch* in the *United Kingdom*;

(b) been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*; and

(c) considered, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.

Overseas firms: general

10C.1.5A G (1) Generally, where an overseas manager of a *non-UK* ~~*relevant authorised person*~~ *SMCR firm* has responsibilities in relation to its *branch* in the *United Kingdom* that are strategic only, they will not need to be an *FCA-approved SMF manager*.

(2) However, where an overseas manager is responsible for implementing that strategy for its *branch* in the *United Kingdom*, and has not delegated that responsibility to an *SMF manager* in the *United Kingdom*, they will potentially be performing an *FCA controlled function* if the detailed conditions in this chapter defining the relevant *FCA controlled function* are met.

UK firm with overseas branches or providing services on a cross-border basis

10C.1.6 G There are no territorial limitations to *SUP* 10C for:

(1) overseas branches of *UK firms*; or

(2) *UK firms* providing services into or out of the *United Kingdom* on a cross-border basis.

Appointed representatives

10C.1.7 R This chapter does not deal with an *approved person* who is approved under *SUP* 10A.1.16BR (Appointed representatives).

10C.1.8 G (1) *SUP* 10A.1.15R to SUP 10A.1.16DG (Appointed representatives) deal with the *approved persons* regime for *appointed representatives* of *relevant authorised persons*.

(2) In general this chapter does not apply *to appointed representatives* of *relevant authorised persons*. SUP 10A applies instead.

(3) In theory, a *person* employed by an *appointed representative* of a *relevant authorised person* could come within one of the *controlled functions* in this chapter. If so, that person will be performing a *senior management function* and this chapter would apply. However, the *FCA* thinks that such a situation should rarely, if ever, arise.

(4) If a *person* is an *approved person* under this chapter and under *SUP* 10A for the same *firm*, this chapter applies to *FCA-designated senior management functions* under this chapter and *SUP* 10A applies to *controlled functions* under *SUP* 10A. It is unlikely that such a scenario would ever arise in practice.

[*Editor's note*: SUP 10C.1.7R and SUP 10C.1.8G will be reviewed in a second Consultation Paper]

Insolvency practitioners

10C.1.9 R This chapter does not apply to a function performed by a *person* acting as:

(1) an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986;

(2) a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986;

(3) an insolvency practitioner within the meaning of article 3 of the Insolvency (Northern Ireland) Order 1989; or

(4) a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Swiss general insurers

10C.1.10 R For *Swiss general insurers*, references in this chapter to parts of the *PRA Rulebook* for 'Solvency II firms' are to be read as references to the corresponding parts of the *PRA Rulebook* applying to *large non directive insurers*.

10C.1.11 G *Swiss general insurers* are in the *large non directive insurers* sector of the *PRA Rulebook* and the *PRA* applies to them, in relation to their *controlled functions*, provisions equivalent to those applying to third country branches in the *Solvency II firms* sector of the *PRA Rulebook*. The *FCA* includes them as third country undertakings of *Solvency II firms* and so they must follow the requirements for *Solvency II* firms set out in this chapter.

Insurance and mortgage credit mediation

10C.1.12 G See *MIPRU* 2.2 (Allocation of the responsibility for insurance distribution activity or MCD credit intermediation activity) for how the *FCA's* senior managers regime for *SMCR firms* is adjusted for a *firm* carrying on *insurance distribution activity* or *MCD credit intermediation activity*.

10C.2 Purpose

10C.2.1 G The purpose of *SUP* 10C is:

(1) to specify, under section 59 of the *Act*, descriptions of the *FCA-designated senior management functions* for ~~*relevant authorised persons*~~ *SMCR firms*, which are listed in *SUP* 10C.4.3R; and

(2) to specify the manner in which a *firm* must apply for the *FCA's* approval under section 59 of the *Act* and other procedures for *FCA-approved SMF managers*. ~~; and~~

~~(3) describe the *FCA's* senior management managers regime for *SMF managers* in *relevant authorised persons*.~~

10C.2.2 G ~~*SUP* 10C does not deal with the *PRA's* senior management regime for *relevant authorised persons*. The key parts of its regime can be found in the parts of the *PRA's* rulebook called Senior Management Functions' and 'Allocation of Responsibilities'.~~ [deleted]

10C.2.3 G (1) The *FCA* has certain powers in relation to *PRA-approved persons*, such as the requirement for *FCA* consent to the *PRA* granting approval for the performance of a *PRA controlled function*. *SUP* 10C does not deal with these.

(2) However, *SUP* 10C.12.1G has material about the *FCA's* policy on giving its consent to applications made to the *PRA* about conditional and time-limited approvals for *SMF managers* in *PRA-authorised persons*.

10C.2.4 G *SUP* 10C.14 (Changes to an approved person's details) applies, in certain cases, to *PRA-approved persons*. Where this is the case, it says so.

10C.3 General material about the definition of controlled functions

Purpose

10C.3.1 G This section has general provisions that apply to the definition of all *controlled functions*.

Types of controlled function

10C.3.2 G There are two types of *FCA controlled function* under the *Act*:

(1) an *FCA-designated senior management function*; and

(2) an *FCA controlled function* that is not a *designated senior management function*.

10C.3.3 G All the *controlled functions* that the *FCA* has specified in this chapter are *designated senior management functions*. The *FCA* has not, in this chapter, used its power to specify *controlled functions* that are not *designated senior management functions*.

10C.3.4 G The *FCA* has (in *SUP* 10A) specified *controlled functions* for *relevant authorised persons* that are not *designated senior management functions*. (See *SUP* 10C.1.7R to *SUP* 10C.1.8G (Appointed representatives)).

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

10C.3.5 G (1) Except as described in *SUP* 10C.3.4G, in this chapter, *FCA controlled function* and *FCA-designated senior management function* cover the same functions.

(2) Therefore, a function is only covered by *SUP* 10C.4.3R (Table of FCA-designated senior management functions ~~for relevant authorised persons~~) if that function meets both the following sets of requirements:

(a) the requirements of *SUP* 10C.3.6R (Definition of FCA controlled function: arrangements); and

(b) the requirements of *SUP* 10C.3.10R (Definition of FCA-designated senior management function).

Definition of FCA controlled function: arrangements

10C.3.6 R In accordance with section 59 of the *Act* (Approval for particular arrangements), a function specified in this chapter is an *FCA controlled function* only to the extent that it is performed under an *arrangement* entered into by:

(1) a *firm*; or

(2) a contractor of the *firm*;

in relation to the carrying on by the *firm* of a *regulated activity*.

10C.3.7 G Section 59(1) and (2) of the *Act* provide that approval is necessary for an *FCA controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractor (typically an *appointed representative*), in relation to a *regulated activity*.

10C.3.8 G (1) *Arrangement* is defined in section 59(10) of the *Act* as any kind of arrangement for the performance of a function which is entered into by a *firm* or any of its contractors with another *person*.

(2) *Arrangement* includes the appointment of a *person* to an office, a *person* becoming a *partner*, or a *person's* employment (whether under a contract of service or otherwise).

(3) An *arrangement* need not be a written contract but could arise by conduct, custom and practice.

10C.3.9 G If a *firm* is a member of a group, a *person* employed elsewhere in the *group* (for example, by the *holding company*) who carries out a function in relation to the *firm* will only perform an *FCA controlled function*:

(1) if the function is performed under an *arrangement* entered into by the *firm* (under section 59(1)); or

(2) if:

(a) there is a contract (under section 59(2)) between the *firm* and the relevant *group* member permitting this; and

(b) the function is performed under an *arrangement* entered into by the contractor.

Definition of FCA-designated senior management function

10C.3.10 R Each *FCA-designated senior management function* is one which comes within the definition of a *senior management function*.

10C.3.11 G Section 59ZA(2) of the *Act* says that a function is a 'senior management function', in relation to the carrying on of a *regulated activity* by a *firm*, if:

(1) the function will require the *person* performing it to be responsible for managing one or more aspects of the *firm's* affairs, so far as relating to the activity; and

(2) those aspects involve, or might involve, a risk of serious consequences:

(a) for the *firm*; or

(b) for business or other interests in the *United Kingdom*.

10C.3.12 G Section 59ZA(3) of the *Act* says that 'managing' includes, for these purposes, taking decisions, or participating in the taking of decisions, about how one or more aspects of the *firm's* affairs should be carried on.

The 12-week rule

10C.3.13 R If:

(1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA-designated senior management function*;

(2) the appointment is to provide cover for an *SMF manager* whose absence is:

(a) temporary; or

(b) reasonably unforeseen; and

(3) the appointment is for less than 12 weeks in a consecutive 12-month period;

the description of the relevant *FCA-designated senior management function* does not relate to those activities of that individual.

10C.3.14 G *SUP* 10C.3.13R enables cover to be given for (as an example) holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing an *FCA-designated senior management function* for more than 12 weeks, the *firm* should apply for approval.

10C.3.15 G See *SUP* 10C.12.7G to *SUP* 10C.12.14G (time-limited approvals) for procedures for temporary appointments longer than 12 weeks.

10C.3.16 G (1) A *firm* to which *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) applies may have allocated responsibilities under that chapter to an *SMF manager* who is absent under *SUP* 10C.3.13R.

(2) *SYSC* 26.4.8R (Exclusion where the 12-week rule applies) deals with how those responsibilities may be reallocated during the *SMF manager's* absence.

(3) *SYSC* 26.4.10G explains that *SYSC* 26.4.8R and *SUP* 10C.3.13R apply to a person performing the *other overall responsibility function* or the *other local responsibility function* as well as to other *designated senior management functions*.

10C.3.17 G (1) If:

(a) a *firm* allocates any *FCA-prescribed senior management responsibilities* to an *SMF manager*; and

(b) the *SMF manager* later becomes absent;

the *firm* should reallocate them to another *SMF manager*.

(2) The *firm* may not allocate the absent manager's *FCA-prescribed senior management responsibilities* to the *person* providing cover for that manager unless the *person* providing cover is also an *SMF manager* of the *firm*.

10C.4 Specification of functions

10C.4.1 R (1) Each function described in *SUP* 10C.4.3R is an *FCA controlled function*.

(2) In accordance with section 59(6A) of the *Act* (Approval for particular arrangements), the *FCA* designates each function in (1) as a *senior management function*.

10C.4.2 R ~~(1)~~ ~~Part 1 of the table in *SUP* 10C.4.3R applies to *UK relevant authorised persons*.~~

~~(2)~~ ~~Part 2 of the table in *SUP* 10C.4.3R applies to *EEA relevant authorised persons*.~~

~~(3)~~ ~~Part 3 of the table in *SUP* 10C.4.3R applies to *third-country relevant authorised persons*.~~ [deleted]

10C.4.2A R *SUP* 10C Annex 1 (What functions apply to what type of firm) sets out which of the functions in *SUP* 10C.4.3R apply to which kind of *firm*.

10C.4.3 R Table of FCA-designated senior management functions ~~for relevant authorised persons~~ SMCR firms

The first column (Type) of the following table is amended by (a) amalgamating its rows so that "FCA governing functions" and "FCA required functions" apply to the functions in columns two and three as follows and then (b) amending the table further as shown.

~~**Part One: (FCA-designated senior management functions for relevant authorised persons)**~~		
Type	**SMF**	**Description of FCA controlled function**
FCA governing functions	SMF 1	*Chief executive function*
	SMF 3	~~Executive~~ *Executive director function*
	SMF 7	*Group entity senior manager function*
	SMF 9	*Chairman function*
	SMF 10	*Chairman of the risk committee function*
	SMF 11	*Chairman of the audit committee function*
	SMF 12	*Chairman of the remuneration committee function*
	SMF 13	~~*Chair*~~ *Chairman of the nomination committee function*
	SMF 14	*Senior independent director function*

	<u>SMF 15</u>	<u>*Chairman of the with-profits committee function*</u>
	<u>SMF 19</u>	<u>*Head of third country branch function*</u>
	<u>SMF 27</u>	<u>*Partner function*</u>
FCA required functions	SMF 16	*Compliance oversight function*
	SMF 17	*Money laundering reporting function*
	SMF 18	*Other overall responsibility function*
~~**Part Two: (FCA-designated senior management functions for EEA relevant authorised persons)**~~		
~~**Type**~~	~~**SMF**~~	~~**Description of FCA controlled function**~~
~~*FCA required functions*~~	~~SMF 17~~	~~*Money laundering reporting function*~~
	SMF 21	*EEA branch senior manager function*
	<u>SMF 29</u>	<u>*Limited scope function*</u>
	<u>SMF 23b</u>	<u>*Conduct risk oversight (Lloyd's) function*</u>
~~**Part Three: (FCA-designated senior management functions for third-country relevant authorised persons)**~~		
~~**Type**~~	~~**SMF**~~	~~**Description of FCA controlled function**~~
~~*FCA governing function*~~	~~SMF3~~	~~Executive *director function*~~
~~*FCA required functions*~~	~~SMF 16~~	~~*Compliance oversight function*~~
	~~SMF 17~~	~~*Money laundering reporting function*~~
	SMF22	*Other local responsibility function*
<u>Systems and controls functions</u>	<u>SMF 2</u>	<u>*Chief finance officer function*</u>
	<u>SMF 4</u>	<u>*Chief risk officer function*</u>
	<u>SMF 5</u>	<u>*Head of internal audit function*</u>
	<u>SMF 24</u>	<u>*Chief operations function*</u>

10C.4.4 G [As described in *SUP* 10C.1.7R to *SUP* 10C.1.8G (Appointed representatives), *SUP* 10A specifies certain other *controlled functions* for *relevant authorised persons*.]

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

10C.4A FCA governing functions: General

Sole traders

10C.4A.1 G (1) An individual *sole trader* themselves will not need approval to perform any of the *governing functions*. Therefore the *governing functions* do not apply to a *sole trader* with no employees.

(2) It is possible, although perhaps not likely in practice, that the *governing functions* could apply to staff working for the *sole trader*.

(3) In particular, it is possible for the *sole trader* to give sufficient authority to a staff member that the staff member meets the *Glossary* definition of a *director*.

(4) This might happen, for example, if the *sole trader's* business is so large that the *sole trader* sets up a *governing body* to run it.

PRA-authorised persons

10C.4A.2 G *SUP* 10C.9 (Minimising overlap with the PRA approved persons regime) explains that in many cases a *person* performing one the functions set out in *SUP* 10C.5 to *SUP* 10C.5B for a *PRA-authorised person* will not in fact require approval from the *FCA* to perform the function and will just require *PRA* approval.

10C.5 FCA governing functions: Executive

Executive director function (SMF3): General

10C.5.1 R (1) For a *UK* ~~*relevant authorised person*~~ *SMCR firm*, the ~~executive~~ *executive director function* is the function of acting in the capacity of a *director* (other than a *non-executive director*) of the *firm*.

(2) For a ~~*third-country relevant authorised person*~~ *non-UK SMCR firm*, the ~~executive~~ *executive director function* is the function of acting in the capacity of a *director* (other than a *non-executive director*) in relation to its *branch* in the *United Kingdom* where

the *person* performing that function has responsibility for managing one or more aspects of the *firm's* affairs so far as relating to the activities of the *branch*.

(3) Paragraph (2) includes a *person* who is a member (other than a non-executive member) of the *branch's governing body*.

(4) The *executive director function* does not apply to a *UK SMCR firm* that is:

(a) a *partnership*; or

(b) a *limited liability partnership*.

~~Chairman of the nomination committee function (SMF13)~~

10C.5.2 R [deleted] [*Editor's note:* The text of this provision has been moved to *SUP* 10C.5A.2R]

10C.5.3 G [deleted] [*Editor's note*: The text of this provision has been moved to *SUP* 10C.5A.3G]

10C.5.4 G [deleted] [*Editor's note*: The text of this provision has been moved to *SUP* 10C.5A.4G]

10C.5.5 G ~~In some *firms*, the chairman of the nomination committee is also the chairman of the *governing body*. As being chairman of the *governing body* is a *PRA controlled function*, the chairman may not need approval to perform the *chair of the nomination committee function* but instead just need *PRA* approval for being chairman of the *governing body*.~~ [deleted]

~~(See *SUP* 10C.9 (Minimising overlap with the PRA approved persons regime) for an explanation of when *PRA* approval means that *FCA* approval is not needed.)~~

~~Non-executive directors~~

10C.5.6 G [deleted] [*Editor's note*: The text of this provision has been moved to *SUP* 10C.5A.1G]

~~Insurance mediation~~

10C.5.7 G ~~See *MIPRU* 2.2 for how the *FCA's* senior management regime for *relevant authorised persons* is adjusted for a *firm* carrying on *insurance mediation activity*.~~ [deleted]

Executive director function: Extension of definition for Lloyd's

10C.5.8 R In the case of the *Society*, the *executive director function* also includes the function of acting in the capacity of an executive member of a committee to which the Council of the *Society* directly delegates authority to carry out the *Society's* regulatory functions.

Executive director function: Adjustment of definition for non-directive friendly societies

10C.5.9	R	(1)	This *rule* applies to a *non-directive friendly society*.
		(2)	The *executive director function* is the function of directing the affairs of the *firm*, either alone or jointly with others.
		(3)	If the principal purpose of the *firm* is to carry on *regulated activities*, each *person* with responsibility for directing its affairs performs the *FCA controlled function*.
		(4)	If the principal purpose of the *firm* is other than to carry on *regulated activities*, a *person* performs the *FCA controlled function* only to the extent that they have responsibility for a *regulated activity*.
		(5)	Each *person* on the *firm's governing body* will be taken to have responsibility for its *regulated activities*, unless the *firm* has apportioned this responsibility to one particular *person* to whom it is reasonable to give this responsibility.
		(6)	The *person* in (5) need not be a member of the *firm's governing body*.
		(7)	The *executive director function* does not include acting in the capacity of a *non-executive director*.
		(8)	This *rule* applies in place of *SUP* 10C.5.1R.
10C.5.10	G	(1)	Typically a *non-directive friendly society* will appoint a "committee of management" to direct its affairs.
		(2)	However, the governing arrangements may be informal and flexible. If this is the case, the *FCA* would expect the society to resolve to give responsibility for the carrying on of *regulated activities* to one individual who is appropriate in all the circumstances.
		(3)	The individual in (2) may, for example, have the title of chief executive or similar. The individual would have to be an *FCA-approved person* under *SUP* 10C.5.9R.
10C.5.11	G	(1)	In practice, the *FCA* expects that most *non-directive friendly societies* will be *PRA-authorised persons*.
		(2)	Where that is the case, the *executive director function* will often not apply (see *SUP* 10C.4A.2G).

Chief executive function (SMF1)

10C.5.12 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.

10C.5.13 G This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body* for the conduct of the whole of the business (or relevant activities) of the *firm*.

10C.5.14 G (1) A *person* performing the *chief executive function* may be a member of the *governing body* but need not be.

(2) If the chairman of the *governing body* is also the *chief executive*, they will be discharging this function.

(3) If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*.

(4) But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.

Head of third country branch function (SMF 19)

10C.5.15 R (1) This *rule* applies to a *non-UK SMCR firm* but not to an *EEA SMCR firm*.

(2) The *head of third country branch function* is the function of having responsibility alone or jointly with others, for the conduct of all activities of the *United Kingdom branch* of a *firm* which are subject to the *UK regulatory system*.

Partner function (SMF27): Partnerships and limited liability partnerships

10C.5.16 R (1) This *rule* applies to a *UK SMCR firm* that is a *partnership*.

(2) The *partner function* is the function of being or occupying the position of a *partner* in that *firm*.

(3) The *partner function* also includes:

(a) the function of being or occupying the position of a partner in that *firm* (by whatever name called); and

(b) acting as a member of the *firm's governing body*.

(4) (3) applies where the *Glossary* definition of *partner* is not wide enough to cover all the functions in (3).

10C.5.17 R (1) This *rule* applies to a *UK SMCR firm* that is a *limited liability partnership*.

(2) The *partner function* is the function of being or acting in the capacity of:

(a) a member in that *firm* or a *person* occupying the position of a member (by whatever name called);

(b) a *person* appointed to direct the *firm's* affairs; or

(c) a *person* in accordance with whose directions or instructions (not being advice given in a professional capacity) the members or *directors* are accustomed to act.

Partner function: When partners and members do not require approval

10C.5.18 R (1) This *rule* applies to a *firm* to which the *partner function* applies.

(2) If the principal purpose of the *firm* is to carry on one or more *regulated activities*, each *person* in *SUP* 10C.5.16R to *SUP* 10C.5.17R (a "partner") performs the *partner function*.

(3) If the principal purpose of the *firm* is other than to carry on *regulated activities*:

(a) a partner performs the *partner function* to the extent only that they have responsibility for a *regulated activity*; and

(b) a partner in a *firm* will be taken to have responsibility for each *regulated activity* except where the *firm* has apportioned responsibility to another partner or group of partners.

10C.5.19 G (1) The effect of *SUP* 10C Annex 1 2.4R is that *regulated activity* in *SUP* 10C.5.18R is to be taken as not including an activity that is a *non-mainstream regulated activity*.

(2) Therefore, a partner whose only *regulated activities* are incidental to their professional services, in a *firm* whose principal purpose is to carry on other than *regulated activities*, need not be an *FCA-approved person*.

(3) What amounts to the principal purpose of the *firm* is a matter of fact in each case having regard to all the circumstances, including the activities of the *firm* as a whole.

(4) Any *regulated activities* which such a partner carries on are not within the description of the *partner function*.

Partner function: Limited partnerships

10C.5.20 R If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.

Partner function: Partners without influence

10C.5.21 G (1) *SUP* 10C.5.16R to *SUP* 10C.5.20R (Partner function) are drafted to cover all partners and members.

(2) However, the *partner function* is (as are all *FCA-designated senior management functions*) subject to *SUP* 10C.3.10R (Definition of FCA-designated senior management function).

(3) The effect is that unless the function performed by the partner or member in question comes within the definition of a *senior management function*, the function does not come within the *partner function*. Thus partners or members who play no part in the management of the *firm* are unlikely to be performing the *partner function*.

10C.5A FCA governing functions: Oversight

Non-executive directors

10C.5A.1 ~~10C.5.6~~ G (1) As explained in *SUP* 10C.7.4G, the *FCA* does not expect a *non-executive director* ever to perform the *other overall responsibility function*.

(2) Therefore, a *non-executive director* will not need to be approved to perform any *FCA-designated senior management function* unless they perform ~~the *chair of the nomination committee function*~~ one of the *FCA-designated senior management functions* set out in this section.

Chairman of the nomination committee function (SMF13)

10C.5A.2 ~~10C.5.2~~ R If the *firm* has a nomination committee, the ~~*chair*~~ *chairman of the nomination committee function* is the function of acting in the capacity of the chairman of that committee.

10C.5A.3 ~~10C.5.3~~ G See *SYSC* 4.3A (CRR firms) for material about nomination committees

10C.5A.4 ~~10C.5.4~~ G Please note that the ~~*chair*~~ *chairman of the nomination committee function* still applies if the *firm* is not a *CRR firm*.

Chairman function (SMF9)

10C.5A.5 R The *chairman function* is the function of having responsibility for chairing, and overseeing the performance of the role of, the *governing body* of the *firm*.

Chairman of the risk committee function (SMF10)

10C.5A.6 R The *chairman of the risk committee function* is the function of having responsibility for chairing, and overseeing the performance of, any committee responsible for the oversight of the risk management systems, policies and procedures of the *firm*, including where applicable to the *firm*, a committee established in accordance with the *risk control requirements for SMCR firms*.

10C.5A.7 G The *chairman of the risk committee function* applies even if the *firm*:

(1) is not obliged to have a committee of the type described in *SUP* 10C.5A.6R; or

(2) is not subject to any requirements of the *regulatory system* dealing with risk management systems, policies and procedures.

Chairman of the audit committee function (SMF11)

10C.5A.8 R The *chairman of the audit committee function* is the function of having responsibility for chairing, and overseeing the performance of, any committee responsible for the oversight of the internal audit system of the *firm* including where applicable to the *firm*, a committee established in accordance with the *internal audit requirements for SMCR firms*.

10C.5A.9 G The *chairman of the audit committee function* applies even if the *firm*:

(1) is not obliged to have a committee of the type described in *SUP* 10C.5A.8R; or

(2) is not subject to any requirements of the *regulatory system* dealing with internal audit.

Chairman of the remuneration committee function (SMF12)

10C.5A.10 R The *chairman of the remuneration committee function* is the function of having responsibility for chairing, and overseeing the performance of, any committee responsible for the oversight of the design and the implementation of the *remuneration* policies of a *firm*, including where applicable to the *firm*, a committee established in accordance with:

(1) *SYSC* 19A.3.12R (Remuneration Principle 4: Governance);

(2) *SYSC* 19B.1.9R (AIFM Remuneration Principle 3: Governance);

(3) *SYSC* 19C.3.12 R (Remuneration Principle 4: Governance);

(4) *SYSC* 19D.3.12R (Remuneration Principle 4: Governance);

(5) *SYSC* 19E.2.9R (UCITS Remuneration Principle 3: Governance).

10C.5A.11 G The *chairman of the remuneration committee function* applies even if the *firm*:

(1) is not obliged to have a committee of the type described in *SUP* 10C.5A.10R; or

(2) is not subject to any requirements of the *regulatory system* dealing with *remuneration* policies.

Chairman of the with-profits committee function (SMF15)

10C.5A.12 R If the *firm* has a *with-profits committee*, the *chairman of the with-profits committee function* is the function of acting in the capacity of a non-executive chairman of the committee.

10C.5A.13 R If the *firm* has a *with-profits advisory arrangement*, the *chairman of the with-profits committee function* is the function of being whichever of the following applies to the *firm*:

(1) the independent person referred to in paragraph (a) of the definition of *with-profits advisory arrangement*; or

(2) the *non-executive directors* referred to in paragraph (b) of that definition.

Senior independent director function (SMF14)

10C.5A.14 R The *senior independent director function* is the function of performing the role of a senior independent director, and having particular responsibility for leading the assessment of the performance of the person performing the *chairman function*.

10C.5B FCA governing functions: Group entities

Group entity senior manager function (SMF7)

10C.5B.1 R (1) The *group entity senior manager function* is the function of having a significant influence on the management or conduct of one or more aspects of the affairs of a *firm* in relation to its *regulated activities*.

(2) This *controlled function* does not include having such influence in the course of performance of another *designated senior management function* for that *firm*.

(3) This *controlled function* only applies if it is performed by:

(a) a *person* employed by; or

(b) an officer of:

any of the following:

(c) a *parent undertaking* or *holding company* of the *firm*; or

(d) another *undertaking* which is a member of the *firm's group*.

Basis on which group entity senior manager function is included

10C.5B.2 G (1) This provision explains the basis on which the *group entity senior manager function* is included as a *controlled function*.

(2) The basic position is set out in *SUP* 10C.3.9G. As is the case with all *controlled functions*, the definition of the *group entity senior manager function* is subject to the overriding provisions in *SUP* 10C.3.6R, which sets out the requirements of section 59(1) and (2) of the *Act*.

(3) This means that unless the *firm* has an *arrangement* permitting the performance of these roles by the *persons* concerned, these *persons* will not be performing the *group entity senior manager function*.

(4) Therefore, the *FCA* accepts that there will be cases in which a *person* performing the role described in *SUP* 10C.5B.1R will not require approval.

(5) However where there is such an *arrangement* the function may apply.

When the group entity senior manager function applies

10C.5B.3 G (1) Individuals in the management of a group in which a *firm* is a subsidiary do not automatically come within the *group entity senior manager function* even though their job relates to the *firm*.

(2) The *FCA* does not aim or expect to approve individuals to perform this function for every *firm* to which the function potentially applies under *SUP* 10C Annex 1 (What functions apply to what type of firm) just because the *firm* is part of a group.

(3) The *FCA* would not consider it to be unusual for there to be no one performing the *group entity senior manager function* for a

firm that is a subsidiary in a group.

10C.5B.4 G Whether someone performs the *group entity senior manager function* should be assessed on a case-by-case basis. The factors to be taken into account include:

(1) the organisational structures of the group and the *firm*;

(2) the split of key responsibilities between the group and *firm* boards and senior management; and

(3) whether *SMF managers* based in the *firm* have an appropriate level of authority within the group to ensure that the *firm* complies with the requirements of the *regulatory system*.

10C.5B.5 G (1) An individual based elsewhere in a group whose responsibilities in relation to a subsidiary in the group that is a *firm* are limited to developing the group's overall strategy is unlikely to be performing the *group entity senior manager function*.

(2) The function is more likely to apply to individuals who are directly responsible for implementing the group's strategy in the *firm*.

(3) Therefore, if an individual based elsewhere in the group:

(a) is directly responsible for taking decisions about how the *firm* should conduct its *regulated activities*; and

(b) has not delegated this responsibility to an *SMF manager* based in the *firm*;

it is likely that they will require approval to perform the *group entity senior manager function* (or, as described in *SUP* 10C.5B.6G, another *designated senior management function*).

(4) If however the *firm's governing body* has sufficient discretion in how it applies and responds to proposals coming from group committees or individuals based in parent entities, approval would generally not be required. In this case the individual will be carrying on a group-level function rather than performing a function on behalf of the *firm*.

(5) So, where:

(a) a *firm* has in place the required *SMF managers* based in the *firm*; and

(b) those *SMF managers* are effective and have sufficient control over the *firm*;

the *FCA* would not routinely expect the *firm* to have *persons* performing the *group entity senior manager function* in place.

10C.5B.6 G (1) *SUP* 10C.5B.1R(2) means that an individual who is approved to perform another *designated senior management function* for a *firm* will often not need to be approved to perform the *group entity senior manager function* for that *firm* as well.

(2) So for example if the individual has responsibility for the *firm's* finances they may be performing the *chief finance officer function*. If that is the case the individual will not be performing the *group entity senior manager function*.

(3) Similarly an individual who is approved to perform another *designated senior management function* for the *firm* may have influence that comes from holding that post in matters falling outside the core duties of that post. For example a chief finance officer of a *firm* will have important input into decisions that fall outside the core financial control function. That influence does not mean that they are performing the *group entity senior manager function*.

10C.5B.7 G The *group entity senior manager function* is potentially relevant:

(1) whether the individual is located in or outside the *United Kingdom*; and

(2) whether the group is headquartered in the *United Kingdom* or overseas.

10C.5B.8 G (1) The parent of a subsidiary *firm* cannot itself perform the *group entity senior manager function*.

(2) A shareholder in the parent will also not perform this function unless the shareholder is also a director, officer or employee of the parent and is exerting significant influence over the *firm* through that role.

10C.6 FCA-required functions

Compliance oversight function (SMF16)

10C.6.1 R The *compliance oversight function* is the function of acting in the capacity of a ~~*director* or *senior manager*~~ *person* who is allocated the function in:

(1) *SYSC* 6.1.4R(2); ~~or~~

(2) article 22(3) of the *MiFID Org Regulation*; ~~or~~

(3) article 22(3) of the *MiFID Org Regulation* (as applied in

accordance with *SYSC* 1 Annex 1 2.8AR, *SYSC* 1 Annex 1 3.2-AR, *SYSC* 1 Annex 1 3.2-BR, *SYSC* 1 Annex 1 3.2CR and *SYSC* 1 Annex 1 3.3R);

(4) *SYSC* 6.1.4CR;

(5) *SYSC* 3.2.8R; or

(6) (for a *full-scope UK AIFM*) article 61(3)(b) of the *AIFMD level 2 regulation*.

Money laundering reporting function (SMF17)

10C.6.2 R The *money laundering reporting function* is the function of acting in the capacity of the *money laundering reporting officer* of a *firm*.

10C.6.3 G ~~A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see *SYSC* 6.3.9R and, for their scope, see the application provisions in *SYSC* 1 Annex 1).~~ [deleted]

Limited scope function (SMF29)

[*Editor's note:* This function is the renamed apportionment and oversight function. The consequential changes to the Handbook required by this renaming will be dealt with in a second Consultation Paper.]

10C.6.4 R The *limited scope function* is the function of acting in the capacity of a *person* responsible for the apportionment function and/or the oversight function set out in *SYSC* 4.4.5R.

10C.6.5 G The fact that there is a *person* performing the *limited scope function*, and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on whether a manager who is based overseas will be performing an *FCA controlled function*. It is a factor to take into account when assessing the likely influence of the overseas manager.

Conduct risk oversight (Lloyd's) function (SMF23b)

10C.6.6 R The *conduct risk oversight (Lloyd's) function* is the function of acting in the capacity of a *person* who is allocated the function in *SYSC* 3.2.9AR.

10C.6A Systems and controls functions: Finance, risk and internal audit

Introduction

10C.6A.1 G The *FCA-designated senior management functions* in this section apply even if the *firm*:

(1) is not required by the *regulatory system* to allocate any of these

roles to someone; or

(2) is not subject to any requirements of the *regulatory system* dealing with the management of the matters referred to in *SUP* 10C.6A.3R to *SUP* 10C.6A.6R.

Seniority

10C.6A.2 G The *FCA* expects a *firm* to ensure that a person performing a function in this section for a *firm* has sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

Chief finance officer function (SMF2)

10C.6A.3 R The *chief finance officer function* is the function of having responsibility for management of the financial resources of the *firm*, including reporting directly to the *governing body* of the *firm* in relation to its financial affairs.

Chief risk officer function (SMF4)

10C.6A.4 R The *chief risk officer function* is the function of having responsibility for overall management of the risk controls of a *firm*, including:

(1) the setting and managing of the *firm's* risk exposures; and

(2) reporting directly to the *governing body* of the *firm* in relation to its risk management arrangements.

10A.6A.5 G (1) Risk controls systems include ones designed to deal with the kinds of matters in the *risk control requirements for SMCR firms*.

(2) However *SUP* 10C.6A.4R applies even if the provisions in (1) do not apply to the *firm*.

Head of internal audit function (SMF5)

10C.6A.6 R The *head of internal audit function* is the function of having responsibility for management of the internal audit function of the *firm*, including reporting directly to the *governing body* of the *firm* on the internal audit function.

10A.6A.7 G (1) Internal audit covers the kinds of matters in the *internal audit requirements for SMCR firms*.

(2) However *SUP* 10C.6A.6R applies even if the provisions in (1) do not apply to the *firm*.

10C.6B Systems and controls functions: Other

The chief operations function (SMF24)

10C.6B.1 R The *chief operations function* is the function of having overall responsibility for managing all or substantially all the internal operations or technology of the *firm* or of a part of the *firm*.

10C.6B.2 G (1) In *SUP* 10C.6B.1R technology refers principally to the *firm's* information and communications technology (ICT) systems and services.

(2) Those services include but may not be necessarily limited to the mechanisms and networks that support the operations of a *firm*, including data entry, data storage, data processing and reporting services, but also monitoring, business and decision support services.

10C.6B.3 G The table in *SUP* 10C.6B.4G gives examples of how the *chief operations function* applies.

10C.6B.4 G Table: Examples of how the chief operations function applies

Example	**Comments**
(1) *Firm* A has the following three individuals. - Chief Operating Officer (COO); - Chief Information & Technology Officer (CITO); - Head of Human Resources (Head of HR). The Head of HR and the CITO report to the COO.	The COO is the only person performing the *chief operations function*.
(2) *Firm* A has the following two individuals: - Chief Operating Officer (COO); - Chief Information and Technology Officer (CITO). The COO and CITO are equally senior. Both have separate reporting lines to the Board and the CEO.	Both individuals perform the *chief operations function*.

Overall responsibility for information technology is shared between the COO and CITO. The COO has overall responsibility for all other internal operations.	
(3) *Firm* A has two business lines (broking and advice). It has the following three individuals: - a Chief Operating Officer responsible for the internal operations of the broking business (other than technology) - a Chief Information and Technology Officer for the broking business - an individual who combines the roles of Chief Operating Officer and Chief Information and Technology Officer for the advice business. The individuals are equally senior.	All three individuals perform the *chief operations function*.
(4) *Firm* A splits overall responsibility for its internal operations between various individuals. A separate individual is responsible for human resources, business continuity, procurement and outsourcing, buildings and the remaining parts of internal operations. *Firm* A also has a Chief Information & Technology Officer (CITO) with responsibility for all the *firm's* technology. Each individual is equally senior.	The CITO performs the *chief operations function*. None of the others perform the *chief operations function*. This is because none of them has responsibility for the *firm's* internal operations as a whole or for all the internal operations of a part of the business. *Firm* A has divided the responsibility based on function rather than business line. However those others may be performing the *other overall responsibility function*.

Seniority

10C.6B.5 G The *FCA* expects a *firm* to ensure that a person performing a function in this section for a *firm* has sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

10C.7 Other overall responsibility function (SMF18)

Application

10C.7.1-2 R This section applies to a *firm*:

(1) to which *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) applies; and

(2) that is a *UK SMCR firm*.

10C.7.1-1 G The effect of *SUP* 10C.7.1-2R is that this section only applies to one of the following types of *UK SMCR firm*:

(1) an *SMCR dual regulated banking sector firm*;

(2) an *enhanced scope SMCR firm*; and

(3) a *Solvency II firm* (including a *large non-directive insurer*) but excluding an *insurance special purpose vehicle* and certain *firms* in run-off.

Definition

10C.7.1 R A *person* performs the *other overall responsibility function* in relation to a *firm* if that *person*:

(1) is performing:

(a) a function allocated to that *person* under ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ *SYSC* 26.3.1R (Main rules) in relation to the *firm*; or

(b) *FCA-prescribed senior management responsibility* ~~number (11)~~ (z) in the table in *SYSC* 24.2.5R (functions in relation to *CASS*) allocated to that *person* under ~~*SYSC* 4.7.5R (Allocation of FCA-prescribed senior management responsibilities)~~ *SYSC* 24.2 (Allocation of FCA-prescribed senior management responsibilities: Main allocation rules); ~~and~~ or

(c) (if the *firm* has allocated such a function to someone) the function of having overall responsibility for any of the activities, business areas and management functions of the *firm* excluded from *SYSC* 26.3 (Main rules) by *SYSC* 26.4.11R (Exclusion for AIFMD); and

(2) does not have an approval to perform any other *designated senior management function* in relation to the *firm*.

~~Other~~ The other overall responsibility function does not apply if approved for another function

10C.7.2 G The table in *SUP* 10C.7.3G gives examples of how *SUP* 10C.7.1R(2) works.

10C.7.3 G Table: Examples of how the other overall responsibility function applies

Example	Comments
(1) 'A' is appointed to perform the ~~executive~~ *executive director function* and to perform a potential *other overall responsibility function* for the same *firm*.	A only needs approval to perform the ~~executive~~ *executive director function*.
(2) 'A' is approved to perform the *other overall responsibility function*. Later, A is appointed to perform the ~~executive~~ *executive director function* for the same *firm*.	A requires approval for the *other overall responsibility function* when A is first appointed. When A is later approved to perform the ~~executive~~ *executive director function*, A stops performing the *other overall responsibility function*. The *firm* should use Form E to apply for approval for A to perform the ~~executive~~ *executive director function* and to notify the *FCA* that A is no longer performing the *other overall responsibility function*.
(3) 'A' is appointed to perform the *PRA's* Head of Key Business Area *designated senior management function* for Firm X and to perform a potential *other overall responsibility* function for the same *firm*. Firm X is an *SMCR dual regulated banking sector firm*.	A only needs approval to perform the *PRA's* Head of Key Business Area *designated senior management function*. It does not make any difference whether the potential *other overall responsibility function* that A performs is connected to the *PRA's* Head of Key Business Area *designated senior management function*.

(4) 'A' is approved to perform the *other overall responsibility function* for Firm X. Firm X is an *SMCR dual regulated banking sector firm.* Later, A is appointed to perform the *PRA's* Head of Key Business Area *designated senior management function* for the same *firm*.	A requires approval for the *other overall responsibility function* when A is first appointed. When A is later approved to perform the *PRA's* Head of Key Business Area *designated senior management function*, A stops performing the *other overall responsibility function*.
(5) 'A' is appointed to perform: (a) the *compliance oversight function* for one *firm* (Firm X) in a group ~~(which may or may not be a *relevant authorised person*)~~; and (b) a function coming within the scope of the *other overall responsibility function* for another *firm* ~~(which is a *relevant authorised person*)~~ in the same group (Firm Y).	A needs approval to perform the *compliance oversight function* for Firm X and the *other overall responsibility function* for Firm Y.
(6) 'A' is appointed to be head of sales for Firm X and to report directly to the *firm's governing body* about this. This function also comes within the *PRA's* Head of Key Business Area *designated senior management function*. Firm X is an *SMCR dual regulated banking sector firm.*	A only needs approval to perform the *PRA's* Head of Key Business Area *designated senior management function*.
(7) 'A' is appointed to take on some functions that come within the *other overall responsibility function*. Later, A is appointed as chief risk officer. The *firm* is one of those for which being chief risk officer is a *PRA-designated senior management function* or an *FCA-designated senior*	On A's first appointment, A will need to be approved to perform the *other overall responsibility function*. On being appointed as chief risk officer, the answer for example (4) applies because being chief risk officer is a ~~*PRA*~~ *designated senior management function*. A will stop performing the *other overall responsibility function*.

<u>*management function*.</u>	
(8) 'A' is appointed to a role <u>for Firm X</u> that comes within the *other overall responsibility function*. <u>Firm X is an *SMCR dual regulated banking sector firm*.</u> Later, the *firm* reorganises and A's role comes within the *PRA's* Head of Key Business Area *designated senior management function*. A's role does not otherwise change.	~~The answer for example (7) applies.~~ <u>On A's first appointment, A will need to be approved to perform the *other overall responsibility function*.</u> <u>When A is later approved to perform the *PRA's* Head of Key Business Area *designated senior management function*, A stops performing the *other overall responsibility function*.</u>
(9) 'A' is appointed to a role <u>for Firm X</u> that comes within the *PRA's* Head of Key Business Area *designated senior management function*. It is also a potential *other overall responsibility function*. <u>Firm X is an *SMCR dual regulated banking sector firm*.</u> Later, the *firm* reorganises—A's role stays the same but now it falls outside the *PRA's* Head of Key Business Area *designated senior management function*.	On A's first appointment, A only needs approval to perform the *PRA's* Head of Key Business Area *designated senior management function*. Following the reorganisation, the *firm* has three months to get approval for A to perform the *other overall responsibility function*. This three-month period applies because the relevant *PRA* rules keep the *PRA's* Head of Key Business Area *designated senior management function* in place, which means that the *other overall responsibility function* does not apply during that period. The relevant *PRA* rules can be found in Chapter 2 of the part of the *PRA* ~~rulebook~~ <u>*Rulebook*</u> titled 'Senior Management Functions'.
(10) 'A' is appointed to a role <u>for Firm X</u> that comes within the *PRA's* Head of Key Business Area *designated senior management function*. A also performs a potential *other overall responsibility function*. <u>Firm X is an *SMCR dual regulated banking sector firm*. Later,</u> A gives up the *PRA* role but carries on with the potential *other overall responsibility function*.	The answer to example (9) applies.
(11) 'A' is appointed as an	On A's first appointment, A will need

executive director. A then resigns and takes up a job with the same *firm* coming within the *other overall responsibility function*.	to be approved to perform the ~~executive~~ *executive director function*. A will need to get approval to perform the *other overall responsibility function* before A ~~gives up being a director~~ takes up their new responsibilities.
Note (1): A potential *other overall responsibility function* means a function that would have come within the *other overall responsibility function* but is excluded by *SUP* 10C.7.1R(2).	
Note (2): A potential *other overall responsibility function* should be recorded in A's *statement of responsibilities* and in the *firm's management responsibilities map*.	

Non-executive directors

10C.7.4 G For the reasons described in ~~*SYSC* 4.7.18G~~ *SYSC* 26.4.5G, the *FCA* does not expect that a *non-executive director* will ever perform the *other overall responsibility function*.

10C.8 The other local responsibility function (SMF22) and EEA branch senior manager functions (SMF21)

Application

10C.8.1-1 G This section does not apply to a *UK SMCR firm*.

Other local responsibility function (SMF22)

10C.8.1 R A *person* performs the *other local responsibility function* in relation to a *branch* maintained in the *United Kingdom* by a ~~*third-country relevant authorised person*~~ *non-UK SMCR firm* if that *person*:

(1) is performing:

(a) a function allocated to that *person* under ~~*SYSC* 4.8.10R (Local responsibility for a firm's activities, business areas and management functions)~~ *SYSC* 26.3.1R (Main rules) in relation to the *firm*; or

(b) *FCA-prescribed senior management responsibility* ~~number (8)~~ (z) in the table in ~~*SYSC* 4.8.9R~~ *SYSC* 24.2.5R (functions in relation to *CASS*) allocated to that person under ~~*SYSC* 4.8.6R (FCA-prescribed senior management responsibilities)~~ *SYSC* 24.2 (Allocation of FCA-prescribed senior management responsibilities: Main allocation rules); and

(2) does not have an approval to perform any other *designated senior management function* in relation to the *branch*.

10C.8.1A R The *other local responsibility function*:

(1) applies to a *firm* to which *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) applies; and

(2) does not apply to an *EEA SMCR firm*.

10C.8.1B G The effect of *SUP* 10C.8.1AR is that the *other local responsibility function* only applies to one of the following types of *non-UK SMCR firm*:

(1) an *SMCR dual regulated banking sector firm*; and

(2) a *Solvency II firm* (including a *large non-directive insurer*) but excluding an *insurance special purpose vehicle* and certain *firms* in run-off;

but does not apply to any *EEA SMCR firm*.

10C.8.2 G The table in *SUP* 10C.8.3G gives:

(1) examples of how *SUP* 10C.8.1R(2) works; and

(2) other examples of how the *other local responsibility function* works.

10C.8.3 G Table: Examples of how the other local responsibility function applies

Example	**Comments**
(1) 'A' is allocated local responsibility for one of a *branch's* main business lines. A is also appointed to perform a *PRA-designated senior management function* for the same *branch*. The *firm* is a *PRA-authorised person*.	A only needs approval to perform the *PRA-designated senior management function*.
(2) 'A' is outside the *branch's* management structure and A's responsibilities for the *branch* are limited to setting overall strategy for the *branch*. A does not have responsibility	A is not performing the *other local responsibility function*. The reason for this is explained in *SYSC* 26.8.3G. *SUP* 10C.8.1R(2) is irrelevant to this example.

for implementing that strategy.	
(3) A small branch undertakes two business lines (wholesale lending and corporate investments). 'A' is head of wholesale lending and is also an executive director of the branch. 'B' is head of corporate investments and does not sit on the branch management committee but reports to it on corporate investments. The branch allocates local responsibility for these functions to A and B. Neither A nor B performs any other ~~*PRA* or~~ *FCA-designated senior management* ~~*functions*~~ *function* or (if the *firm* is a *PRA-authorised person*) *PRA-designated senior management function*.	A only needs approval to perform the ~~executive~~ *executive director function*. B needs approval to perform the *other local responsibility function*.
(4) A *branch* does not have a Head of Internal Audit. 'P' is allocated local responsibility for internal audit in relation to that *branch*.	P needs approval to perform the *other local responsibility function*. However, if P has already been approved to perform another ~~*PRA* or~~ *FCA-designated senior management function* or (if the *firm* is a *PRA-authorised person*) *PRA-designated senior management function*, then P will not be performing the *other local responsibility function*.
(5) 'A' is appointed to perform the ~~executive~~ *executive director function*. The same branch also allocates local responsibility for some branch functions to A.	A only needs approval to perform the ~~executive~~ *executive director function*.
(6) 'A' is approved to perform the *other local responsibility function*. Later, A is appointed to perform the ~~executive~~ *executive director*	A requires approval for the *other local responsibility function* when A is first appointed. When A is later approved to perform the ~~executive~~ *executive director function*, A stops performing

function for the same *firm*.	the *other local responsibility function*. The *firm* should use Form E to apply for approval for A to perform the ~~executive~~ *executive* *director function* and to notify the *FCA* that A is no longer performing the *other overall responsibility function*.
(7) 'A' is appointed to perform: (a) the *compliance oversight function* for one *firm* (Firm X) in a group ~~(which may or may not be a *relevant authorised person*)~~; and (b) a function coming within the scope of the *other local responsibility function* for the *United Kingdom branch* of another *firm* ~~(which is a *third-country relevant authorised person*)~~ in the same group (Firm Y).	A needs approval to perform the *compliance oversight function* for Firm X and the *other local responsibility function* for Firm Y.
(8) 'A' is appointed to take on some functions that come within the *other local responsibility function*. Later, A is appointed as chief risk officer. A is a type of *firm* for which being chief risk officer is a *PRA designated senior management function*.	On A's first appointment, A will need to be approved to perform the *other local responsibility function*. On being approved as chief risk officer, A stops performing the *other local responsibility function* ~~as being chief risk officer is a *PRA designated senior management function*~~.
(9) 'A' is appointed as an executive director. A then resigns and takes up a job with the same *firm* coming within the *other overall responsibility function*.	On A's first appointment, A will need to be approved to perform the ~~executive~~ *executive* *director function*. A will need to get approval to perform the *other overall responsibility function* before A ~~gives up being a director~~ takes up their new responsibilities.
Note: Local responsibility is explained in ~~*SYSC* 4.8.10R (Third-country relevant authorised persons: Allocation of responsibilities)~~ *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility).	

EEA branch senior manager function (SMF21)

10C.8.4 R (1) A *person* performs the *EEA branch senior manager function* in relation to the *branch* in the *United Kingdom* of an *EEA* ~~*relevant authorised person*~~ <u>*SMCR firm*</u> if that *person* has significant responsibility for one or more significant business units of the *branch* that carry on any of the activities listed in (2).

(2) The activities listed in this paragraph are:

(a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*;

(b) processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to *designated investment business*;

(c) the activity of *accepting deposits* from *banking customers* and activities substantially connected to that activity to the extent that it does not fall within (a) or (b), above; and

(d) activities that are subject to *CASS*.

(3) In considering whether a *person* performs the functions in (2), only activities carried on from the *branch* are relevant.

(4) Paragraph (2)(d) only applies in relation to the activities of a *firm* for which it has a *top-up permission*.

10C.8.5 G (1) The definition of the *EEA branch senior manager function* (SMF21) is similar to that of the significant management *FCA-specified significant-harm function* under *SYSC* 27.7.5R. However, only the former is an *FCA-designated senior management function*.

(2) The main differences are:

(a) *SUP* 10C.8.4R(2)~~(d)~~ is not included in the significant management *FCA-specified significant-harm function*; and

(b) the overriding requirements in *SUP* 10C.3 (General material about the definition of controlled functions) do not apply to the significant management *FCA-specified significant-harm function*.

10C.8.6 G A *person* performing the *EEA branch senior manager function* could, for example, be:

(1) the head of a significant business unit carrying on the activities

in *SUP* 10C.8.4R(2); or

(2) a member of a committee (that is, a person who, together with others, has authority to commit the *branch*) making decisions about those activities.

EEA branch senior manager function (SMF21): ~~meaning~~ Meaning of significance

10C.8.7 G When considering whether a business unit is significant for the purposes of *SUP* 10C.8.4R, the *firm* should take into account all relevant factors in the light of the *firm's* current circumstances and its plans for the future, including:

(1) the risk profile of that unit;

(2) its use or commitment of the *firm's* capital;

(3) its contribution to the profit and loss account;

(4) the number of *employees* or *approved persons* working in the business unit;

(5) the number of customers; and

(6) any other factor which makes the unit significant to the conduct of the *branch's* affairs.

10C.9 Minimising overlap with the PRA approved persons regime

Application

10C.9.1 -1 G This section only applies to a *PRA-authorised person*.

Introduction

10C.9.1 G *SUP* 10C.9 deals with how the *FCA's* senior ~~management~~ managers regime for ~~*relevant authorised persons*~~ *SMCR firms* interacts with the *PRA's* one.

10C.9.2 G Both the *FCA* and the *PRA* may specify a function as a *designated senior management function* in relation to a *PRA-authorised person*.

10C.9.3 G If a *person's* job for a *firm* involves performing:

(1) an *FCA-designated senior management function*, the *firm* should apply to the *FCA* for approval;

(2) a *PRA-designated senior management function*, the *firm* should apply to the *PRA* for approval;

(3) both an *FCA-designated senior management function* and a *PRA-designated senior management function*, the *firm* should apply to both the *FCA* and the *PRA* for approval (the purpose of *SUP* 10C.9 is to cut down the need for this sort of dual approval).

FCA controlled functions absorbed into PRA controlled functions

10C.9.4 G The *FCA* is under a duty, under section 59A of the *Act* (Specifying functions as controlled functions: supplementary), to exercise the power to specify any *senior management function* as an *FCA controlled function* in a way that it considers will minimise the likelihood that approvals need to be given by both the *FCA* and the *PRA* for the performance by a *person* of *senior management functions* in relation to the same *PRA-authorised person*.

10C.9.5 G The *FCA* and *PRA* have coordinated their *approved person* regimes to reduce the amount of overlap.

10C.9.6 G (1) *SUP* 10C.9.8R applies when a *firm* is seeking approval from the *PRA* for a *candidate* to perform a *PRA controlled function* and the intention is that the *candidate* will also perform what would otherwise be an *FCA governing function* once the *PRA* gives its approval. *SUP* 10C.9.8R works by disapplying that *FCA governing function*.

(2) Where (1) applies, the activities within that *FCA governing function* are included in the *PRA controlled function* for which the *person* has approval. The following parts of the *PRA Rulebook* deal with this:

(a) Chapter Two of the part of the ~~*PRA's* rulebook~~ *PRA Rulebook* titled 'Senior Management Functions' ~~deals with this~~ ;

(b) Chapter 2 of the part of the *PRA Rulebook* titled 'Insurance - Senior Insurance Management Functions'

(c) Chapter 2 of the part of the *PRA Rulebook* titled 'Large Non-Solvency II Firms – Senior Insurance Management Functions'; and

(d) Chapter 2 of the part of the *PRA Rulebook* titled 'Non-solvency II Firms - Senior Insurance Management Functions'.

10C.9.7 G (1) *SUP* 10C.9.9G gives some examples of how *SUP* 10C.9.8R works.

(2) The examples do not cover the *other overall responsibility function* because that function does not apply if the *person*

holds any other *designated senior management function* for the same *firm*. See the table in *SUP* 10C.7.3G for examples of how this works.

The main rule

10C.9.8 R A *person* (referred to as 'A' in this *rule*) is not performing an *FCA governing function* (referred to as the 'particular' *FCA governing function* in this *rule*) in relation to a *PRA-authorised person* (referred to as 'B' in this *rule*), at a particular time, if:

(1) A has been approved by the *PRA* to perform any *PRA-designated senior management function* in relation to B;

(2) throughout the whole of the period between the time of the *PRA* approval in (1) and the time in question, A has been the subject of a *current PRA approved person approval* to perform a *PRA-designated senior management function* in relation to B;

(3) at the time of the *PRA* approval referred to in (1), A was not subject to a *current FCA approved person approval* to perform the particular *FCA governing function* in relation to B;

(4) as part of the application for the *PRA* approval referred to in (1), B notified the *PRA* that A would start to perform what would otherwise have been the particular *FCA governing function* (referred to as the 'potential' *FCA governing function* in this *rule*) at or around the time of the *PRA* approval in (1); and

(5) A started to perform the potential *FCA governing function* at, or around the time of, the *PRA* approval in (1) and has continued to perform it up to the time in question.

10C.9.9 G Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorised persons is reduced

Example	**Whether FCA approval required**	**Whether PRA approval required**	**Comments**
(1) A is appointed as chief risk officer and an executive director.	No. ~~He~~ <u>A</u> is not treated as performing the ~~executive~~ <u>*executive*</u> *director function*.	Yes	Chief risk officer is a *PRA-designated senior management function*. A's functions as a director will be included in the *PRA-designated senior management function*. To avoid the need for

Example	Whether FCA approval required	Whether PRA approval required	Comments
			FCA approval, A's appointment as director should not take effect before *PRA* approval for the chief risk officer role.
(2) Same as example (1), except that A will take up the role as an executive director slightly later because the approval is needed from the *firm's* shareholders or *governing body*.	No	Yes	The answer for (1) applies. The arrangements in this section apply if the application to the *PRA* says that A will start to perform the potential *FCA governing function* around the time of the *PRA* approval as well as at that time.
(3) Same as example (1) but the application to the *PRA* does not mention that it is also intended that A is to be an executive director.	Yes, to perform the ~~executive~~ <u>*executive*</u> *director function*.	Yes	*SUP* 10C.9.8R does not apply if the application for *PRA* approval does not say that A will also be performing what would otherwise be an *FCA governing function*.
(4) A is to be appointed as chief executive and an executive director.	No. A is not treated as performing the ~~executive~~ <u>*executive*</u> *director function*.	Yes	Being a chief executive is a *PRA-designated senior management function*. A's functions as a director will be included in the *PRA controlled function*.
(5) A is	Yes, when A	Yes, when A	*SUP* 10C.9.8R does

Example	Whether FCA approval required	Whether PRA approval required	Comments
appointed as chief risk officer. Later, A is appointed as an executive director while carrying on as chief risk officer.	takes up the director role. The ~~executive~~ <u>*executive*</u> *director function* applies.	takes up the chief risk officer role.	not apply because, when the *firm* applied for approval for A to perform the *PRA* chief risk officer *designated senior management function*, there was no plan for A also to perform the ~~executive~~ <u>*executive*</u> *director function*.
(6) A is appointed as an executive director. Later, A takes on the chief risk officer function and remains as an executive director.	Yes, when A is appointed as director. The ~~executive~~ <u>*executive*</u> *director function* applies.	Yes, when A takes up the chief risk officer role.	When A is appointed as chief risk officer, A is still treated as carrying on the ~~executive~~ <u>*executive*</u> *director function*. A retains the status of an *FCA-approved person*.
(7) A is appointed as chief risk officer. A then stops performing that role and for a while does not perform any *controlled function* for that *firm*. Later, A is appointed as an executive director with the same *firm*.	Yes, when A is appointed as an executive director. The ~~executive~~ <u>*executive*</u> *director function* applies.	Yes, when A takes up the chief risk officer role.	*SUP* 10C.9.8R does not apply because there is no current *PRA* approval when A is being appointed as a director.
(8) A is	No, on A's	Yes, on A's	When A stops being a

Example	Whether FCA approval required	Whether PRA approval required	Comments
appointed as an executive director and chief risk officer at the same time. Later, A gives up the role as chief risk officer but remains as an executive director.	first appointment (see example (1)). But when A gives up the role as chief risk officer, *FCA* approval is needed to perform the ~~executive~~ <u>*executive*</u> *director function*. Form E should be used. The application should state that it is being made as a result of A ceasing to perform a *PRA-designated senior management function*. Form A should be used if there have been changes in A's fitness (*SUP* 10C.10.9D(4))	first appointment.	chief risk officer, A stops performing a *PRA-designated senior management function*. However, being an executive director requires *FCA* approval. A does not have that approval because A did not need it when A was first appointed. The combined effect of *SUP* 10C.9.8R and the relevant *PRA* rules is that the *firm* has three months to secure approval by the *FCA*. During that interim period, A keeps the status of a *PRA approved person* performing the director element of the *PRA* chief risk *designated senior management function* - which is included in that function under relevant *PRA* rules. The relevant *PRA* rules say that, during this transitional period, A is still treated as performing the *PRA* chief risk *designated senior management function* and *SUP* 10C.9.8R says that, for as long as A is performing a *PRA*-

Example	Whether FCA approval required	Whether PRA approval required	Comments
			designated senior management function, A does not perform the ~~executive~~ *executive director function*.
(9) A is appointed as the chief finance officer and an executive director at the same time. Later, A switches to being chief risk officer while remaining as an executive director.	No	Yes	The arrangements in *SUP* 10C.9.8R continue to apply, even though A switches between *PRA-designated senior management functions* after the *PRA's* first approval.
(10) A is appointed chief risk officer and an executive director. A goes on temporary sick leave. A takes up his old job when he comes back.	No, neither on A's first appointment nor when A comes back from sick leave.	Yes	*SUP* 10C.9.8R still applies on A's return because A does not stop performing either the *PRA's* chief risk function or what would otherwise have been the ~~executive~~ *executive director function* just because A goes on temporary sick leave.
(11) A is appointed to be chairman of the *governing body* and chairman of the	No. A does not need approval to perform the ~~*chair*~~ *chairman of the nomination*	Yes, on first appointment.	Being chairman of the *governing body* is a *PRA-designated senior management function*. Therefore, the answer for example (1) applies.

Example	**Whether FCA approval required**	**Whether PRA approval required**	**Comments**
nomination committee at the same time.	*committee function*.		
(12) 'A' is to be appointed to perform the Head of Overseas Branch *PRA-designated senior management function* (SMF19) for a *third-country* ~~*relevant authorised person*~~ *SMCR firm*. A is also an executive director of that *firm's UK branch*.	No. A is not treated as performing the ~~executive~~ *executive director function*.	Yes	A's functions as a director will be included in the *PRA controlled function*.
Note 1: The relevant *PRA* rules can be found in ~~Chapter 2 of~~ the ~~part~~ parts of the *PRA* ~~rulebook called 'Senior Management Functions'~~ *Rulebook* listed in *SUP* 10C.9.6G.			
Note 2: Where one of the examples in this table includes someone being chief risk or finance officer or chairman of the *governing body*, the example assumes that the *firm* is of a type for which that function is a *PRA-designated senior management function*.			

10C.9.10 G (1) The potential *FCA governing functions* should be recorded in A's *statement of responsibilities* and in the *firm's management responsibilities map*.

(2) A potential *FCA governing function* means a function that would have been an *FCA governing function* but which is not an *FCA governing function* because of *SUP* 10C.9.8R.

Further guidance on the arrangements between the FCA and PRA about approvals

10C.9.11 G The *PRA* cannot give its approval for the performance of a *PRA-designated senior management function* without the consent of the *FCA*. The *firm* does not need to apply to the *FCA* for that consent.

10C.9.12 G Under section 59B of the *Act* (Role of FCA in relation to PRA decisions), the *FCA* may arrange with the *PRA* that, in agreed cases, the *PRA* may give approval without obtaining the consent of the *FCA*. No such arrangements are currently in force.

10C.10 Application for approval and withdrawing an application for approval

Purpose

10C.10.1 G This section explains how a *firm* should apply for approval for a *person* to perform an *FCA-designated senior management function*.

10C.10.2 G Unless the context otherwise requires, in *SUP* 10C.10 (Application for approval and withdrawing an application for approval) to *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA), where reference is made to a *firm*, this includes an applicant for *Part 4A permission* and other *persons* seeking to carry on *regulated activities* as ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>.

When to apply for approval

10C.10.3 G (1) Section 59 of the *Act* (Approval for particular arrangements) says that a *firm* must take reasonable care to ensure that no one performs an *FCA controlled function* (including an *FCA-designated senior management function*) unless that *person* is acting in accordance with an approval given by the *FCA*.

(2) That means that where a *candidate* will be performing one or more *FCA-designated senior management functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless they have prior approval from the *FCA*.

Failure to apply for approval

10C.10.4 G (1) If a *person* performs an *FCA controlled function* (including an *FCA-designated senior management function*) without approval, it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties), if the *FCA* is satisfied that:

(a) a *person* (‘P’) has at any time performed an *FCA* *controlled function* without approval; and

(b) at that time P knew, or could reasonably be expected to have known, that P was performing an *FCA controlled function* without approval;

it may impose a penalty on P of such amount as it considers appropriate.

(2) A *person* performs a *controlled function* without approval for these purposes if that *person* is not acting in accordance with an approval given under section 59 (Approval for particular arrangements).

Who should make the application?

10C.10.5 G In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by:

(1) the *FCA candidate*; or

(2) (where the *FCA candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*.

10C.10.6 G (1) The *firm* that is employing the *FCA candidate* to perform the *FCA-designated senior management function* will usually make the submission itself.

(*SUP* 10C.10.7G describes some common situations.)

(2) Where a *firm* has outsourced the performance of an *FCA-designated senior management function*, the details of the outsourcing determines whom the *FCA* anticipates will submit the *FCA-approved persons* application forms.

(3) The *firm* which is outsourcing is referred to as 'A' and the *person* to whom the performance of the *FCA-designated senior management function* has been outsourced, or which makes the arrangement for the *FCA-designated senior management function* to be performed, is referred to as 'B'. In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the Act, no *person* performs an *FCA-designated senior management function* under an arrangement entered into by its contractor in relation to the carrying on by A of a *regulated activity,* without approval from the *FCA*.

10C.10.7 G Outsourcing arrangements

Outsourcing arrangements	**Explanation**	**Submitting form**
Firm A to *firm* B	The *FCA* will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant *FCA-designated senior management functions* are performed by *FCA-approved SMF managers*, and that it is reasonable for A to rely on this.	*Firm* B submits *FCA-approved persons* forms on behalf of *firm* A.
Outsourcing by A to B (both being a member of the same *United Kingdom group* and each having its registered office in the *United Kingdom*)	See *SUP* 10C.3.9G	Either A or B may submit *FCA-approved persons* forms on behalf of *firms* in the group (see *SUP* 15.7.8G).
(i) A to B, where B: (a) is not an *authorised person*; and (b) is not part of the same *group* as A; or (ii) A to B, where A is a *branch* of an *overseas firm* in the *United Kingdom*, and B is an *overseas undertaking* of the same *group*; or (iii) A to B, where A is a *UK* authorised	Responsibility for (as opposed to the performance of) any activity *outsourced* to B will remain with A. See *SYSC* 8.	A ensures that an individual approved by the *FCA* or the *PRA* to perform a *designated senior management function* has responsibility for the *outsourced arrangement* and A submits a form in relation to that individual.

subsidiary of an *overseas firm* and B is an *overseas undertaking* of the same *group*.		

How to apply for approval

10C.10.8 D (1) An application by a *firm* for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* must be made by completing Form A (*SUP* 10C Annex 2D), except where *SUP* 10C.10.9D requires Form E.

(2) If a *firm* must make an application using Form A, it must use Form A (shortened form) ~~if:~~ in the circumstances described in *SUP* 10C.10.8AD.

~~(a) the *person* has *current approved person approval* to perform:~~

~~(i) an *FCA controlled function* that is a *significant influence function*; or~~

~~(ii) an *FCA-designated senior management function*; or~~

~~(iii) a *PRA controlled function*; and~~

~~(b) there have been no matters arising in relation to the fitness and propriety of the *person* to whom the application relates which mean that the information provided to the *FCA* or the *PRA* regarding fitness and propriety in connection with the *current approved person approval* may have changed since the application for the *current approved person approval* was made.~~

10C.10.8A D If a *firm* must make an application using Form A, it must use Form A (shortened form) if:

(1) the *candidate*:

(a) has *current approved person approval* to perform:

(i) an *FCA controlled function* that is a *significant influence function*; or

(ii) an *FCA-designated senior management function*; or

(iii) a *PRA controlled function*; or

(b) has had *current approved person approval* of the type described in (a) within the previous six *months*; and

(2) there have been no matters arising in relation to the fitness and propriety of the *person* to whom the application relates which mean that the information provided to the *FCA* or the *PRA* regarding fitness and propriety in connection with the *current approved person approval* in (1)(a) or (b) may have changed since the application for that *current approved person approval* was made.

10C.10.9 D (1) A *firm* must use Form E (*SUP* 10C Annex 3D) where an *approved person*:

(a) is both ceasing to perform one or more *controlled functions*; and

(b) needs to be approved in relation to one or more *FCA-designated senior management function*;

within the same *firm* or *group*.

(2) A *firm* must not use Form E if the *approved person* has never before been approved to perform for any *firm*:

(a) an *FCA controlled function* that is a *significant influence function*;

(b) an *FCA-designated senior management function*; or

(c) a *PRA controlled function*.

(3) A *firm* must not use Form E if the *approved person* has not been subject to a *current approved person approval* from the *FCA* or *PRA* to perform for any *firm* for more than six months:

(a) an *FCA controlled function* that is a *significant influence function*;

(b) an *FCA-designated senior management function*; or

(c) a *PRA controlled function*.

(4) A *firm* must not use Form E if:

(a) a notification has been made or should be made:

(i) to the *FCA* under *SUP* 10C.14.18R (Changes in fitness to be notified under Form D); or

(ii) (if the *firm* is a *PRA-authorised person*) to the *PRA* under any equivalent *PRA* rule; or

(iii) to the *FCA* under *SUP* 10A.14.17R (the equivalent to (i) ~~for *firms* that are not *relevant authorised persons*)~~ ~~; or~~ in *SUP* 10A).

~~(iv) the *PRA* requirements corresponding to (iii);~~

(whichever is applicable);

(b) a notification has been made or should be made to the *FCA* or (if the *firm* is a *PRA-authorised person*) *PRA* under any of the following:

(i) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or

(ii) [deleted]

(iii) section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action); or

(c) (if the *firm* is a *PRA-authorised person*) a notification has been made or should be made to the *PRA* under any provision of ~~Chapter 11 of the part of~~ the *PRA* ~~rulebook~~ *Rulebook* ~~titled "Notifications" (Conduct Rules: Notifications)~~ corresponding to the requirements in (b); or

(d) any of the circumstances in *SUP* 10C.14.7R (Qualified Form C) apply;

in relation to any:

(e) *controlled functions* which that *person* is ceasing to perform (as referred to in (1)); or

(f) any *controlled function* that they are continuing to perform for that *firm* or a *firm* in the same *group*.

10C.10.10 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how applications should be submitted.

Statements of responsibilities

10C.10.11 G An application by a *firm* for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* should be accompanied by a *statement of responsibilities*.

10C.10.12 G *SUP* 10C.11 (Statements of responsibilities) contains more material about *statements of responsibilities*, including (in particular) about a *statement of responsibilities* submitted under an application under *SUP* 10C.10.

Other material to be included in an application

10C.10.13 G A *firm* to which *SYSC* 25.9 (Handover procedures and material) applies should include in an application a reasonable summary of:

(1) any handover certificate; and

(2) any other handover material;

referred to in *SYSC* 25.9 ~~(Handover procedures and material)~~ that relates to the responsibilities that the *candidate* is to perform.

10C.10.13A D A *firm* to which *SYSC* 25.2 (Management responsibilities maps: Main rules) applies must include in an application for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* the latest version of the *firm's management responsibilities map*.

Vetting of candidates by the firm

10C.10.14 G Under section 60A of the *Act*, before a *firm* makes an application for approval, it should be satisfied that the *candidate* is a fit and proper person to perform the function to which the application relates. In deciding that question, the *firm* should have particular regard to whether the *candidate*, or any *person* who may perform a function on the *candidate's* behalf:

(1) has obtained a qualification;

(2) has undergone, or is undergoing, training;

(3) possesses a level of competence; or

(4) has the personal characteristics;

required by *FCA rules* in relation to *persons* performing functions of the kind to which the application relates.

10C.10.15 G For *guidance* on criteria that a *firm* should use for assessing whether an *FCA candidate* is fit and proper (including the *FCA rules* referred to in *SUP* 10C.10.14G), see *FIT*.

Criminal records checks and verifying fitness and properness

10C.10.16 R (1) A *firm* must (as part of its assessment of whether a *candidate* is a fit and proper person to perform an *FCA-designated senior management function* and to verify the information contained in the application to carry out the *FCA-designated senior management function*) obtain the fullest information that it is lawfully able to obtain about the *candidate* under Part V of the Police Act 1997 (Certificates of Criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK* before making the application.

(2) This *rule* does not apply to a *firm* that is a *sole trader* if the *candidate* is the *sole trader* themselves.

10C.10.17 G (1) In England and Wales a *firm* should get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks).

(2) The *firm* should ask the *candidate* to fill in and return the form to the *firm*. The *firm* should then send the completed application form to the DBS or the *firm's* umbrella body.

(3) The *firm* should then ask the *candidate* to show the *firm* the certificate when the *candidate* receives it from the DBS.

(4) There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI).

10C.10.18 G The *firm* should not send a copy of the certificate to the *FCA* unless required to do so under *SUP* 10C.10.28G (requests for additional information).

10C.10.19 G If the *candidate* is employed by a contractor, the *firm* may ask the contractor to obtain the certificate.

10C.10.20 G A *firm* should also check the *Financial Services Register* as part of its assessment of whether a *candidate* is fit and proper and to verify the information contained in the application for approval.

10C.10.21 G If appropriate, a *firm* should:

(1) carry out a criminal record check; and

(2) check any equivalent of the *Financial Services Register*;

in a jurisdiction outside the *UK*. This may be appropriate if the *candidate* has spent time working or living in that jurisdiction.

10C.10.22 G A *firm* should consider whether it should take additional steps to verify any information contained in an application to carry out an *FCA-designated senior management function* or that it takes into account in its assessment of whether a *candidate* is a fit and proper person.

10C.10.23 G Please see *SYSC* 22 (Regulatory references) about the requirement for a *firm* to ask for references from previous employers.

Processing an application

10C.10.24 G The *Act* sets out the time that the *FCA* has to consider an application and come to a decision.

10C.10.25 G In any case ~~,~~ where the application for approval is made by a *person* applying for a *Part 4A permission*, the *FCA* has until the end of whichever of the following periods ends last:

(1) the period within which an application for that *permission* must be determined; and

(2) the period of three months from the time it receives a properly completed application.

10C.10.26 G In any other case, it is the period of three months from the time it receives a properly completed application.

10C.10.27 G The *FCA* will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, the processing time will be longer than the published standard response times if:

(1) an application is incomplete when received; or

(2) the *FCA* has knowledge that, or reason to believe that, the information is incomplete.

10C.10.28 G Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information about the *FCA candidate*. If it does this, the three-month period in which the *FCA* must determine a completed application:

(1) will stop on the day the *FCA* requests the information; and

(2) will start running again on the day on which the *FCA* finally receives all the requested information.

10C.10.29 G If there is a delay in processing the application within the standard response time, the *FCA* will tell the *firm* making the application as soon as this becomes apparent.

10C.10.30 G (1) Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form.

(2) If forms are not completed fully and honestly, applications will be subject to investigation and the *FCA candidate's* suitability

to be approved to undertake an *FCA controlled function* will be called into question.

(3) A *person* who provides information to the *FCA* that is false or misleading may commit a criminal offence and could face prosecution under section 398 of the *Act*, regardless of the status of their application.

10C.10.31 G The *FCA* may grant an application only if it is satisfied that the *FCA candidate* is a fit and proper *person* to perform the *FCA-designated senior management function* stated in the application form. Responsibility lies with the *firm* making the application to satisfy the *FCA* that the *FCA candidate* is fit and proper to perform the *FCA-designated senior management function* applied for.

10C.10.32 G For further *guidance* on criteria for assessing whether an *FCA candidate* is fit and proper for the purposes of *SUP* 10C.10.31G, see *FIT*.

Decisions on applications

10C.10.33 G The *FCA* must:

(1) grant the application;

(2) grant the application subject to conditions or limitations (see *SUP* 10C.12 for more information); or

(3) refuse the application.

10C.10.34 G Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

10C.10.35 G If the *FCA* proposes to take the steps in *SUP* 10C.10.33G(2) or *SUP* 10C.10.33G(3) in relation to one or more *FCA-designated senior management functions*, it must follow the procedures for issuing *warning* and *decision notices* to all *interested parties*. The requirements relating to warning and decision notices are in *DEPP* 2.

Withdrawing an application for approval

10C.10.36 R A *firm* notifying the *FCA* of its withdrawal of an application for approval must use Form B (*SUP* 10A Annex 5R).

10C.10.37 G Under section 61(5) of the *Act* (Determination of applications), the *firm* may withdraw an application only if it also has the consent of:

(1) the *candidate*; and

(2) the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.

10C.10.38 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how a notice of withdrawal should be submitted.

10C.11 Statements of responsibilities

What a statement of responsibilities is

10C.11.1 G (1) Section 60(2A) of the *Act* (Applications for approval) says that, if a *firm* is applying for approval from the *FCA* or the *PRA* for a *person* to perform a *designated senior management function*, the regulator to which the application is being made must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the *firm* which it is intended that the *person* will be responsible for managing in performing the function.

(2) That statement is a *statement of responsibilities*.

(3) A *statement of responsibilities* includes a statement amended under section 62A of the *Act* (see *SUP* 10C.11.5G).

What this section covers

10C.11.2 G (1) This section is about the *FCA's* requirements for *statements of responsibilities*.

(2) However, in the case of a *PRA-authorised person*, where applications and notifications relate both to *FCA-designated senior management functions* and to *PRA* ones, the regulators' requirements are consistent with each other.

(3) The general material in this section (*SUP* 10C.11.13G to *SUP* 10C.11.35G) applies to *statements of responsibilities* submitted in all the cases covered by this section. It covers *statements of responsibilities* submitted as part of an application for approval or variation and revised *statements of responsibilities*.

Applications for approval

10C.11.3 D An application by a *firm* for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* must be accompanied by a *statement of responsibilities* (*SUP* 10C Annex 5D).

10C.11.4 G (1) *SUP* 10C.10 (Application for approval and withdrawing an application for approval) explains the procedures for applying for approval.

(2) *SUP* 10C.15 (Forms and other documents and how to submit

them to the FCA) explains how applications for approval should be submitted.

(3) See the table in *SUP* 10C.11.19G for examples of how the requirements of this section about including *statements of responsibilities* in applications for approval apply in different situations.

Revised statements of responsibilities: Introduction

10C.11.5 G Under section 62A of the *Act*, a *firm* must provide the *FCA* with a revised *statement of responsibilities* if there has been any significant change in the responsibilities of an *FCA-approved SMF manager*. More precisely:

(1) if a *firm* has made an application (which was granted) to the *FCA* for approval for a *person* to perform an *FCA-designated senior management function*;

(2) the application contained, or was accompanied by, a *statement of responsibilities*; and

(3) since the granting of the application, there has been any significant change in the aspects of the *firm's* affairs which the *FCA-approved SMF manager* is responsible for managing in performing the function;

the *firm* should provide the *FCA* with a revised *statement of responsibilities*.

Revised statements of responsibilities: Meaning of significant change

10C.11.6 G (1) This paragraph sets out non-exhaustive examples of potential changes which, in the *FCA's* view, may be significant and thus require the submission of a revised *statement of responsibilities*.

(2) A variation of the *FCA-approved SMF manager's* approval, either at the *firm's* request or at the *FCA's* or (in the case of a *PRA-authorised person*), *PRA's* initiative, resulting in the imposition, variation or removal of a condition or time limit, may involve a significant change.

(3) Fulfilling or failing to fulfil a condition on approval may involve a significant change.

(4) The addition, re-allocation or removal of any of the following (or part of one):

(a) an *FCA-prescribed senior management responsibility*;

(b) (in the case of a *PRA-authorised person*), a *PRA-prescribed senior management responsibility* ~~or a *PRA-*~~

~~*prescribed UK branch senior management responsibility*~~; or

(c) responsibility for a function under ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions)~~ <u>*SYSC* 26 (Senior managers and certification regime: Overall and local responsibility)</u> ;

may involve a significant change.

(5) The sharing or dividing of ~~a function in (4)~~ <u>an *FCA-prescribed senior management responsibility*</u> or a <u>*PRA-prescribed senior management responsibility*</u> that was originally performed by one *person* between two or more *persons* may involve a significant change.

(6) Ceasing to share ~~a function in (4)~~ <u>an *FCA-prescribed senior management responsibility*</u> or a <u>*PRA-prescribed senior management responsibility*</u> that was originally shared with another, or others, may involve a significant change.

<u>(6A)</u> <u>Beginning or ceasing to share responsibility for a function under *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) may involve a significant change.</u>

(7) A change is likely to be significant if it reflects a significant change to the job that the *person* is doing for the *firm*. Some factors relevant here include:

(a) the importance to the *firm* of the functions being given up or taken on;

(b) whether the *FCA-approved SMF manager's* seniority in the *firm's* management changes;

(c) whether there are changes to the identity, number or seniority of those whom the *FCA-approved SMF manager* manages; and

(d) whether there are changes to the skills, experience or knowledge needed by the *FCA-approved SMF manager* for the job.

Revised statements of responsibilities: Procedure

10C.11.7 D (1) A *firm* must provide a revised *statement of responsibilities* under section 62A of the *Act* under cover of Form J (*SUP* 10C Annex 5D).

(2) A *firm* must not use Form J where the revisions are to be made as part of arrangements involving an application:

(a) for approval for the *FCA-approved SMF manager* concerned to perform another *designated senior management function* for the same *firm*; or

(b) to vary (under section 63ZA of the *Act* (Variation of senior manager's approval at request of relevant authorised person)) an approval for the *FCA-approved SMF manager* concerned to perform a *designated senior management function* for the same *firm*.

(3) In the case of a *PRA-authorised person*, where the change to be notified to the *FCA* under section 62A of the *Act* is part of an arrangement under which:

(a) the *firm* is also required to make an application or notification about the *FCA-approved SMF manager* to the *PRA*; but

(b) the *firm* is not required to send any application or notice about the *FCA-approved SMF manager* under this chapter directly to the *FCA* except for the notification under section 62A of the *Act*;

the *PRA-authorised person* must provide the revised *statement of responsibilities* to the *FCA* by including it with the application or notice to the *PRA*.

10C.11.8 G Broadly, the intention of *SUP* 10C.11.7D(2) is that there is no need for Form J if the revised *statement of responsibilities* is being submitted together with Form A, Form E or Form I for the same *firm*.

10C.11.9 G (1) *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how revised *statements of responsibilities* should be submitted.

(2) See the table in *SUP* 10C.11.19G for examples of how the requirements of this section about submitting revised *statements of responsibilities* apply in different situations.

(3) In particular, the table in *SUP* 10C.11.19G gives examples of how *SUP* 10C.11.7D(2) and (3) ~~works~~ work.

Variation of approval

10C.11.10 D An application by a *firm* to the *FCA* for the variation of an existing approval under section 63ZA of the *Act* (Variation of a senior manager's approval at request of ~~relevant~~ authorised person) must be accompanied by a *statement of responsibilities*.

10C.11.11 G (1) See *SUP* 10C.13 (Variation of conditional and time-limited approvals) for more details about applications to vary an approval.

(2) *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how applications to vary an approval should be submitted.

(3) See the table in *SUP* 10C.11.19G for examples of how the requirements of this section about submitting *statements of responsibilities* with applications to vary an approval apply in different situations.

Ceasing to carry on some functions

10C.11.12 R If:

(1) an *FCA-approved SMF manager* ceases to perform a *designated senior management function* for a *firm*; but

(2) continues to perform an *FCA-designated senior management function* for that *firm*;

the *firm* must (under Form J) submit a *statement of responsibilities* for the remaining functions complying with the requirements of this section (including *SUP* 10C.11.13D).

One document for each SMF manager for each firm

10C.11.13 D (1) A *firm* must prepare *statements of responsibilities* (including revised ones) for one of its *FCA-approved SMF managers* as a single document covering every *designated senior management function* for which:

(a) that *FCA-approved SMF manager* has approval; or

(b) for which an application for approval is being made;

for that *firm*.

(2) The statement must be up to date for each *designated senior management function*.

10C.11.14 G (1) *SUP* 10C.11.13D means that, at any time, a *firm* should have a single document for an *FCA-approved SMF manager* that:

(a) contains *statements of responsibilities* for all *designated senior management functions* for which that *SMF manager* has approval; and

(b) where relevant, contains *statements of responsibilities* for all *designated senior management functions* for which the *firm* is applying for approval.

(2) ~~The~~ (In the case of a *PRA-authorised person*), the document in (1) should cover *PRA-designated senior management functions* as well as *FCA-designated senior management functions*.

(3) The document should be updated:

(a) under section 62A of the *Act* (see *SUP* 10C.11.5G); and

(b) whenever the *firm* has to submit *statements of responsibilities* under this section.

(4) The *FCA* and the *PRA* have coordinated their arrangements so that a ~~*firm*~~ *PRA-authorised person* can prepare a single document that will meet the requirements of both regulators about *statements of responsibilities*.

(5) The table in *SUP* 10C.11.19G gives examples of how these requirements work.

10C.11.15 G If a *person* is an *SMF manager* for several *firms* in a group ~~that are *relevant authorised persons*~~, there should be a separate document for each *firm*.

10C.11.16 G There should be a separate document for each *SMF manager* in a *firm*. A *firm* should not combine *statements of responsibilities* for several *SMF managers*.

10C.11.17 G The requirement for a single document does not prevent the document having an attachment sheet for additional information where *SUP* 10C Annex 5D (the *FCA's* template for *statements of responsibilities*) allows this.

Submitting statements of responsibilities: examples of how the requirements work

10C.11.18 G The table in *SUP* 10C.11.19G gives examples of how the requirements in this section for submitting *statements of responsibilities* (combined, in the case of a *PRA-authorised person*, with the corresponding *PRA* requirements) work in different cases.

10C.11.19 G Table: ~~examples~~ Examples of how the requirements for submitting statements of responsibilities work

Example	**Comments**
(1) A *firm* applies for approval for A to perform the ~~executive~~ *executive director function* and the *money laundering function*.	There should be a single *statement of responsibilities*

Example	Comments
	document that covers the two functions. The combined document should be included with the application for approval.
(2) Firm X applies for approval for A to perform the ~~executive~~ <u>*executive*</u> *director function*. Firm Y applies for approval for A to perform the *money laundering function*. ~~Both *firms* are *relevant authorised persons*.~~	There should be separate *statements of responsibilities* for each *firm*. This is the case even if Firm X and Firm Y are in the same group.
(3) A *firm* applies for approval for A to perform an *FCA-designated senior management function* and a *PRA-designated senior management function*. The arrangements in *SUP* 10C.9 for *FCA* functions to be absorbed into *PRA* ones do not apply and so there are separate applications to the *FCA* and *PRA*. <u>The *firm* is a *PRA-authorised person*.</u>	The single *statement of responsibilities* document should cover both the *FCA* and the *PRA* functions.
(4) A has approval to perform the ~~executive~~ <u>*executive*</u> *director function*. Later, A is to be appointed to perform the *money laundering function* for the same *firm*. This will also result in substantial changes to A's duties as an executive director.	The *firm* should not use Form J to notify the changes to A's duties as an executive director. The *firm* should submit a revised single *statement of responsibilities* document along with the application to perform the *money laundering function*. The single *statement of responsibilities* document should cover both functions. The part relating to A's duties as an executive director should be updated.
(5) A has approval to perform the ~~executive~~	The *firm* should not use

Example	**Comments**
<u>executive</u> *director function*. Later, A is to be appointed to perform the *PRA's* chief risk officer *designated senior management function* for the same *firm*. This will also result in substantial changes to A's duties as an executive director. <u>The *firm* is a *PRA-authorised person*.</u>	Form J to notify the changes to A's duties as an executive director. The *firm* should submit a revised single *statement of responsibilities* document along with the application to perform the *PRA* function. The *firm* should not submit the revised single *statement of responsibilities* document separately to the *FCA*. Instead, it should include it as part of the application to the *PRA*. The single *statement of responsibilities* document should cover both the *FCA* and the *PRA* functions. The part relating to A's duties as an executive director should be updated.
(6) A has approval to perform the *money laundering function*. The approval to perform the *money laundering function* is subject to a condition. The *firm* is applying to vary that condition.	The *firm* should include a revised *statement of responsibilities* with the application. The *firm* should not use Form J. It should submit a revised *statement of responsibilities* along with the application to vary the approval.
(7) A has approval to perform the ~~executive~~ <u>executive</u> *director function* and the *money laundering function* for the same *firm*. The approval to perform the *money laundering function* is subject to a condition. The *firm* is applying to vary that condition. As part of the same arrangements, there are to be substantial changes to A's job as an	The *firm* should not use Form J to notify the changes to A's duties as an executive director. The *firm* should submit a revised single *statement of*

Example	Comments
executive director.	*responsibilities* document along with the application to vary the approval for the *money laundering function*. The single *statement of responsibilities* document should be updated and should cover both functions.
(8) A has approval to perform the ~~executive~~ <u>*executive*</u> *director function* and the *PRA's* chief risk officer *designated senior management function* for the same *firm*. The arrangements in *SUP* 10C.9 for *FCA* functions to be absorbed into *PRA* ones do not apply and so there are separate *FCA* and *PRA* approvals. The approval to perform the *PRA's* chief risk officer *designated senior management function* is subject to a condition. The *firm* is applying to vary that condition. As part of the same arrangements, there are to be substantial changes to A's job as an executive director. <u>The *firm* is a *PRA-authorised person.*</u>	The *firm* should not use Form J to notify the changes to A's duties as an executive director. The *firm* should submit a revised single *statement of responsibilities* document along with the application to vary the *PRA* function. The *firm* should not submit the revised document separately to the *FCA*. Instead it should include it as part of the application to the *PRA*. The single *statement of responsibilities* document should cover both the *FCA* and the *PRA* functions and should be updated.
(9) A has approval to perform the ~~executive~~ <u>*executive*</u> *director function* and the *money laundering function* for the same *firm*. Sometime later, A is to give up the *money laundering function* and take up the *PRA's* chief risk officer *designated senior management function*. This will involve major changes to A's role as executive director.	The answer to example (5) applies. The application to the *PRA* to perform the *PRA* function should be accompanied by a single document that: (1) contains the *statement of responsibilities* for the

Example	Comments
<u>The *firm* is a *PRA-authorised person*.</u>	new function; (2) contains the revised *statement of responsibilities* for the ~~executive~~ <u>*executive*</u> *director function*; and (3) reflects the fact that A is no longer performing the *money laundering function*.
(10) A *firm* has approval for A to perform the ~~executive~~ <u>*executive*</u> *director function* and the *money laundering function*. A then ceases to perform the *money laundering function* but continues to perform the ~~executive~~ <u>*executive*</u> *director function*.	The *firm* must submit: (a) Form C for the *money laundering function*; (b) Form J; and (c) a single updated *statement of responsibilities* document that covers the ~~executive~~ <u>*executive*</u> *director function* <u>and reflects the fact that A is no longer performing the *money laundering function*</u>.
(11) A has approval to perform the ~~executive~~ <u>*executive*</u> *director function* and the *PRA's* chief risk officer *designated senior management function* for the same *firm*. Later, A gives up his role as chief risk officer. <u>The *firm* is a *PRA-authorised person*.</u>	The *firm* must submit: (a) Form C for the *PRA* function; (b) Form J; and (c) a single updated *statement of responsibilities* document that covers the ~~executive~~ <u>*executive*</u> *director function*. The *firm* should not submit the revised single *statement of responsibilities* document separately to the *FCA*. Instead, it should include it as part

Example	Comments
	of the notification to the *PRA*.
(12) A has approval to perform the ~~executive~~ <u>*executive*</u> *director function*. Later, A is to be appointed to perform the *money laundering function* for the same *firm*. The application is rejected.	The single *statement of responsibilities* document submitted as part of the application will no longer be correct as it reflects the proposed new approval. If the only changes to the single document in the version sent with the application are ones, clearly and exclusively tied to the new function, the *firm* will not need to amend the document as the changes will automatically fall away. In any other case (for instance if the application is approved conditionally), it is likely that the *firm* will need to update it using Form J. In any case, the *FCA* may contact the *firm* to agree a revised single *statement of responsibilities* document.
(13) A has approval to perform the ~~executive~~ <u>*executive*</u> *director function*. Later, A is to be appointed to perform the *money laundering function* for the same *firm*. This will not result in any changes to A's duties as an executive director. However, there have been some insignificant changes to A's role as an executive director since the *firm* submitted the most recent single *statement of responsibilities* document. The changes are not connected to A's appointment to perform the *money*	The answer for example (4) applies. The single *statement of responsibilities* document should be updated to cover the changes to A's duties as executive director, as well as covering A's new money laundering role. It does not matter that the changes to A's role as an executive

Example	Comments
laundering function.	director are not significant.
(14) A has approval to perform the ~~executive~~ *executive director function*. Later, A's business unit grows in size and so the *firm* needs to apply for A to be approved to perform the *PRA's* Head of Key Business Area *designated senior management function*. However, A's responsibilities do not change. The *firm* is a *PRA-authorised person*.	The *firm* should submit a revised single *statement of responsibilities* document along with the application to perform the *PRA* function. The *firm* should submit a single *statement of responsibilities* document that covers both the *FCA* and the *PRA* functions. It should not submit the revised single *statement of responsibilities* document separately to the *FCA*. Instead, it should include it as part of the application to the *PRA*.
(15) Firm X has a *branch* in the *United Kingdom*. Firm Y is a *UK* authorised *subsidiary* of firm X. Firm X is a *third-country* ~~*relevant authorised person*~~ *SMCR firm* and firm Y is a *UK* ~~*relevant authorised person*~~ *SMCR firm*. Both *firms* apply for approval for the same individual (P) to perform the ~~executive~~ *executive director function*.	There should be separate *statement of responsibilities* for P for each *firm*.
Note: The single *statement of responsibilities* document means the single document described in *SUP* 10C.11.13D.	

Need for a complete set of current statements of responsibilities

10C.11.20 R A *firm* must, at all times, have a complete set of current *statement of responsibilities* for all its *SMF managers*.

10C.11.21 G (1) A complete set of current *statement of responsibilities* means all *statements of responsibilities* that the *firm* has provided to the *FCA* or (in the case of a *PRA-authorised person*), *PRA* as revised under section 62A of the *Act*.

(2) A *statement of responsibilities* is not current if the *person* in question no longer performs any of the *controlled* ~~*function*~~ *functions* to which it relates.

Past versions

10C.11.22 (1) A *firm* should consider past versions of its *statements of responsibilities* as an important part of its records and as an important resource for the *FCA* in supervising the *firm*.

(2) Past versions of a *firm's statements of responsibilities* form part of its records under ~~*SYSC* 9.1 (General rules on record-keeping)~~ the *regulatory system*.

What statements of responsibilities should contain: ~~general~~ General

10C.11.23 G A *statement of responsibilities* should:

(1) show clearly how the responsibilities that the *SMF manager* performs as part of their *FCA-designated senior management function* fit in with the *firm's* overall governance and management arrangements; ~~and~~

(1A) be consistent with the *statement of responsibilities* for the *firm's* other *SMF managers*; and

(2) be consistent with the *firm's management responsibilities map* (if the *firm* is required to have one).

(See ~~*SYSC* 4.5.9G, *SYSC* 4.6.12G and *SYSC* 4.6.27G~~ *SYSC* 25.4.1G and *SYSC* 25.4.2G for more about this.)

10C.11.24 G (1) A *statement of responsibilities* (including its attachment sheet for additional information) should:

(a) be complete by itself;

(b) not refer to documents not forming part of it; and

(c) only contain material about the matters that this chapter, the corresponding *PRA* requirements (in the case of a *PRA-authorised person*), and the *Act* say should be included in it.

(2) For example, if it is necessary to include relevant material from the *firm's* report and accounts, the *statement of responsibilities* should not attach the whole of the report and accounts or cross refer to them. Instead it should include a summary of the

relevant part only.

10C.11.25 G A *statement of responsibilities* should be:

(1) practical and useable by the *FCA*;

(2) without unnecessary detail; and

(3) succinct and clear.

10C.11.26 G (1) *SYSC* or another part of the *regulatory system* will generally impose requirements (referred to as 'prescribed requirements' in this paragraph) that relate to a particular post or set of responsibilities.

(2) For instance, these include:

(a) the responsibilities that go with the *FCA required functions*; and

(b) the *FCA-prescribed senior management responsibilities*~~,~~ and (in the case of a *PRA-authorised person*) the *PRA-prescribed senior management responsibilities* ~~and the *PRA-prescribed UK branch senior management responsibilities*~~.

(3) The allocation of responsibilities under a *statement of responsibilities* should not reduce or alter the scope of any applicable prescribed requirements.

(4) If:

(a) the responsibilities that the *SMF manager* carries out as described in the *statement of responsibilities* go beyond the prescribed requirements; or

(b) the *firm* includes additional information about any prescribed requirements;

the additional responsibilities or additional information should not:

(c) reduce or alter the scope of the prescribed requirements; or

(d) dilute or undermine the prescribed requirements.

10C.11.27 G (1) ~~A~~ An example of the requirement that a *firm's statements of responsibilities* for its *SMF managers* should be consistent (see *SUP* 10C.11.23G) is that they should together demonstrate that there are no gaps in the allocation of responsibilities among ~~it's~~ the *firm's* *SMF managers*.

(2) A *firm's statements of responsibilities* should be interpreted, where possible, so as to avoid any gaps in the allocation of responsibility for its activities among its *SMF managers*.

(3) Paragraphs (1) and (2) ~~are not relevant to *EEA relevant authorised persons*~~ apply to a *firm* to which *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) applies.

10C.11.28 G (1) A *statement of responsibilities* of an *SMF manager* should include details about any:

(a) *FCA-prescribed senior management responsibilities* ~~,~~ and (in the case of a *PRA-authorised person*) *PRA-prescribed senior management responsibilities* ~~and *PRA-prescribed UK branch senior management responsibilities*~~ allocated to the *SMF manager*;

(b) (in the case of a *PRA-authorised person*) functions that are included in a *PRA controlled function* under the arrangements described in *SUP* 10C.9 (Minimising overlap with the PRA approved persons regime); ~~and~~

(c) responsibility for a function allocated to the *SMF manager* under ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business areas and management functions) or *SYSC* 4.8.10R (Local responsibility for a branch's activities, business areas and management functions).~~ *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) if that chapter applies to the *firm*; and

(d) responsibilities allocated under *MIPRU* 2.2 (Responsibility for insurance distribution activity or MCD credit intermediation activity).

(2) Paragraph (1)(c) applies even if the responsibility is excluded from the *other overall responsibility function* under *SUP* 10C.7.1R(2) (~~Exclusion~~ exclusion for *approved person* with approval to perform other *controlled functions*) or from the *other local responsibility function* under *SUP* 10C.8.1R(2) (~~Exclusion~~ exclusion for *approved person* with approval to perform other *controlled functions*).

10C.11.29 G (1) The definition of every *FCA-designated senior management function* contains a responsibility which is inherent, inseparable from and intrinsically built into the specific role.

(2) In many ways, this inherent responsibility is the most important responsibility of any given *SMF manager*, as it provides a rationale as to why that specific function is subject to pre-

approval by the *FCA* in the first place.

(3) Even where an *SMF manager* has not been allocated any other responsibilities by the *firm*, the responsibility inherent in the definition of their *FCA-designated senior management function* means that they will be accountable for that aspect of the *firm's* activities.

(4) For instance, even if a person approved to perform the *compliance oversight function* has no other responsibilities allocated to them, they will be accountable for the *Handbook* requirements for the *compliance oversight function*.

10C.11.30 G (1) The *FCA* may request a *firm* to include specific responsibility for a regulatory outcome in the *statement of responsibilities* of the relevant *SMF managers*.

(2) For example, where the *FCA* asks a *firm* to take remediation action following an internal or supervisory review or a report under section 166 of the *Act* (Reports by skilled persons) and considers it appropriate for an *SMF manager* to take responsibility for that action, it may ask the *firm* to add an additional, customised, explicit responsibility to the relevant *SMF manager's statement of responsibilities*.

What statements of responsibilities should contain: dividing and splitting responsibilities

10C.11.31 G (1) Where a responsibility or function is shared or divided between an *SMF manager* and others, the *statements of responsibilities* for each *SMF manager* concerned should make this clear.

(2) Where a responsibility or function is divided between an *SMF manager* and others, the *statements of responsibilities* for each *SMF manager* concerned should make it clear for what part of which responsibility or function that *SMF manager* has responsibility.

(3) Together, the *statements of responsibilities* should show which responsibility or function is shared or divided between which *SMF managers* or other persons. It should be clear which responsibility or function and which *SMF managers* or other *persons* are involved.

10C.11.32 G (1) Where:

(a) an *FCA-prescribed senior management responsibility* <u>is divided or shared between several *SMF managers*</u>; or

(b) any function allocated under ~~*SYSC* 4.7.8R (Allocation of overall responsibility for a firm's activities, business~~

~~areas and management functions) or *SYSC* 4.8.10R (Local responsibility for a branch's activities, business areas and management functions)~~ *SYSC* 26 (Senior managers and certification regime: Overall and local responsibility) is shared between several *SMF managers* (if that chapter applies to the *firm*);

~~is divided or shared between several *SMF managers*,~~ the *statement of responsibilities* for each *SMF manager* should:

(c) explain why this has been done; and

(d) give full details of the arrangements, including the names of the other *persons* and their *FCA*/*PRA* Individual Reference Numbers (IRN) (if known).

(2) Where a responsibility or function is shared between several *SMF managers*, this should be recorded in the same way in the *statements of responsibilities* of each of them. This should also be consistent with the *firm's management responsibilities map*.

10C.11.33 G (1) Where two or more *SMF managers* share a responsibility, each will be individually responsible for everything included in that responsibility, including anything inherent in that responsibility (see *SUP* 10C.11.29G for inherent responsibilities).

(2) Where:

(a) a responsibility is divided between several *SMF managers*; but

(b) some part of the responsibility has not clearly been allocated to any of them;

it should be assumed that that part is the joint responsibility of all of them.

What statements of responsibilities should contain: Non-executive directors

10C.11.34 G In general, the *FCA* expects the *statement of responsibilities* of a *non-executive director* who is an *SMF manager* to be less extensive than those of an executive *SMF manager*.

10C.11.35 G The *FCA* does not require any of the general duties of a *non-executive director* described in section 2 of *COCON* 1 Annex 1 (~~The general role of a NED~~ Guidance on the role and responsibilities of non-executive directors of SMCR firms subject to COCON) to be included in the *non-executive director's statement of responsibilities*.

10C.12 Conditional and time-limited approvals

Purpose

10C.12.1 G (1) *SUP* 10C.12 describes the regime for conditional and time-limited approvals.

(2) In particular, *SUP* 10C.12 sets out the *FCA's* policies on giving approval under section 59 subject to conditions or for a limited period only, as required by section 63ZD of the *Act* (Statement of policy relating to conditional approval and variation).

(3) ~~The~~ (In the case of a *PRA-authorised person*) the policies described in *SUP* 10C.12 also apply when the *FCA* is considering whether to give its consent to an application made to the *PRA* for approval.

(4) Material on variations of conditional and time-limited approvals can be found in *SUP* 10C.13 (Variation of conditional and time-limited approvals).

10C.12.2 G (1) The power to grant an approval subject to conditions or for a limited period only applies to *senior management functions*.

(2) As all *FCA controlled functions* specified in this chapter are *senior management functions*, this means that this power applies to all *FCA controlled functions* specified in this chapter.

(3) The *FCA* has (in *SUP* 10A) specified *controlled functions* for *relevant authorised persons* that are not *designated senior management functions*. See *SUP* 10C.1.7R to *SUP* 10C.1.8G (Appointed representatives) for more about this.

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

(4) The power to grant an approval subject to conditions or for a limited period does not apply to the *controlled functions* in (3).

[*Editor's note*: This provision will be reviewed in a second Consultation Paper]

Introduction

10C.12.3 G The ~~FCA~~ *FCA* may:

(1) grant an application for approval subject to any conditions that the *FCA* considers appropriate; and

(2) grant the application to give approval only for a limited period.

10C.12.4 G The *FCA* may use this power only if it appears to the *FCA* that it is desirable to do so to advance one or more of its *operational objectives*.

10C.12.5 G Factors that the *FCA* will take into account include:

(1) those relating to the *firm* at the time of the application, such as:

(a) its size, scale and complexity; and

(b) its plans and prospects; and

(2) those relating to the *candidate* and, in particular, the *candidate's* fitness and properness.

10C.12.6 G The *FCA* expects that the most common use of the power to give qualified approvals would be:

(1) time-limited approvals;

(2) a time limitation in relation to an ongoing or prospective enforcement investigation;

(3) a competency-related condition; and

(4) a role-limited condition.

Time-limited approval

10C.12.7 G An example of a time-limited approval is where a *firm* needs to appoint the *candidate* on an interim basis while the *firm* seeks to appoint a permanent *candidate*. The *FCA* may approve the interim appointee on a time-limited basis.

10C.12.8 G The *FCA* would not generally impose a time limitation in these circumstances for a period of less than 12 weeks. The *FCA* would expect the *firm* to use the 12-week rule in *SUP* 10C.3.13R.

10C.12.9 G An example of when the *FCA* may approve an individual on a time-limited basis is where, following a sudden or unexpected departure:

(1) a *firm* needs to fill an *FCA-designated senior management function* vacancy immediately; but

(2) it is likely to take longer than 12 weeks to recruit a permanent replacement; and

(3) there is an individual at the *firm* not currently approved to perform the relevant *FCA-designated senior management function* whom the *firm* and the *FCA* think capable of fulfilling the role on an interim, provisional basis but not necessarily on a permanent basis.

10C.12.10 G Generally, the *FCA* would not impose a time limitation of this type for longer than 12 to 18 months.

10C.12.11 G The *FCA* would consider using this power for a person who is in the running for the long-term appointment.

10C.12.12 G (1) An example of how the *FCA* could deal with a *person* who is in the running for the long-term appointment is outlined below.

(2) The head of compliance resigns unexpectedly from a *firm*. The *firm* wishes to appoint one of the deputies. The *FCA* and the *firm* believe the deputy to be capable of running the *firm's* compliance function on a day-to-day 'business as usual basis' but the deputy has no experience developing a long-term, firm-wide strategy. The *firm* estimates that it could take up to a year to recruit a permanent head of compliance. It also believes that the deputy could be the ideal candidate if the deputy could outline a viable compliance strategy for the *firm*.

(3) In this situation, it may be appropriate to approve the deputy as head of compliance subject to a 12-month time limit.

(4) Before the end of that period, the deputy would have to prepare a new compliance strategy and the deputy's ability to do so would be taken into account when deciding whether to approve the deputy on a permanent basis.

10C.12.13 G In deciding whether a *candidate* is fit and proper, the *FCA* will take into account the role that the *candidate* is going to perform. The standard for a *person* who is appointed on a temporary basis may be different from a *person* appointed on a permanent basis when the *person* with a temporary appointment has a more limited role.

10C.12.14 G The *FCA* may impose a condition on the approval, as well as time limitation. For example, in the example in *SUP* 10C.12.12G, the *FCA* may impose a condition prohibiting the *candidate* from significantly amending the management structure of the department.

10C.12.15 G The other main examples of a time-limited approval are:

(1) an enforcement action time-limited approval (see *SUP* 10C.12.16G);

(2) a time limitation used in conjunction with a competence condition (see *SUP* 10C.12.26G); and

(3) a time limitation in relation to the scale of a role (see *SUP* 10C.12.35G).

Enforcement action: time limitation

10C.12.16 G An enforcement action time-limited approval relates to a case in which there is an enforcement investigation ongoing, or in prospect, the results of which may call into question the *candidate's* fitness and properness, but at the time of application there are no or insufficient grounds to refuse approval. The *candidate* may or may not be a subject of that investigation.

10C.12.17 G The *FCA* will generally limit an enforcement action time-limited approval for a period long enough to allow the investigation to be completed so far as relevant to the *candidate*. Imposing a time limitation on approval would allow the *FCA* to look at the situation in more detail after approval, with the benefit of all the facts arising from the investigation.

10C.13.18 G The policy on the length of time-limited approvals in *SUP* 10C.12.8G does not apply to time limitations of this type.

Competence and related conditions

10C.12.19 G The *FCA* may take the view that a *candidate* would meet the fit and proper requirement with an approval subject to either, or both, of the following:

(1) one or more conditions; and/or

(2) a time limitation;

who would not have met that requirement without the qualification.

10C.12.20 G *Firms* should not see the power to give approval on this basis as an opportunity to put forward sub-standard *candidates* in the knowledge that they are unlikely to gain unconditional approval but may scrape through by way of a qualified approval.

10C.12.21 G (1) The *FCA* is likely only to give a qualified approval on the basis described in *SUP* 10C.12.19G in limited circumstances.

(2) Generally, the *FCA* would only use this power in place of rejection where the deficiency is in only a relatively small proportion of the required job competencies.

(3) Lack of technical knowledge is more likely to be easier to remedy than a problem with personal characteristics.

(4) The *FCA* is only likely to give its approval on this basis when the *candidate* has fallen short of the required standard by a reasonably small margin (a 'near miss').

10C.12.22 G One example of a conditional approval based on the competence of the *candidate* would be where the *candidate* would have met the fitness and properness standard but for a shortfall in the *candidate's* technical knowledge and the shortfall is in a relatively narrow and specific area.

10C.12.23 G The *FCA* does not see this as being a probationary or standalone measure. The competency-related limitation would be time specific and linked to something that the *FCA* would wish to re-examine after the period has expired.

10C.12.24 G (1) When the *FCA* is imposing a competence-related condition where there is a shortfall, approval will only be granted on the condition that the *candidate* is required to undertake training or receive mentoring to eliminate the shortfall.

(2) See *SUP* 10C.12.39G (role-limited approval) for an example of a shortfall in competence that is not dealt with by trying to remove it.

10C.12.25 G (1) An example of where a qualified approval based on competence may be used is for a *candidate* with proven management skills who is new to the role or the industry and requires some new technical knowledge for the new role.

(2) For instance, a *candidate* for the role of a senior manager may have a proven track record as a senior manager but may lack detailed knowledge of a specific area, such as money laundering or of the technical details of prudential capital requirements.

(3) A competence condition would require the *candidate* to undertake training in the area of shortfall after appointment.

10C.12.26 G (1) A competency-related approval is likely to be linked with a time-limited approval.

(2) Under an approval of this kind, the *candidate* will be required to undertake the necessary training or other remedial measures.

(3) The time for which the approval will last would be set to give the *firm* and the *candidate* a reasonable time to complete the measures.

(4) At the end of the period, the *firm* would need to apply to the *FCA* to appoint the *candidate* on a permanent basis.

10C.12.27 G The *FCA* would only be likely to consider a qualified approval based on competence if it was sure that the *candidate* could achieve the required level of competence within a specified period, which is unlikely to be more than 12 to 18 months.

10C.12.28 G (1) The *FCA* may give a conditional approval instead of rejection in cases where the condition does not relate to the *candidate's* abilities.

(2) For example, the *FCA* may consider that the *candidate* is suitable only if the *candidate* refrains from, or ceases

undertaking, certain actions and makes the approval conditional on that basis.

(3) The *FCA* may require the *candidate* to go beyond the regulatory requirements in a given area.

10C.12.29 G (1) An example of *SUP* 10C.12.28G is where a *firm* wishes to appoint someone as an executive director who has a number of non-executive directorships.

(2) The *FCA* may be concerned about the potential impact of these other commitments on that individual's ability to devote sufficient time to the proposed role with the *firm*.

(3) In this situation, it might be appropriate to attach a condition to the individual's approval requiring that person to resign from some of their non-executive directorships.

Role-limited

10C.12.30 G A role-limited approval means:

(1) a time-limited approval; or

(2) a condition;

relating to the nature or scope of the *candidate's* role.

10C.12.31 G One example of a role-limited approval relates to the fact that the size, nature, scope and complexity of a *firm's* activities can change over time. An individual may be fit and proper to perform a *senior management function* at a certain *firm* at a point in time but the *FCA* may wish to re-assess that individual if the *firm's* situation changes.

10C.12.32 G It is not *FCA* policy to impose role-limited approvals routinely for all *firms* or for a certain category of *firm*. For example, there is no blanket policy that approval of a *candidate* for a post in a small *firm* would be subject to a qualification based on the *firm* remaining small.

10C.12.33 G Where a *firm* is expanding or transforming its business model or its risk profile and there are identifiable upcoming milestones, the *FCA* may wish to link the duration of a *candidate's* approval to these milestones.

10C.12.34 G If the change is likely to occur in the near future and the details are clear, the *FCA* may consider its approval of the application in the light of this proposed change.

10C.12.35 G (1) Very often it will be uncertain whether a change in circumstances will happen at all, the details may not yet be known or the timing may be uncertain.

(2) In that case, the *FCA* may, subject to (3), make its judgement

based on the *candidate's* proposed role, without taking into account the possible change. This reflects the fact that the judgement of whether a *candidate* is fit and proper takes into account the role that they are actually going to play.

(3) However, to reflect the possible change, the *FCA* would give a time-limited approval that would come to an end on the occurrence of the milestone.

(4) The *firm* could then apply for a new and possibly unqualified approval.

10C.12.36 G An example under *SUP* 10C.12.35G is as follows.

(1) In this example:

(a) an individual is to perform an *FCA-designated senior management function* in an unlisted *firm* which currently operates only in the *UK*; and

(b) the *firm* is planning a listing and a string of acquisitions which are projected to treble the size of its balance sheet and give it a global footprint over the next three years, but the *candidate* has never worked for an institution as large or as complex.

(2) In this situation:

(a) it may be appropriate to limit the *candidate's* approval to a specified period. If the projected time for completing the transactions is three years, the approval would be for three years; or

(b) it may be appropriate to draft the time limitation by reference to the milestone. For example, the approval might be expressed to come to an end at the point at which the *firm's* balance sheet exceeds a certain size.

10C.12.37 G The policy on the length of time-limited approvals in *SUP* 10C.12.8G does not apply to time limitations of this type.

10C.12.38 G Another way of dealing with a *firm* that plans to reorganise itself but has not made a firm decision to do so or worked out the details, is to make the approval subject to the condition that the nature or scope of the *candidate's* role should not change. The *firm* could apply for the condition to be removed once the plans are ready to be carried out.

10C.12.39 G (1) Another example of a limited-role approval is where:

(a) a *candidate* is not competent to carry out all the functions that are capable of falling within the *FCA-designated senior management function* for which approval is sought; but

(b) the *candidate* will be fit to carry out most of them; and

(c) the *firm* has adequate arrangements to deal with the other aspects.

(2) In such circumstances, the condition would be that the *candidate* does not get involved in the aspects of the role for which that *candidate* is not competent, as specified in the condition.

Condition not based on fitness

10C.12.40 G The power to impose a conditional or time-limited approval:

(1) does not depend on the *candidate* being unfit without that condition or limit; and

(2) need not be related to the *candidate's* ability to do the job properly (see *SUP* 10C.12.28G).

10C.12.41 G One example of a conditional approval when the *candidate* is fit and proper and able to do the job is to support supervisory action in relation to the *firm*. So, if a *firm* is running a remedial programme, it may be a condition of the *candidate's* approval that the *candidate* takes responsibility for aspects of that programme.

10C.12.42 G Although it is not general *FCA* policy to use the power to give qualified approval as a probationary measure, there may be circumstances where a *firm* wants to appoint a *candidate* to perform an *FCA-designated senior management function* who, although fit and proper, may, in the role, be responsible for the *firm's* approach to dealing with particularly unusual or severe challenges in the near future. In this situation, it might be appropriate to approve the *candidate* subject to a time limit with a view to reassessing that *candidate* for a permanent position in due course.

10C.12.43 G In this scenario, the time-limited approval may be accompanied by a condition requiring the *candidate* to:

(1) complete an action or deliverable on or before the end of the time limit, eg a requirement on the acting Head of Sales to produce a revised strategy for treating customers fairly within the next six months; and

(2) refrain from taking specific actions or decisions associated with the role until that person receives permanent approval, eg ~~,~~ a requirement not to introduce a new sales channel until they receive permanent approval.

Effects of a breach of condition

10C.12.44 G The provisions in:

(1) section 59 of the *Act* that say a *firm* should take reasonable care to ensure that no *person* performs a *controlled function* without approval (see *SUP* 10C.10.3G); and

(2) section 63A of the *Act*, under which a *person* performing a *controlled function* without approval may be subject to a penalty (see *SUP* 10C.10.4G);

apply not only to the performance of an *FCA-designated senior management function* by someone who has not been approved to perform that function but also to the performance of an *FCA-designated senior management function* for which the person has been approved in breach of a condition or time limitation.

10C.12.45 G Sections 59 and 63A of the *Act* show that failure to observe a condition does not in itself necessarily invalidate an approval. Instead, both the *firm* and the *SMF manager* may be subject to a penalty for breach of the *Act*. Such a failure may also:

(1) involve a breach of *FCA rules* by the *firm* and a breach by the *SMF manager* of *COCON*; and

(2) call into question the fitness of the *SMF manager*.

10C.12.46 G For example, if an *SMF manager* is subject to a role-limited condition under which the *SMF manager* is not allowed to carry out certain specified aspects of the *FCA-designated senior management function* but the *SMF manager* goes ahead and carries out those aspects, the *SMF manager's* approval does not automatically come to an end. Instead, both the *firm* and the *SMF manager* may be subject to a financial penalty.

10C.12.47 G However the *Act* does allow a condition to be drafted in such a way that the approval ends if the condition is not met or is no longer met.

10C.13 Variation of conditional and time-limited approvals

Purpose

10C.13.1 G This section deals with variation of a conditional approval at the:

(1) request of the *firm*; and

(2) initiative of the *FCA*.

10C.13.2 G (1) In particular, this section sets out the *FCA's* policies about varying conditional approvals at the request of a *firm*, as required by section 63ZD of the *Act* (Statement of policy relating to conditional approval and variation).

(2) This section does not deal with the *FCA's* policies on varying a condition on its own initiative. *DEPP* 8 deals with that. However this section gives a short description of the *FCA's* powers to impose such variations.

Variation of a conditional approval at the request of the firm: general description

10C.13.3 G A *firm* may apply to the *FCA* to change a conditional or time-limited approval. The changes for which a *firm* may apply are:

(1) a variation of the condition;

(2) removal of the condition; ~~and~~

(3) the imposition of a new condition; or

(4) where the approval is time-limited:

(a) varying the time limit; or

(b) removing the time limit.

10C.13.4 G (1) If ~~a~~ the *firm* ~~is~~ applying for a change ~~of the type~~ described in *SUP* 10C.13.3G~~(1) or *SUP* 10C.13.3G(2)~~ is a *PRA-authorised person*, there are requirements about whether the *firm* should apply to the *FCA* ~~if the *FCA* imposed that condition, even if the approval was given by~~ or the *PRA*. Paragraphs (2) to (3) summarise these requirements.

(2) If the *firm* is applying for the imposition of a new condition, the *firm* should apply to the *FCA* if the approval to which the application relates was given by the *FCA*.

(2A) If a *firm* is applying for a change of the type described in *SUP* 10C.13.3G(1) or *SUP* 10C.13.3G(2), the *firm* should (subject to (2C)) apply to the *FCA* if the *FCA* imposed that condition, even if the approval was given by the *PRA*.

(2B) If a *firm* is applying for a change of the type described in *SUP* 10C.13.3G(4), the *firm* should subject to (2C)) apply to the *FCA* if the *FCA* imposed that time limit, even if the approval was given by the *PRA*.

(2C) Where the time limit or condition has been varied before and the *FCA* was the last to vary it, the *firm* should apply to the

FCA. This applies whether the variation was made on the application of the *firm* or on the initiative of the *FCA* or the *PRA*.

(3) In other cases, the application should be to the *PRA*.

10C.13.5 G The ~~power~~ right to apply for a variation does not ~~apply to~~ include the right to apply for a time limitation where the current approval has effect for an unlimited period.

10C.13.5A G The procedures described in this section for the variation of an approval at the request of a *firm* do not apply where the condition or time limit has effect by virtue of section 66 of the *Act* (Disciplinary powers).

Variation of a conditional approval at the request of the firm: process

10C.13.6 D An application by a *firm* to the *FCA* under section 63ZA of the *Act* (Variation of senior manager's approval at request of ~~relevant~~ authorised persons) must be made by using Form I (*SUP* 10C Annex 4D).

10C.13.7 G (1) An application under *SUP* 10C.13.6D should be accompanied by a *statement of responsibilities* for the *approved person* concerned.

(2) See *SUP* 10C.11 (Statements of responsibilities) for more details.

10C.13.8 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how applications to vary a conditional approval should be submitted.

10C.13.9 G The *FCA* has until the end of the period of three months from the time it receives a properly completed application to consider the application and come to a decision.

10C.13.10 G The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see *DEPP* 2).

10C.13.11 G The *FCA* may refuse an application if it appears to the *FCA* that it is desirable to do so to advance one or more of its *operational objectives*.

10C.13.12 G Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information. If it does this, the three-month period in which the *FCA* must determine a completed application:

(1) will stop on the day the *FCA* requests the information; and

(2) will start running again on the day on which the *FCA* finally receives all the requested information.

10C.13.13 G Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

10C.13.14 G If the *FCA* proposes to refuse an application, it must follow the procedures for issuing *warning notices* and *decision notices* to all *interested parties*. The requirements relating to warning and decision notices are in *DEPP* 2.

10C.13.15 R A *firm* notifying the *FCA* of its withdrawal of an application for variation of an approval must use Form B (*SUP* 10A Annex 5R).

10C.13.16 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how notifications of withdrawal of an application should be submitted.

10C.13.17 G Under section 61(5) of the *Act* (Determination of applications), as applied by section 63ZA(8) of the *Act* (Variation of senior manager's approval at request of ~~relevant~~ authorised person), the *firm* may withdraw an application only if it also has the consent of:

(1) the *approved person*; and

(2) the person by whom the *approved person* is employed if this is not the *firm* making the application.

Variation of a conditional approval at the request of the firm: policy

10C.13.18 G The *FCA's* policy on approving or refusing a request for a variation is the same as it is for imposing conditions on approval (see *SUP* 10C.12 (Conditional and time-limited approvals)).

10C.13.19 G (1) An example of a situation in which the *FCA* would consider varying a condition would be a competency-related condition which required a training course to be completed (see, in particular, *SUP* 10C.12.24G for this type of condition).

(2) If the *firm* later concludes that a different course would be better, the *firm* may apply for a variation of the condition.

10C.13.20 G Another example of a situation in which the *FCA* would consider varying a condition would be a condition relating to a remedial programme (see *SUP* 10C.12.41G). If the remedial programme is changed, it may be appropriate to change the condition.

10C.13.21 G (1) Other examples of where the *FCA* may agree to removing a condition are where:

(a) the *approved person's* role has changed so that the reason for the condition originally being imposed no longer applies; or

(b) new information has come to light that removes any doubt about the *approved person's* competence so a condition is no longer necessary.

(2) For example, the *FCA* may agree to removing a condition about the scope of the *approved person's* role of the type described in *SUP* 10C.12.39G.

10C.13.22 G See *SUP* 10C.12.38G for another example of a case where the *FCA* may agree to removing a condition (condition imposed pending reorganisation).

Variation of a conditional approval: action at the initiative of the FCA

10C.13.23 G Under section 63ZB of the *Act* (Variation of senior manager's approval on initiative of regulator), the *FCA* may vary an approval given by the *FCA* or the *PRA* for the performance of a *designated senior management function* if the *FCA* considers that it is desirable to do so to advance one or more of its *operational objectives*.

10C.13.24 G The *FCA* may vary an approval by:

(1) imposing a condition;

(2) varying a condition;

(3) removing a condition; ~~or~~

(4) limiting the period for which the approval is to have effect; or

(5) removing or varying a time limit on an approval.

10C.13.25 G More information about the *FCA's* powers to vary a condition on its own initiative, including its policy on using these powers, can be found in *DEPP* 8.

10C.14 Changes to an FCA-approved person's details

Moving within a firm

10C.14.1 G (1) An *FCA-approved SMF manager's* job may change from time to time as a result, for instance, of a change in personal job responsibilities or a *firm's regulated activities*.

(2) Where the changes will involve the *SMF manager* performing one or more *FCA-designated senior management functions* different from those for which approval has already been granted, an application must be made to the *FCA* for approval for the *SMF manager* to perform those *FCA-designated senior*

management functions.

(3) The *firm* must take reasonable care to ensure that an individual does not begin performing an *FCA-designated senior management function* until the *FCA* has granted *FCA-approved SMF manager* status to that individual for that *FCA-designated senior management function*.

(4) Similarly <u>(in the case of a *PRA-authorised person*)</u>, a *firm* must get the *FCA's* approval if an individual is to start performing an *FCA-designated senior management function* in relation to that *firm* when they already have the *PRA's* approval to perform a *PRA-designated senior management function* in relation to that *firm*.

10C.14.2 G (1) A *firm* should generally use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA-designated senior management functions* within the same *firm* or *group*.

(2) In certain cases, a *firm* should use Form A.

(3) The details can be found in *SUP* 10C.10.8D to *SUP* 10C.10.9D.

Moving between firms

10C.14.3 G If it is proposed that an *FCA-approved SMF manager*:

(1) will no longer be performing an *FCA-designated senior management function* under an *arrangement* entered into by one *firm* or one of its contractors; but

(2) will be performing the same or a different *FCA-designated senior management function* under an *arrangement* entered into by a new *firm* or one of its contractors (whether or not the new *firm* is in the same *group* as the old *firm*);

the new *firm* will be required to make a fresh application for the performance of the *FCA-designated senior management function* by that *person*.

10C.14.4 G In certain circumstances, when the *FCA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See ~~the notes relevant to each form~~ <u>*SUP* 10C.10.8D and *SUP* 10C.10.8AD</u> for full details.

Ceasing to perform an FCA-designated senior management function

10C.14.5 R (1) A *firm* must notify the *FCA* no later than seven *business days* after an *FCA-approved SMF manager* ceases to perform an *FCA-designated senior management function*.

(2) It must make that notification by submitting to the *FCA* a completed Form C (*SUP* 10A Annex 6R).

(3) If:

(a) the *firm* is also making an application for approval for that *approved person* to perform a *controlled function* within the same *firm* or *group*; and

(b) ceasing to perform the *FCA-designated senior management function* in (1) has triggered a requirement to make that application for approval:

(i) to the *FCA* using Form E (rather than a Form A) under *SUP* 10C.10.9D; or

(ii) to the *FCA* using Form E (rather than a Form A) under *SUP* 10A; or

(iii) to the *PRA* using the *PRA's* Form E in accordance with the corresponding *PRA* requirements;

it must make the notification under (1) using that Form E.

10C.14.6 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how notifications should be submitted.

10C.14.7 R (1) A *firm* must notify the *FCA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C for an *FCA-approved SMF manager*.

(2) Form C is qualified if the information it contains:

(a) relates to the fact that the *firm* has dismissed, or suspended, the *FCA-approved SMF manager* from its employment;

(b) relates to the resignation by the *FCA-approved SMF manager* while under investigation by the *firm*, the *FCA* or any other *regulatory body*;

(c) otherwise reasonably suggests that it may affect the *FCA's* assessment of the *FCA-approved SMF manager's* fitness and propriety; or

(d) includes a notification about the *FCA-approved SMF manager* under one of the provisions of the *Act* listed in *SUP* 10C.14.22R (notification of grounds for withdrawal of approval and disciplinary action).

10C.14.8 G (1) Notification under *SUP* 10C.14.7R may be made by telephone, email or fax and should be made, where possible, within one *business day* of the *firm* becoming aware of the information.

(2) Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another *person* or left on a voicemail, or other automatic messaging service, is unlikely to have been given appropriately.

10C.14.9 G A *firm* is responsible for notifying the *FCA* if any *FCA-approved SMF manager* has ceased to perform an *FCA-designated senior management function* under an arrangement entered into by its contractor.

10C.14.10 G (1) A *firm* can submit Form C or Form E to the *FCA* in advance of the cessation date.

(2) If the actual cessation date turns out to be different from the one notified in advance, the *firm* should notify the *FCA*.

(3) If the *firm*:

(a) does not submit Form C ~~(including a qualified one)~~ following notification under *SUP* 10C.14.7R; or

(b) submits Form C or Form E~~,~~ in advance under (1) but it turns out that there is no requirement to have done so (because for example the *approved person* is staying in post);

it should inform the *FCA* in due course of the reason. This could be done using Form D, if appropriate.

10C.14.11 G (1) When a *person* ceases the arrangement under which they perform an *FCA-designated senior management function*, they will automatically cease to be an *FCA-approved SMF manager* in relation to that *FCA-designated senior management function*.

(2) A *person* can only be an *FCA-approved SMF manager* in relation to a specific *FCA-designated senior management function*. Therefore, a *person* is not an *FCA-approved SMF manager* during any period between ceasing to perform one *FCA-designated senior management function* (when they are performing no other *FCA-designated senior management function*) and being approved for another *FCA-designated senior management function*.

10C.14.12 G Sending forms promptly will help to ensure that any fresh application can be processed within the standard response times.

Changes to an approved person's personal details

10C.14.13 R If an *FCA-approved SMF manager's* title, name or national insurance number changes, the *firm* for which the *person* performs an *FCA-designated senior management function* must notify the *FCA* on Form D (*SUP* 10A Annex 7R), of that change within seven ~~business days~~ *business days* of the firm becoming aware of the matter.

10C.14.14 G The duty to notify in *SUP* 10C.14.13R does not apply to changes to an *FCA-approved SMF manager's* private address.

Changes to arrangements

10C.14.15 R (1) If any of the details relating to:

(a) the arrangements in relation to any of a *firm's FCA-approved SMF managers*; or

(b) any *FCA-designated senior management functions* of one of its *FCA-approved SMF managers*;

are to change, the *firm* must notify the *FCA* on Form D (*SUP* 10A Annex 7R).

(2) The notification under (1) must be made as soon as reasonably practicable after the *firm* becomes aware of the proposed change.

(3) This *rule* does not apply to anything required to be notified under section 62A of the *Act* (Changes in responsibilities of senior managers) or *SUP* 10C.11 (Statements of responsibilities).

10C.14.16 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) explains how notifications should be submitted.

Revised statements of responsibilities

10C.14.17 G (1) Under section 62A of the *Act*, a *firm* should provide the *FCA* with a revised *statement of responsibilities* if there has been any significant change in the responsibilities of an *FCA-approved SMF manager*.

(2) Details can be found in *SUP* 10C.11 (Statements of responsibilities).

Notifications about fitness, disciplinary action and breaches of COCON

10C.14.18 R (1) If a *firm* becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of an *FCA-approved SMF manager*, or of *candidate* to be one (see *FIT*), it must inform the *FCA* either:

(a) on Form D; or

(b) if it is more practical to do so and with the prior agreement of the *FCA*, by email or fax;

as soon as practicable and, in any case, within seven *business days*.

(2) This *rule* does not apply to anything required to be notified under *SUP* 10C.14.7R (Qualified Form C).

10C.14.19 G *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) applies to the submission of Form D.

10C.14.20 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

10C.14.21 G The duty to notify in *SUP* 10C.14.18R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in *FIT* 2.

10C.14.22 R If a *firm* is required to notify the *FCA* about an *FCA-approved SMF manager* under any of the following:

(1) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or

(2) [deleted]

(3) section 64C of the *Act* (Requirement for ~~relevant~~ authorised persons to notify regulator of disciplinary action);

it must give that notification:

(4) under *SUP* 10C.14.5R (Form C) if that *rule* applies;

(5) under *SUP* 10C.14.7R (Qualified Form C) if that *rule* applies; ~~or~~

(5A) (in the case of a *PRA-authorised person*) under the *PRA's* requirements corresponding to (4) or (5), if those requirements apply; or

(6) (in any other case) in accordance with *SUP* 10C.14.18R (Form D);

and in accordance with the requirements of this chapter (or if applicable the requirements ~~of *SUP* 10A or~~ of the *PRA*) about submission of those forms.

10C.14.23 G The table in ~~*SUP* 10C.12.24G~~ *SUP* 10C.14.24G summarises what the relevant parts of the sections of the *Act* listed in ~~*SUP* 10C.12.22G~~ *SUP*

10C.14.22R say.

10C.14.24 G Table: Explanation of the sections of the Act mentioned in ~~*SUP* 10C.12.22G~~ *SUP* 10C.14.22R

Section	Summary of relevant parts	Other Handbook material	Comments
Section 63(2A) (Duty to notify regulator of grounds for withdrawal of approval)	At least once a year, each *firm* must, in relation to every *SMF manager* for whom an approval has been given on the application of that *firm*: (a) consider whether there are any grounds on which the *FCA* could withdraw the approval; and (b) if the *firm* is of the opinion that there are such grounds, notify the *FCA* of those grounds.		*FIT* sets out *guidance* on the factors a *firm* should take into account when assessing the fitness and propriety of an *approved person*.
Section 64C of the *Act* (Requirement for ~~relevant~~ authorised persons to notify regulator of disciplinary action)	If: (a) a *firm* takes disciplinary action in relation to an *SMF manager*; and (b) the reason, or one of the reasons, for taking that action is a reason specified in *SUP*	*SUP* 15.11 (Notification of COCON breaches and disciplinary action)	An example of when a notification should be made using Form C rather than Form D is when a *firm* is required to notify the *FCA* under section 64C of the *Act* that it has dismissed an *SMF manager*.

	15.11.6R; the *firm* should notify the *FCA* of that fact.		

10C.14.25 G (1) When considering how to notify the *FCA* under *SUP* 10C.14.18R or *SUP* 10C.14.22R, a *firm* should have regard to the urgency and significance of a matter. If appropriate, the *firm* should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting a written notification.

(2) Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another *person* or left on a voicemail, or other automatic messaging service, is unlikely to have been given appropriately.

The need for complete and accurate information

10C.14.26 G (1) The obligations to supply information to the *FCA* under:

(a) *SUP* 10C; or

(b) the sections of the *Act* listed in *SUP* 10C.14.22R;

apply notwithstanding any agreement (for example, a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment.

(2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section or the *Act*.

10C.14.27 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

Application of this section to PRA-approved persons

10C.14.28 R This section also applies to a notification about a *PRA-approved SMF manager* who is not an *FCA-approved SMF manager* required by any of the provisions of the *Act* listed in *SUP* 10C.14.22R.

10C.14.29 R The *PRA's rules* determine how a notification under *SUP* 10C.14.28R is to be made.

10C.14.30 G If a *firm* is required to notify the *FCA* about a *PRA-approved SMF manager* who is not an *FCA-approved SMF manager* under one of the sections of the *Act* referred to in *SUP* 10C.14.28R, it should make a single notification under the *PRA's* requirements. There is no need for a separate notification to the *FCA*.

10C.15 Forms and other documents and how to submit them to the FCA

Purpose

10C.15.1 G The purpose of this section is to:

(1) summarise the main forms and other documents used in this chapter; and

(2) explain how they should be submitted to the *FCA*.

Forms and documents

10C.15.2 G The main forms and other documents used in this chapter are listed in *SUP* 10C.15.3G.

10C.15.3 G Table: FCA approved persons forms and other documents

Form or other document		**Purpose**	**Handbook requirement**
~~the~~ <u>The</u> relevant Form A	*SUP* 10C Annex 2D	Application to perform *designated senior management functions* ~~under the *approved persons* regime~~	*SUP* 10C.10.8D
Form B	*SUP* 10A Annex 5R	Notice to withdraw an application to perform *controlled functions* under the *approved persons* regime	*SUP* 10C.10.36R
		Notice to withdraw an application to vary an approval under the senior ~~management~~ <u>managers</u> regime	*SUP* 10C.13.15R

		~~for *SMF managers*~~	
Form C	*SUP* 10A Annex 6R	Notice of ceasing to perform *controlled functions*	*SUP* 10C.14.5R
Form D	*SUP* 10A Annex 7R	Notification of changes in personal information or application details or functions	*SUP* 10C.14.13R
			SUP 10C.14.15R
		Notification about fitness or of breach of conduct rules	*SUP* 10C.14.18R
			SUP 10C.14.22R
Form E	*SUP* 10C Annex 3D	Internal transfer of an *approved person*	*SUP* 10C.10.9D
Form I	*SUP* 10C Annex 4D	Application to vary a conditional approval ~~under the senior management regime for *SMF managers*~~	*SUP* 10C.13.6D
Form J	*SUP* 10C Annex 6D	Notification of significant change to a *statement of responsibilities*	*SUP* 10C.11
Relevant *statement of responsibilities*	*SUP* 10C Annex 5D		*SUP* 10C.11
[*Editor's note*: The notes at the end of this table will be reviewed in a second Consultation Paper]			

10C.15.4 G *SUP* 10C Annex ~~1G~~ 2G gives examples of the circumstances in which the documents in *SUP* 10C.15.3G should be used.

10C.15.5 G Copies of the forms in *SUP* 10C.15.3G and of the *statement of responsibilities* may be obtained from the *FCA* website. *Credit unions* can obtain copies from the *FCA's* Firm Contact Centre.

10C.15.6 G To contact the ~~FCA's~~ *FCA's* Customer Contact Centre for *approved persons* enquiries:

(1) telephone: 0300 500 0597;

(2) email: firm.queries@fca.org.uk; or

(3) ~~fax: 020 7066 0017; or~~ [deleted]

(4) write to:

Customer Contact Centre

The Financial Conduct Authority

25 The North Colonnade

Canary Wharf

LONDON E14 5HS.

How to make applications and give notifications

10C.15.7 D (1) A *firm* other than a *credit union* must submit a document in column 1 of the table in *SUP* 10C.15.10R, in accordance with the corresponding requirement in column two of that table.

(2) A *credit union* must submit a document in column 1 of the table in *SUP* 10C.15.10R, in accordance with the corresponding requirement in column three of that table.

(3) This direction applies to the forms and other documents listed in the table in *SUP* 10C.15.10R that are submitted under a direction.

10C.15.8 R *SUP* 10C.15.7D also applies to the forms and other documents listed in the table in *SUP* 10C.15.10R that are submitted under a *rule*.

10C.15.9 G It is up to the *credit union* concerned to decide which of the methods of submission available to it under *SUP* 10C.15.10R it is going to use.

10C.15.10 R Table: Method of submission

Form or other document	**Firms that are not credit unions**	**Credit unions**
The relevant Form A	*SUP* 10C.15.11R	*SUP* 10C.15.11R or *SUP* 10C.15.14R

Form B	*SUP* 10C.15.14R	*SUP* 10C.15.14R
Form C	*SUP* 10C.15.11R	*SUP* 10C.15.11R or *SUP* 10C.15.14R
Form D	*SUP* 10C.15.11R	*SUP* 10C.15.11R or *SUP* 10C.15.14R
Form E	*SUP* 10C.15.11R	*SUP* 10C.15.11R or *SUP* 10C.15.14R
Form I	*SUP* 10C.15.11R	*SUP* 10C.15.11R or *SUP* 10C.15.14R
Form J	*SUP* 10C.15.11R	*SUP* 10C.15.11R or *SUP* 10C.15.14R
Relevant *statement of responsibilities*	In accordance with the requirements for the form with which it is submitted	In accordance with the requirements for the form with which it is submitted

Method of submission: electronic submission

10C.15.11 R (1) An application or submission by a *firm* made under this *rule* must be made by submitting the form or document online at fca.org.uk using the *FCA's* and *PRA's* ~~Connect system~~ *online notification and application system*.

(2) A *firm* must use the version of the form or document made available on the electronic system referred to in (1), which is based on the version found in the applicable Annex to this chapter or to *SUP* 10A (which are listed in *SUP* 10C.15.3G).

(3) If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, *SUP* 10C.15.14R applies until such time as facilities for online submission are restored.

10C.15.12 G If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, the *FCA* and *PRA* will endeavour to publish a notice on their websites confirming that:

(1) online submission is unavailable; and

(2) the alternative methods of submission in *SUP* 10C.15.14R applies.

10C.15.13 G Where *SUP* 10C.15.11R(3) applies to a firm, *GEN* 1.3.2R (Emergency) does not apply.

Method of submission: other forms of submission

10C.15.14 R (1) An application or submission by a *firm* made under this *rule* must be made in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).

(2) A *firm* must use the version of the form or document found in the applicable Annex to this chapter or to *SUP* 10A (which are listed in *SUP* 10C.15.3G).

10C.16 References and accurate information

References

10C.16.1 R ~~(1)~~ *SYSC* 22 (Regulatory references) says that if a *firm* (A):

(a) is considering appointing a *person* (P) to perform any *controlled function* or certain other functions;

(b) requests a reference from a *firm* (B) that is P's current or former *employer*; and

(c) indicates to B the purpose of the request;

B should, as soon as reasonably practicable, give a reference to A.

~~(2)~~ ~~This applies even if A is a *firm* to which *SUP* 10A (FCA Approved Persons) applies rather than this chapter.~~

10C.16.2 G *SYSC* 22 also requires *firms* to get a reference before applying to have someone approved as an *approved person*.

10C.16.3 G [deleted]

10C.16.4 G [deleted]

The need for complete and accurate information

10C.16.5 G (1) The obligations to supply information to:

(a) the *FCA* under this chapter;

(b) [deleted]

apply notwithstanding any:

(c) agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)); or

(d) any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment.

(2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this chapter.

10C.16.6 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

[*Editor's note*: The other annexes to SUP 10C (forms) will be consulted on in a second Consultation Paper.]

Delete the existing SUP 10C Annex 1G (Summary of forms and their use in the senior management regime for SMF managers) and replace it with the following new annex. The text is not underlined.

10C Annex 1 **What functions apply to what type of firm**

Introduction

1.1 R This annex sets out which *FCA controlled function* applies to which type of *SMCR firm*.

1.2 G If an *FCA controlled function* is not included in a table for a particular class of *firm* that means that *FCA controlled function* does not apply to any *firm* in that class.

1.3 G (1) If one of the tables in this annex shows that an *FCA controlled function* applies to a type of *firm*, that function does not necessarily apply to every *firm* in that class.

(2) That may be because of limitations in the description of the function itself. For example, the *partner function* only applies to partnerships.

(3) Another reason would be if the *rules* defining the *FCA controlled function* refer to a *rule* elsewhere in the *Handbook* and that *rule* only applies to certain types of *firm*. For example, *SYSC* 1 Annex 1 (Detailed application of SYSC) and *SYSC* 4.4 (Apportionment of responsibilities) cut back the application of the *limited scope function*.

(4) The exclusions in section 2 of this annex and in *SUP* 10C.1 are also relevant.

1.4 R In the tables in this annex:

(1) ✓ means that the *FCA controlled function* applies;

(2) × means that the *FCA controlled function* does not apply;

Exclusions

2.1 R None of the *FCA controlled functions* apply to a *not-for-profit debt advice body*.

2.2 R None of the *FCA controlled functions* apply to an *incoming EEA firm* that is an *EEA pure reinsurer* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*.

2.3 R None of the *FCA controlled functions* apply to an *internally managed AIF* which is a *body corporate* and not a *collective investment scheme*.

2.4 R (1) This chapter, except in respect of the *FCA required functions*, does not apply to an *authorised professional firm* in respect of its *non-mainstream regulated activities*, subject to (2).

(2) Where the *authorised professional firm* has appointed *FCA-approved persons* to perform the *FCA governing functions* with equivalent responsibilities for the *firm's non-mainstream regulated activities* and other *regulated activities*, for the *firm's non-mainstream regulated activities* this chapter applies with respect to the *FCA governing functions* and the *FCA required functions* only.

Functions applying to banking sector firms

3.1 R (1) The table in *SUP* 10C Annex 1 3.2R sets out which *FCA controlled function* applies to which type of *SMCR dual regulated banking sector firm*.

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

(a) a *UK SMCR dual regulated banking sector firm*;

(b) an *EEA SMCR dual regulated banking sector firm*; and

(c) a *third-country SMCR dual regulated banking sector firm*.

3.2 R Table: Controlled functions applying to banking sector firms

Brief description of function	**Function number**	**UK firm**	**EEA firm**	**Third-country firm**
Governing functions				
Executive director function	SMF 3	✓	×	✓
Chairman of the nomination committee function	SMF 13	✓	×	×
Partner function	SMF 27	✓	×	×

Required functions				
Compliance oversight function	SMF 16	✓	×	✓
Money laundering reporting function	SMF 17	✓	✓	✓
Other overall responsibility function	SMF 18	✓	×	×
EEA branch senior manager function	SMF 21	×	✓	×
Other local responsibility function	SMF 22	×	×	✓
Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in *SUP* 10C Annex 1 3.1R. Therefore: (1) column three (UK firm) refers to *SUP* 10C Annex 1 3.1R(2)(a); (2) column four (EEA firm) refers to *SUP* 10C Annex 1 3.1R(2)(b); and (3) column five (Third-country firm) refers to *SUP* 10C Annex 1 3.1R(2)(c).				

Functions applying to insurance sector firms

4.1 R (1) The table in *SUP* 10C Annex 1 4.2R sets out which *FCA controlled function* applies to which type of *Solvency II firm* (including a *large non-directive insurer*) and to a *small non-directive insurer*.

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

(a) a *Solvency II firm* not within any other paragraph of this *rule*;

(b) a *Solvency II firm* within paragraph (c) of the *Glossary* definition of *Solvency II firm* (EEA branch);

(c) a *Solvency II firm* within paragraph (b) of the *Glossary* definition of *Solvency II firm* (third country branch);

(d) a *small non-directive insurer*;

(e) a *firm* in *SYSC* 23 Annex 1 3.2R (*firms* in run-off); and

(f) an *insurance special purpose vehicle*.

(3) An *insurance special purpose vehicle* only falls into paragraph (2)(f). Subject to that a *firm* in (2)(e) does not fall into any other

paragraph.

4.2 R Table: Controlled functions applying to insurance sector firms

Brief description of function	Function number	Solvency II and large NDF	EEA branches	Third country branches	Small NDF and other	ISPV
Governing functions						
Executive director function	SMF 3	✓	×	✓	✓	✓
Chairman of the nomination committee function	SMF 13	✓	×	×	×	×
Chairman of the with-profits committee function	SMF 15	✓	×	✓	×	×
Partner function	SMF 27	✓	×	×	✓	×
Required functions						
Compliance oversight function	SMF 16	✓	×	✓	✓	✓
Money laundering reporting function	SMF 17	✓	✓	✓	✓	×
Other overall responsibility function	SMF 18	✓	×	×	×	×
EEA branch senior manager function	SMF 21	×	✓	×	×	×
Conduct risk oversight (Lloyd's) function See Note 2	SMF 23b	✓	×	×	×	×
Other local responsibility function	SMF 22	×	×	✓	×	×
Note 1: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* at *SUP* 10C Annex 1 4.1R. Therefore: (a) column three (Solvency II and large NDF) refers to *SUP* 10C Annex 1 4.1R(2)(a); (b) column four (EEA branches) refers to *SUP* 10C Annex 1 4.1R(2)(b);						

(c) column five (Third country branches) refers to *SUP* 10C Annex 1 4.1R(2)(c); (d) column six (Small NDF and other) refers to *SUP* 10C Annex 1 4.1R(2)(d) and (e); and (e) column seven (ISPV) refers to *SUP* 10C Annex 1 4.1R(2)(f).
Note 2: The *conduct risk oversight (Lloyd's) function* only applies to the *Society*.

Functions applying to core firms

5.1 R (1) The table in *SUP* 10C Annex 1 5.2R sets out which *FCA controlled function* applies to which type of *core SMCR firm*.

(2) *Firms* in (1) are divided into the following categories for the purposes of this *rule*:

(a) a *UK SMCR firm* not falling into (d);

(b) an *EEA SMCR firm*;

(c) a *non-UK SMCR firm* not falling into (b); and

(d) a *firm* falling into *SYSC* 23 Annex 1 5.4R (a *firm* exempt under *MiFID* whose only *permission* is *bidding in emissions auctions*) but that does not fall into (c).

5.2 R Table: Controlled functions applying to core SMCR firms

Brief description of function	**Function number**	**UK firm**	**EEA firm**	**Other non-UK firm**	**Emission auction bidder**
Governing functions					
Chief executive function	SMF 1	✓	×	×	✓
Executive director function	SMF 3	✓	×	✓	✓
Chairman function	SMF 9	✓	×	×	✓
Partner function	SMF 27	✓	×	×	✓
Head of third country branch function	SMF 19	×	×	✓	×
Required functions					
Compliance oversight function	SMF 16	✓	×	✓	×

Money laundering reporting function	SMF 17	✓	✓	✓	✓
EEA branch senior manager function	SMF 21	×	✓	×	×
Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* at *SUP* 10C Annex 1 5.1R. Therefore: (a) column three (UK firm) refers to *SUP* 10C Annex 1 5.1R(2)(a); (b) column four (EEA firm) refers to *SUP* 10C Annex 1 5.1R(2)(b); (c) column five (Other non-UK firm) refers to *SUP* 10C Annex 1 5.1R(2)(c); and (d) column six (Emission auction bidders) refers to *SUP* 10C Annex 1 5.1R(2)(d).					

Functions applying to enhanced scope firms

6.1 R The table in *SUP* 10C Annex 1 6.2R sets out which *FCA controlled function* applies to which type of *enhanced scope SMCR firm*.

6.2 R Table: Controlled functions applying to enhanced scope SMCR firms

Brief description of function	Function number	Enhanced scope firms
Governing functions		
Chief executive function	SMF 1	✓
Executive director function	SMF 3	✓
Group entity senior manager function	SMF 7	✓
Chairman function	SMF 9	✓
Chairman of the risk committee function	SMF 10	✓
Chairman of the audit committee function	SMF 11	✓
Chairman of the remuneration committee function	SMF 12	✓
Chairman of the nomination committee function	SMF 13	✓

Senior independent director function	SMF 14	✓
Partner function	SMF 27	✓
Required functions		
Compliance oversight function	SMF 16	✓
Money laundering reporting function	SMF 17	✓
Other overall responsibility function	SMF 18	✓
Systems and controls functions		
Chief finance officer function	SMF 2	✓
Chief risk officer function	SMF 4	✓
Head of internal audit function	SMF 5	✓
Chief operations function	SMF 24	✓

Functions applying to limited scope core firms

7.1 R (1) The table in *SUP* 10C Annex 1 7.3R sets out which *FCA controlled function* applies to which type of *limited scope core SMCR firm* other than *firms* covered by *SUP* 10C Annex 1 7.2R.

(2) *SMCR firms* in (1) are divided into the following categories for the purposes of in (1):

(a) a *SMCR firm* not within (b) or (c);

(b) a *firm* falling within row (5) of the table in *SYSC* 23 Annex 1 4.3R (distribution of *non-investment insurance contracts*); and

(c) a *firm* falling within *SYSC* 23 Annex 1 4.6R (credit firms with limited permission).

7.2 R (1) The table in *SUP* 10C Annex 1 7.4R sets out which *FCA controlled function* applies to a *limited scope core SMCR firm* that is a *sole trader* or an *authorised professional firm*.

(2) *Firms* in (1) are divided into the following categories for the purposes of this *rule*:

(a) a *UK SMCR firm*;

(b) an *EEA SMCR firm*; and

(c) a *non-UK SMCR firm* not falling into (b).

7.3 R Table: Controlled functions applying to limited scope core SMCR firms except sole traders and authorised professional firms

Brief description of function	Function number	General	Insurance mediation and credit firms
Required functions			
Compliance oversight function	SMF 16	✓	×
Money laundering reporting function	SMF 17	✓	×
Limited scope function	SMF 29	✓	✓
Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* at *SUP* 10C Annex 1 7.1R. Therefore: (1) column three (General) refers to *SUP* 10C Annex 1 7.1R(2)(a); and (2) column four (Insurance mediation and credit firms) refers to *SUP* 10C Annex 1 7.1R(2)(b) and (c).			

7.4 R Table: Controlled functions applying to limited scope core SMCR firms that are sole traders or authorised professional firms

Brief description of function	Function number	UK firm	EEA firm	Other non-UK firm
Governing functions				
Chief executive function	SMF 1	✓	×	×
Executive director function	SMF 3	✓	×	✓
Chairman function	SMF 9	✓	×	×
Partner function	SMF 27	✓	×	×
Head of third country branch function	SMF 19	×	×	✓
Required functions				

Compliance oversight function	SMF 16	✓	×	✓
Money laundering reporting function	SMF 17	✓	✓	✓
EEA branch senior manager function	SMF 21	×	✓	×
Limited scope function	SMF 29	✓	×	✓
Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* at *SUP* 10C Annex 1 7.2R. Therefore: (a) column three (UK firm) refers to *SUP* 10C Annex 1 7.2R(2)(a); (b) column four (EEA firm) refers to *SUP* 10C Annex 1 7.2R(2)(b); and (c) column five (Other non-UK firm) refers to *SUP* 10C Annex 1 7.2R(2)(c).				

7.5 G As explained in *SUP* 10C Annex 1 1.3G, the full range of *FCA controlled functions* that are applied to a class of *firm* by this Annex may not apply to every *firm* in that class. For example, in the case of a *limited scope core SMCR firm* that is a *sole trader* or an *authorised professional firm*:

(1) *SUP* 10C Annex 1 2.4R cuts back the *FCA controlled functions* that apply to an *authorised professional firm*.

(2) In practice it is unlikely that the *governing functions* will apply to a *sole trader* (see *SUP* 10C.4A.1G).

(3) The *money laundering reporting function* does not apply to a *sole trader* with no employees (see *SYSC* 6.3.9R).

Delete the existing SUP 10C Annex 2D (Form A: Application to perform senior management functions) and replace it with a new annex. The text of the new annex is the same as what was SUP 10C Annex 1G (Summary of forms and their use in the senior management regime for SMF managers) before the insertion of a new SUP 10C Annex 1 by this instrument but is amended as shown.

10C Annex 2G **Summary of forms and their use in the senior ~~management~~ managers regime ~~for SMF managers~~**

Function	Form	Submission
(1) *Person* about to perform an *FCA-designated senior management function* if ~~he has~~ they have never been approved by the *FCA* or *PRA* before.	A	Submitted by the *firm* making the application before activities requiring approval commence.
(2) The *candidate* is to perform an *FCA-designated senior management function* and either: (a) has current approval to perform an *FCA controlled function* that is a *significant influence function*, an *FCA-designated senior management function*, or a *PRA controlled function*; or (b) has had such an approval within the previous six *months*.	Shortened Form A if conditions met	Submitted by the *firm* making the application before activities requiring approval commence.
(3) *Candidate* ceased to be an *approved person* more than six ~~months~~ *months* ago.	A	Submitted by the *firm* making the application before activities requiring approval commence.
(4) Either: (a) *candidate* is seeking to perform an *FCA-designated senior management function* for the first time and has never been approved to perform an *FCA controlled function* that is a *significant influence function* or a *PRA controlled function* before; or (b) *candidate* ceased to have approval from the *FCA* or *PRA* to perform an *FCA controlled function* that is a *significant*	A	Submitted by the *firm* making the application before activities requiring approval commence.

influence function, an *FCA-designated senior management function* or a *PRA controlled function* more than six *months* ago.		
(5) *Firm* withdrawing an outstanding application to perform an *FCA-designated senior management function*.	B	Submitted by the *firm*: signed by all *interested parties*.
(6) *Person* ceasing to perform an *FCA-designated senior management function*.	C (unless it should be notified under Form E)	Submitted by the *firm* within seven *business days* of *approved person* ceasing to perform *controlled function(s)*.
(7) Either: (a) an *FCA-approved SMF manager's* title, name or national insurance number changes; or (b) there is information which may be material to the continuing assessment of an *FCA-approved SMF manager's* fitness and propriety.	D Form C to be used instead where the *person* is ceasing to perform a *controlled function*	Submitted by *firm* within seven *business days* of the firm becoming aware of the matter.
(8) *Firm* obliged to notify the *FCA* under: a) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or (b) [deleted] (c) section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action).	Form D. Form C to be used instead where the *person* is ceasing to perform a *controlled function*	Submitted by *firm* within seven *business days* of the *firm* becoming aware of the matter. A *firm* should not use Form H as that form only applies to notifications relating to breaches by those who are not *SMF managers*.
(9) *Person* remaining with the same *firm* but changing *FCA-designated senior management functions*.	E	Submitted by *firm* to the *FCA* before changes take place.
(10) *Person* remaining with the same ~~*firm*~~ <u>*PRA-authorised person*</u> but giving up a *PRA controlled function* and taking up an *FCA-designated senior management function*.	E	Submitted by *firm* to the *FCA* before changes take place.
(11) *Person* remaining with the same ~~*firm*~~ <u>*PRA-authorised person*</u> but giving up an *FCA-designated senior management*	E	Submitted by *firm* to the *PRA* before changes take place (see the *PRA's* requirements).

function and taking up a *PRA-designated senior management function*.		
(12) *Person* remaining with the same ~~*firm*~~ <u>*PRA-authorised person*</u> in the circumstances described in example 9 in the table in *SUP* 10C.7.3G (ceasing to perform a *PRA controlled function* triggering need for *FCA* approval to perform the *other overall responsibility function*).	E	Submitted by *firm* to the *FCA* in advance of giving up the *PRA controlled function*.
(13) *Person* with approval to perform the *other overall responsibility function* remaining with the same *firm* but ceasing to require approval to perform that function because of being approved to perform another *controlled function* (see the table in *SUP* 10C.7.3G for examples).	E	Submitted by *firm* to: (a) the *PRA* (if the new function is a *PRA controlled function* <u>and the *firm* is a *PRA-authorised person*</u>); or (b) the *FCA* (if the new function is an *FCA controlled function*).
(14) *Person* remaining with the same ~~*firm*~~ <u>*PRA-authorised person*</u> in the circumstances described in example 8 in the table in *SUP* 10C.9.9G (giving up a *PRA controlled function* triggering need for *FCA* approval).	E	Submitted by *firm* to the *FCA* in advance of giving up the *PRA controlled function*.
(15) *Firm* applying for the variation of a conditional approval<u>.</u>	Form I	
(16) *Firm* withdrawing an outstanding application to vary a conditional approval.	Form B	Submitted by the *firm*: signed by all *interested parties*.
(17) Significant change to an *approved person's* responsibilities<u>.</u>	Form J Form J should not be used if the *firm* is also submitting a Form A, E or I for the same *SMF manager*	The revised *statement of responsibilities* should be included. A *statement of responsibilities* must be submitted in the format prescribed by the *FCA* (*SUP* 10C Annex 5D).

…

15 Notifications to the FCA

…

15.11 Notification of COCON breaches and disciplinary action

Reasons for making a notification to the FCA

15.11.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of *approved persons* and certain other *persons* who work for a *firm*.

15.11.2 G *COCON* sets out *rules* under section 64A of the *Act* and *guidance* on those *rules* for ~~*relevant authorised person* and insurers~~ <u>*SMCR firms*</u>.

15.11.3 G [deleted]

15.11.4 G Under section 64C of the *Act*, a *firm* must notify the *FCA* if it takes disciplinary action against certain people working for ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u> and the reason for this action is a reason specified in *rules* made by the *FCA* (those *rules* are set out in *SUP* 15.11.6R).

15.11.5 G Disciplinary action against a *person* is defined in section 64C of the *Act* as the issuing of a formal written warning, the suspension or dismissal of that *person* or the reduction or recovery of any of such *person's* remuneration.

15.11.6 R If a reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of *COCON*, then the ~~*relevant authorised person*~~ <u>*SMCR firm*</u> is required to notify the *FCA* of the disciplinary action.

15.11.6A G The effect of section 64C of the *Act* and *SUP* 15.11.6R is that the reporting obligation in section 64C of the *Act* and in this section:

(a) only applies to ~~*relevant authorised persons*~~ <u>*SMCR firms*</u>; and

(b) only covers *persons* who are subject to *COCON* (who are called *conduct rules staff* in the *FCA Handbook*) rather than to the whole workforce of ~~a *relevant authorised person*~~ <u>an *SMCR firm*</u>.

15.11.7 G A *firm* should make a separate notification about a *person* under section 64C of the *Act* where:

(1) it has made a notification to the *FCA* about a *person* pursuant to *SUP* 15.3.11R(1)(a) because of a breach of *COCON*; and

(2) it subsequently takes disciplinary action against the *person* for the action, failure to act, or circumstance, that amounted to a breach of *COCON*.

15.11.8 G If, after a *firm* has made a notification for a *person* (A) pursuant to section 64C of the *Act*, it becomes aware of facts or matters which cause it to change its view that A has breached *COCON*, or cause it to determine that A has breached a provision of *COCON* other than the provision to which the notification related, the *firm* should inform the *FCA* of those facts and matters and its revised conclusion in line with a *firm's* obligation to comply with *Principle* 11, *SUP* 15.6.4R and, if applicable, *SUP* 10C or *SUP* 15.11.13R(4).

15.11.9 G If a *firm* takes disciplinary action as a result of a conduct breach (see *SUP* 15.11.6R) against an *employee* but the *employee* has appealed or plans to appeal, the *firm* should still report the disciplinary action under section 64C of the *Act* but should include the appeal in the notification. The *firm* should update the *FCA* on the outcome of any appeal.

15.11.10 G [deleted]

15.11.11 G In relation to any *conduct rules staff*, the *FCA* does not expect a *firm* to notify it pursuant to section 64C of the *Act* if the breach of *COCON* occurred before the application of *COCON* to that *firm*.

Timing and form of notifications: SMF managers

15.11.12 G Where a *firm* is required to notify the *FCA* pursuant to section 64C of the *Act* and that notification relates to an *SMF manager*, *SUP* 10C sets out how and when the notification must be made, and the relevant *notification rules* in *SUP* 10C apply.

Timing and form of notifications: conduct rules staff other than SMF managers

15.11.13 R (1) A *firm* must make any notifications required pursuant to section 64C of the *Act* relating to *conduct rules staff* other than *SMF managers* in accordance with *SUP* 15.11.13R to *SUP* 15.11.15R.

(2) That notification must be made annually.

(3) Each notification must:

(a) cover the 12 *month* period ending on the last day of August; and

(b) be submitted to the *FCA*:

(i) within two months of the end of the reporting period; or

(ii) (if the end of the reporting period in (b)(i) falls on a *day* which is not a *business day*) so as to be received no later than the first *business day* after the end of that period.

(4) *SUP* 15.6.4R and *SUP* 15.6.5R (updates to a notification that is or has become incorrect) apply to a notification under this *rule* but the *firm* must include the update or correction in the next notification it is due to make under this *rule* rather than in the time and manner otherwise required for notifications under those *rules*.

(5) If a *firm* (other than a *credit union*) has nothing to report under

section 64C of the *Act* and nothing to report under *SUP* 15.11.13R(4) for a particular reporting period, it must notify the *FCA* of that fact in accordance with *SUP* 15.11.13R to *SUP* 15.11.14R.

15.11.13A G *SUP* 15.11.8G gives examples of when a notification should be updated under *SUP* 15.11.13R(4).

15.11.14 R (1) A *firm* other than a *credit union* must make each notification pursuant to *SUP* 15.11.13R (notifications about section 64C of the Act relating to *conduct rules staff* other than *SMF managers*) by submitting it online through the *FCA's* website using the electronic system made available by the *FCA* for this purpose.

(2) A *firm* must use the version of Form H (named REP008 – Notification of Disciplinary Action) made available on the electronic system referred to in (1), which is based on the version found in *SUP* 15 Annex 7R.

(3) If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, *SUP* 15.11.15R applies until such time as the facilities for online submission are restored.

15.11.14A G (1) If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that:

(a) online submission is unavailable; and

(b) the alternative methods of submission in *SUP* 15.11.15R apply.

(2) Where *SUP* 15.11.14R(3) applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.

15.11.15 R A *credit union* must make each notification pursuant to *SUP* 15.11.13R (notifications about section 64C of the *Act* relating to *conduct rules staff* other than *SMF managers*) in accordance with the *rules* and *guidance* in *SUP* 15.7, using Form H as set out in *SUP* 15 Annex 7R.

General guidance on notifications of rule breaches and disciplinary action

15.11.16 G [deleted]

15.11.17 G The obligation to notify pursuant to section 64C of the *Act* or to update or correct a notification under *SUP* 15.11.13R(4) does not replace or limit a *firm's* obligation to comply with *Principle* 11.

15.11.18 G When considering whether to make a notification pursuant to section 64C of the *Act*, a *firm* should also consider whether a notification should be made under any *notification rules*, including, without limitation, any *notification* *rules* that require a notification to be made to the *PRA*.

15.11.19 G The obligations to make a notification pursuant to section 64C of the *Act* apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

15.11.20 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

…

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (MISCELLANEOUS AMENDMENTS) (No 2) INSTRUMENT 2018

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):

(a) section 137A (The FCA’s general rules);
(b) section 137T (General supplementary powers);
(c) section 139A (Power of the FCA to give guidance);
(d) section 247 (Trust scheme rules);
(e) section 248 (Scheme particulars rules);
(f) section 261I (Contractual scheme rules); and
(g) section 261J (Contractual scheme particulars rules); and

(2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*12 months from making*] 2018.

Amendments to the Handbook

E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) (No 2) Instrument 2018.

By order of the Board
[*date*] 2018

[*Editor's note*: The text in this Annex takes into account the changes to the Handbook proposed in CP17/18 'Consultation to implementing asset management market study remedies and changes to the Handbook' (June 2017) as if they were made.]

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

6 Operating duties and responsibilities

…

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

…

Table of application

6.6.2 R This table belongs to *COLL* 6.6.1R.

Rule	*ICVC*	*ACD*	Any other *directors* of an *ICVC*	*Depositary* of an *ICVC*	*Authorised fund manager* of an *AUT* or *ACS*	*Depositary* of an *AUT* or *ACS*
6.6.26G		x	x		x	
<u>6.6.27R</u>		<u>x</u>	<u>x</u>		<u>x</u>	
Notes:	…					
	(5)	*COLL* 6.6.20R to *COLL* ~~6.6.26G~~ <u>6.6.27R</u> have a special application as set out in *COLL* 6.6.19R.				

…

<u>Allocation of responsibility for compliance to an approved person</u>

<u>6.6.27</u> <u>R</u> <u>(1)</u> <u>An *AFM* must allocate responsibility for ensuring its compliance with *COLL* 6.6.20R, *COLL* 6.6.25R, and, as applicable, *COLL* 6.6A.2R or *COBS* 2.1.4R to an *approved person*.</u>

<u>(2)</u> <u>Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.</u>

…

8 Qualified investor schemes

…

8.5 Powers and responsibilities

…

Application of value for money assessment and independent director rules

8.5.16 R *COLL* 8.5.17R to *COLL* ~~8.5.21G~~ 8.5.22R apply to an *authorised fund manager* (other than an *EEA AIFM*) of an *AUT*, *ACS* or *ICVC*.

…

Allocation of responsibility for compliance to an approved person

8.5.22 R (1) An *AFM* must allocate responsibility for ensuring its compliance with *COLL* 8.5.17R, *COLL* 8.5.20R, and *COBS* 2.1.4R to an *approved person*.

(2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.

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