

Changes to the Approved Persons Regime for insurers not subject to Solvency II

March 2015



Contents

Abbreviations used in this paper	3
1 Overview	5
2 Changes to approvals in the FCA's Significant Influence Function regime	9
3 New Conduct Rules for approved persons	14
Annex	
1 Table showing changes to Controlled Functions under the reformed Approved Persons Regime	16
2 Cost benefit analysis	17
3 Compatibility statement	19
4 List of questions	22
Appendix	
1 Draft Handbook text	23

We are asking for comments on this Consultation Paper by 15 May 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-15-response-form.

Or in writing to:

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Email: cp15-15@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Abbreviations used in this paper

APER	Statements of Principle for Approved Persons
CBA	Cost benefit analysis
CEO	Chief Executive Officer
CF	Controlled Function
COND	Threshold Conditions handbook
CP	Consultation Paper
EIOPA	European Insurance and Occupational Pensions Authority
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
NDF	Non-Directive Firm
NED	Non-Executive Director
PRA	Prudential Regulation Authority
SID	Senior Independent Director
SIF	Significant Influence Function

1. Overview

Introduction

- 1.1** This Consultation Paper (CP) proposes changes to the Approved Persons Regime for insurers not subject to the Solvency II Directive (Non-directive firms, or NDFs) primarily to address:
- provisions in the Financial Services (Banking Reform) Act 2013 (the Act) applying to all FSMA-authorized firms and
 - the Prudential Regulation Authority's (PRA) proposed reforms to the scope of its pre-approval regime for NDFs

Who does this consultation affect?

- 1.2** This consultation affects all firms with permission to effect or carry out insurance contracts that fall out of scope of the Solvency II Directive, and which hold assets of £25 million or less¹, including UK branches of foreign firms. The proposals in this CP are unlikely to be of practical relevance to approved persons of Appointed Representatives of these firms. We are not proposing any changes to the territorial scope of the existing Approved Persons Regime.

Is this of interest to consumers?

- 1.3** This consultation will primarily be of interest to firms and their approved persons. Consumers may be interested in how the staff they interact with will be required to comply with the proposed Conduct Rules.

Context

- 1.4** The Act and the Solvency II Directive provide important domestic and European legislative context to our proposals for amending our regime for regulating key individuals and governance arrangements in insurers.
- 1.5** The Act introduced provisions which apply in varying ways to different classes of FSMA-authorized firms. It also enables the regulators to introduce enforceable Conduct Rules for certain individuals in these firms. The relevant provisions will come into effect in March 2016.

¹ We will consult later this year to address NDFs with a larger asset base.

- 1.6** In addition to provisions aimed at supporting the prudential strength of firms, the Solvency II Directive includes new requirements to support good governance and to ensure the fitness and propriety of persons performing important functions within insurers.
- 1.7** We have published a number of consultations setting out our proposals for Solvency II firms², taking into account this legislative context, as well as the PRA's intention to reduce the scope of individuals it will subject to pre-approval.
- 1.8** For Solvency II firms, we have proposed to:
- Continue to pre-approve those executive and certain other functions which the PRA is proposing not to maintain, as FCA Significant Influence Functions (SIFs).
 - Make the Chair of the Nominations Committee subject to our pre-approval. The PRA intends to designate the Chairman, Chairs of the Remuneration and Risk Committees and a Senior Independent Director (SID) as senior managers and so subject them to pre-approval by the PRA, requiring FCA consent. The regulators' intention is that no other NEDs will be subject to pre-approval by either regulator.
 - Dis-apply the specific CF8 apportionment and oversight function, and:
 - allow firms to allocate responsibility for the apportionment of responsibilities function to any senior approved individual (instead of mandating that this be allocated to the CEO or equivalent as now), and
 - continue to require responsibility for the oversight of systems and controls to be allocated to the Chief Executive Officer (CEO) or equivalent
 - Amend our current Approved Persons assessments to reflect the Solvency II framework, supplementing the information we request in line with EIOPA Guidelines, including a requirement to submit information on the scope of SIF applicants' responsibilities.
 - Make some amendments to our Handbook to ensure we have appropriate powers in relation to firms' allocations of responsibility, particularly in relation to the PRA's rules on 'Governance Maps' (documents designed to ensure that firms have a clear and appropriate allocation of responsibilities at senior levels).
 - Apply new FCA Conduct Rules with content mirroring those that we have proposed for individuals in banks to FCA and PRA approved persons.
- 1.9** The proposals in this CP take into account proposed changes to the Approved Persons Regime for Solvency II firms and the desirability of maintaining a coherent approach across the two classes of firms, whilst being mindful of the principle of proportionality.
- 1.10** The proposals have been designed to work effectively alongside those of the PRA, and this CP should be read in conjunction with the corresponding PRA consultation.³

² <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-25>; <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05>; <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-16>.

³ This is available at: www.bankofengland.co.uk/pr/Pages/publications/cp/default.aspx

Summary of our proposals

- 1.11** To achieve consistency across the industry, we have taken our proposals for Solvency II firms as a starting point for our approach to NDFs. However, we have sought to apply these proportionately, given that these are generally smaller firms.
- 1.12** We intend to make changes to the scope of the FCA Significant Influence Function regime, to requirements for SIF approval applications, and to introduce new Conduct Rules that approved persons must adhere to.
- 1.13** The PRA is proposing to reduce the scope of its mandatory approval regime for NDFs by requiring them to have a minimum of one individual approved. It has published a set of prescribed responsibilities which must be allocated to a PRA or FCA approved senior manager.
- 1.14** We intend to make FCA SIF holders those individuals in executive governing roles (currently CF1, CF3, CF5 and CF6) who will no longer be pre-approved by the PRA. This will ensure they are subject to FCA pre-approval. We also propose making all Chairmen, Senior Independent Directors and others who have specific roles chairing the Remuneration, Risk, Audit or Nominations Committees FCA SIF holders.
- 1.15** We are not intending to maintain (as an FCA function) the existing PRA CF28 function, as we believe that the PRA's proposed prescribed responsibilities reflect the responsibilities of this function comprehensively.
- 1.16** Reflecting our intentions for Solvency II firms, we also propose:
- Applying new FCA Conduct Rules with content mirroring those that we have proposed for individuals in banks and Solvency II firms to FCA and PRA approved persons.
 - Amending our current approved persons assessments to include a requirement to submit information on the scope of SIF applicants' responsibilities.
- 1.17** We also propose dis-applying the specific CF8 apportionment and oversight function and:
- Allowing firms to allocate the responsibility for apportionment of responsibilities to a senior approved individual⁴ (instead of mandating that this be allocated to the CEO or equivalent as now).
 - Removing the requirement to allocate responsibility for oversight of the establishment and maintenance of systems and controls, because the PRA will require an equivalent responsibility to be allocated to an approved senior manager.
- Equality and diversity considerations**
- 1.18** We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that the proposals in this CP raise concerns with regards to equality and diversity issues. We do not consider that the proposals in this consultation result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender. 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 any input to this consultation on such matters.

⁴ This would mean either an FCA approved SIF holder or a PRA approved Controlled Function holder.

Impact on mutuals

- 1.19** Many of the firms that these reforms apply to are mutuals. We consider that the proposals in this CP are appropriate and proportionate for these firms. We also believe the impact of the proposals will not be significantly different from the impact on other firms, but we welcome views from respondents on this issue.

Next steps

What do you need to do next?

- 1.20** We are asking for feedback on the proposals set out in this CP, and in particular we would welcome responses to consultation questions 1-5, set out at Annex 4.
- 1.21** Please send your responses to us at: cp15-15@fca.org.uk by 15 May 2015. This is a shortened consultation period, to allow for full transition to the reformed regime in time for Commencement of the relevant Financial Services (Banking Reform) Act provisions in March 2016.

What will we do?

- 1.22** We will consider your feedback and plan to publish our final rules later this year.
- 1.23** Further consultation will follow this CP in due course. This will cover our approach to actuarial CF12 and CF12a functions (depending on PRA proposals in this area), changes to forms, consequential changes, and details of transitional arrangements for implementing these reforms.

2. Changes to approvals in the FCA's Significant Influence Function regime

- 2.1** This chapter introduces changes to the scope of the FCA's SIF regime and to the SIF application process for NDFs. Our proposals take into account planned reforms to the approval regimes for deposit-takers, large investment firms and Solvency II firms, as well as plans by the PRA to reduce the scope of their Approved Persons Regime for NDFs.
- 2.2** We have recently published three consultations on changes to the SIF regime for Solvency II firms⁵. We propose to:
- Continue to pre-approve those executive and certain other functions which the PRA is proposing not to maintain, as FCA Significant Influence Functions (SIFs).
 - Make the Chair of the Nominations Committee subject to our pre-approval. The PRA intends to designate the Chairman, Chairs of the Remuneration and Risk Committees and a Senior Independent Director (SID) as senior managers and so subject them to pre-approval by the PRA, requiring FCA consent. The regulators' intention is that no other NEDs will be subject to pre-approval by either regulator.
 - Dis-apply the specific CF8 apportionment and oversight function, and:
 - allow firms to allocate responsibility for the apportionment of responsibilities function to any senior approved individual (instead of mandating that this be allocated to the CEO or equivalent as now), and
 - continue to require responsibility for the oversight of systems and controls to be allocated to the Chief Executive Officer (CEO) or equivalent
 - Amend our current approved persons assessments to reflect the Solvency II framework, supplementing the information we request in line with EIOPA Guidelines, including a requirement to submit information on the scope of SIF applicants' responsibilities.
 - Make some amendments to our Handbook to ensure we have appropriate powers in relation to firms' allocations of responsibility, particularly in relation to the PRA's rules on 'Governance Maps' (documents designed to ensure that firms have a clear and appropriate allocation of responsibilities at senior levels).
 - Apply new FCA Conduct Rules with content mirroring those that we have proposed for individuals in banks to FCA and PRA approved persons.
- 2.3** On 27 March the PRA announced plans for reforms to its regime for approving key individuals in NDFs. The PRA proposes to reduce the scope of its approval regime for NDFs, by requiring

⁵ www.fca.org.uk/your-fca/documents/consultation-papers/cp14-25; <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05>; <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-16>

them to have a minimum of one individual approved. It has published a set of prescribed responsibilities which must be allocated to a PRA or FCA approved senior manager. Firms will not be limited to having only one individual approved by the PRA: more may be brought within the PRA's regime if considered appropriate for the effective management of these prescribed responsibilities.⁶

- 2.4** Changes to the scope of the regulators' respective approval regimes will not lead to substantive changes in the approval process: approval of PRA functions will still be subject to the existing FCA consent mechanism.

Executive governing functions (CF1, CF3, CF5 and CF6)

- 2.5** The prescribed responsibilities on which the PRA is consulting in relation to NDFs are:

- business plan and management information
- financial resources
- legal & regulatory obligations
- oversight of proportionate systems & controls, and risk management.

- 2.6** Financial conduct issues can arise in any area of a firm's business. Accordingly, the PRA's proposed prescribed responsibilities are not wide enough to cover the full breadth of FCA interests. In addition, in insurers, the Act limits the application of Conduct Rules to those who are subject to regulatory pre-approval.

- 2.7** In light of this, we intend to require pre-approval of all individuals taking up executive governing functions whom the PRA has not otherwise approved. These individuals will become FCA SIF holders, and subject only to the FCA's approval processes. For the remaining PRA Controlled Functions we will maintain the existing approval and consent model to ensure that these candidates are suitable from a conduct perspective.

Non-executive directors

- 2.8** In CP15/5⁷ (which we published jointly with the PRA), the PRA proposed only requiring prior approval of Chairmen, SIDs and the Chairs of the Audit, Remuneration and Risk Committees in banks, large investment firms and Solvency II firms. We proposed to only specify one additional NED function for prior approval, namely the Chair of the Nominations Committee. All other NEDs are 'standard NEDs'.

- 2.9** This approach addressed concerns raised in response to our consultation on the scope of the Senior Managers Regime for deposit-takers and large investment firms: firms argued that the inclusion of NEDs other than those discussed in paragraph 2.8 within the regime would encourage these NEDs to adopt quasi-executive roles. So, on reflection, we decided that standard NEDs should not be brought within the Senior Managers Regime and therefore would no longer be subject to regulatory pre-approval. To achieve consistency in treatment between banks and insurers we are proposing that for NDFs (as for Solvency II firms) standard NEDs will no longer be subject to regulatory pre-approval.

⁶ These changes do not affect the position of the existing actuarial functions (CF12 and CF12a), which will be subject to consultation later this year.

⁷ www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05

- 2.10** The combined effect of the regulators' proposals would be that in Solvency II firms standard NEDs would not be included in the PRA's Senior Insurance Manager Function (SIMF) regime or the FCA's SIF regime and therefore would not be subject to pre-approval by the regulators.
- 2.11** In CP15/5⁸ we consulted on keeping only NEDs with specific roles as chairs of committees or as senior independent directors within scope of the Approved Persons Regime. We have not yet received feedback to the February CP, and would welcome views on whether any roles specific to insurers are missing from the reformed regime.
- 2.12** For NDFs, the PRA is not proposing to require their pre-approval for NED roles in all circumstances. However, we believe that it is important for the pursuit of our statutory objectives that non-executives with specific responsibilities in these firms beyond the standard NED role should remain within regulation. So we propose to retain Chairmen, SIDs and the Chairs of the Audit, Remuneration, Risk and Nominations Committees as FCA SIFs where such roles exist within these firms.⁹ As with Solvency II firms, we are interested in respondents' views on whether it would be appropriate to also include other designated Chairs of Board Committees (e.g. the Chair of the With-Profits Committee) within the FCA SIF regime.
- 2.13** When finalising our position on regulating NEDs in NDFs we will take into consideration responses received to the consultation on the regulation of NEDs in Solvency II firms, where appropriate.

Dis-application of CF28 Systems and Controls function

- 2.14** For UK incorporated Solvency II insurers, the PRA has chosen to include Chief Finance Officers, Chief Risk Officers and Heads of Internal Audit as Controlled Functions, taking into account relevant Solvency II requirements.¹⁰
- 2.15** For NDFs the PRA is replacing these functions with the prescribed responsibilities of 'Financial resources' and 'Oversight of proportionate systems & controls, and risk management'. We believe these responsibilities overlap comprehensively with the existing CF28 function. The PRA's approach would mean that a senior individual would be accountable for each of these responsibilities in every firm.
- 2.16** These responsibilities are drafted widely enough to fully encompass conduct matters. The fact that the individual holding these responsibilities would have to be performing a Controlled Function means that the FCA would either directly approve them or need to consent to the PRA's approval of them, and could enforce Conduct Rules against them.¹¹ Retaining the existing CF28 function in addition to the PRA's prescribed responsibility would risk causing confusion and is arguably disproportionate.
- 2.17** We therefore do not plan to maintain the CF28 function for NDFs as an FCA only Controlled Function.

Dis-application of the CF8 function

- 2.18** In insurers there is currently a CF8 required function for responsibility of 'apportionment of responsibilities and oversight of the establishment and maintenance of systems and controls'. Under most circumstances, this must be held by the Chief Executive.

⁸ FCA CP15/5 and PRA CP7/15: Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05

⁹ Not all NDFs have NEDs on their governing bodies.

¹⁰ Solvency II requires firms to have in place a risk management, actuarial, internal audit and compliance functions.

¹¹ See chapter 3, below

2.19 In CP15/16¹² we are consulting on dis-applying this function for Solvency II firms, and:

- Allowing responsibility for apportionment of responsibilities to be allocated to a senior approved person¹³ (currently must be a CEO or equivalent). This gives firms some flexibility in how they manage this responsibility. However, the requirement to allocate this responsibility to a pre-approved individual means that we will have enforcement powers over that individual, providing a strong incentive for them to perform this role diligently.
- As now, requiring responsibility for oversight of the establishment and maintenance of systems and controls to be allocated to the CEO or equivalent. This ensures that this responsibility continues to be held by the most appropriate senior individual.

2.20 For NDFs, we propose to mirror this approach for the 'allocation of responsibility' aspect of the CF8 function. The 'oversight' aspect will be replaced by the PRA's prescribed responsibility for 'oversight of proportionate systems and controls'. This PRA prescribed responsibility can be allocated to any approved senior manager. We will therefore remove the requirement for NDFs to allocate 'oversight' to the CEO or equivalent. We believe that the fact that the PRA's prescribed responsibilities need to be carried out by an approved senior manager gives us sufficient powers of assessment and enforcement.

Q1: Do you agree with the proposed scope of our SIF regime for NDFs?

Q2: Do you agree with our proposals for allocating responsibility for apportionment of responsibilities?

Information on the scope of a SIF holder's responsibilities

2.21 Solvency II EIOPA guidelines state that applications for approval for important senior functions should be accompanied by information on the applicants' proposed scope of responsibilities. While the EIOPA guidelines primarily expect these documents to be of use for assessing the fitness and propriety of a key function holder when they are first taking on the role, we believe these documents can also be useful for supervisory purposes to help establish who is responsible for which areas of the firms' business on an ongoing basis. In CP16/15 we have therefore consulted on requiring Solvency II firms to update their scope of responsibilities documents (although there will not be a requirement on firms to proactively supply these updated documents to the regulator). We also propose requiring firms to keep records for ten years to enable themselves and the FCA to identify historic accountabilities should problems come to light in an area of the firms' business some time after they arose.

2.22 We also believe that this approach is appropriate and proportionate for NDFs, where the number of responsibilities is likely to be fewer and the allocation of ownership of them less complex than in larger firms, making the drafting of such documents more straightforward. However, in the interests of proportionality, we do not propose asking NDFs to also draw up 'Governance Maps' as required by PRA and FCA rules for Solvency II firms.

Q3: Do you agree with our proposals for requiring firms to submit and maintain information on the scope of SIF holders' responsibilities?

¹² <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-16>

¹³ Either an FCA SIF or a PRA SIMF

Criminal record checks

- 2.23** The PRA proposes that for both Solvency II firms and NDFs, candidates for PRA Controlled Functions holder roles should be subject to a criminal record check by their employer before submitting their application for pre-approval. We do not propose to introduce this requirement for FCA only functions in such firms at this time, although we may consider whether it is appropriate for all FSMA-authorised firms in future.¹⁴

¹⁴ We have proposed requiring firms to undertake criminal records checks for applicants for Senior Manager roles in deposit-takers and large investment firms from the 7 March 2016.

3. New Conduct Rules for approved persons

- 3.1** This chapter proposes new, enforceable, Conduct Rules to apply to PRA and FCA approved persons in NDFs.
- 3.2** Section 64A of FSMA (as amended by the Act) gives the FCA power to introduce Conduct Rules for certain individuals in FSMA-authorized firms. The regulators aim to design a regime that demands consistent standards of conduct from individuals across deposit-takers, large investment firms and insurers. In light of this, in our November consultation CP14/25, we announced that we intended to adopt Conduct Rules for individuals in Solvency II firms that mirror the content of those we suggested for deposit-takers and large investment firms. We believe these Conduct Rules are also appropriate for NDFs.
- 3.3** These Conduct Rules build on the existing Statements of Principles for Approved Persons (APER), with two additions. Firstly, individuals would be explicitly required to pay due regard to the interests of customers and treat them fairly, mirroring existing obligations on firms. Secondly, there is a specific requirement on those in positions of particular responsibility to take reasonable steps to ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of that delegated responsibility effectively. This aims to strengthen senior accountability for activity in the area of business for which individuals are responsible but which they are not personally managing.
- 3.4** The full set of FCA Conduct Rules is set out below:

First tier – Individual Conduct Rules

Rule 1: You must act with integrity.

Rule 2: You must act with due skill, care and diligence.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

Rule 5: You must observe proper standards of market conduct.

Second tier – Significant Influence Function holder Conduct Rules

SI1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

SI2: 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.

SI3: 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.

SI4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

- 3.5** For FSMA-authorized persons (including insurers) which are not deposit-takers or large investment firms, the regulators can only enforce Conduct Rules against individuals who are subject to regulatory pre-approval. We propose to apply Rules 1-5 to all FCA approved persons and PRA approved persons in NDFs. We propose to apply Rules SI1- SI4 to FCA SIF holders only within NDFs, and to all PRA approved persons in such firms.¹⁵
- 3.6** We also propose to apply the same guidance to NDFs as is applied to deposit-takers, large investment firms and Solvency II firms. That draft guidance is attached in the proposed changes to Handbook text at Appendix 1.
- 3.7** Insurers are not subject to section 64B of FSMA that requires firms to ensure that their approved persons understand the new regime that applies to them. But we would expect insurers to do this in order to comply with the threshold condition in paragraph 3D to Schedule 6 of FSMA (and see current guidance on this in COND 2.5.6G(7)).
- 3.8** To align the Conduct Rules for banks, Solvency II firms and NDFs, we will consider responses to all consultations together before finalising a common set of rules and guidance for individuals across all such firms.
- Q4: Do you agree that these are the right Conduct Rules for the FCA to apply to approved persons in NDFs?**
- Q5: Does the proposed guidance attached at Appendix 1 give helpful clarity on the behaviours the FCA expects under each of the Conduct Rules?**

¹⁵ Under the Act, the PRA may only designate Controlled Functions which it considers to be Senior Management Functions.

Annex 1

Table showing changes to Controlled Functions under the reformed Approved Persons Regime

Current PRA Controlled Function	New PRA SIMF / CF	FCA SIFs
Director (CF1)	Small insurer senior management function (SIMF 25)	CF1s not otherwise approved by the PRA
NED (CF2)	Small insurer senior management function (SIMF 25)	Chair of the Nominations Committee (CF7) not otherwise approved by the PRA
		Chairman (CF7A) not otherwise approved by the PRA
		Senior Independent Director (CF 7B) not otherwise approved by the PRA
		Chair of the Remuneration Committee (CF7C) not otherwise approved by the PRA
		Chair of the Risk Committee (CF7D) not otherwise approved by the PRA
		Chair of the Audit Committee (CF7E) not otherwise approved by the PRA
CEO (CF3)	Small insurer senior management function (SIMF 25)	CF3s not otherwise approved by the PRA
Director of unincorporated association (CF5)	Small insurer senior management function (SIMF 25)	CF5s not otherwise approved by the PRA
Small friendly society function (CF6)	Small insurer senior management function (SIMF 25)	CF6s not otherwise approved by the PRA
FCA Apportionment and oversight (CF8)	To be dis-applied	
FCA Compliance (CF10)		FCA Compliance (CF10)
FCA CASS Operational Oversight (CF10a)		FCA CASS Operational Oversight (CF10a)
FCA Money Laundering Reporting (CF11)		FCA Money Laundering Reporting (CF11)
Chief Actuary (CF 12)	To be reviewed in due course	
With-profits Actuary (CF 12A)	To be reviewed in due course	
Systems and Controls (CF 28)	To be dis-applied	
FCA Significant Management (CF29)		FCA Significant Management (CF29)
FCA Customer function (CF30)		FCA Customer function (CF30)

Annex 2

Cost benefit analysis

1. The FCA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 128J FSMA refer). The FCA considers that the CBA set out below meets the FSMA CBA requirements.
2. The FCA considers that for the following proposals, incremental costs to firms will be minimal:
 - Pre-approving new Controlled Functions which the PRA has chosen to stop making subject to its pre-approval. The proposal is to use the existing Approved Persons Regime mechanisms and processes to individuals who are already subject to pre-approval (albeit by the PRA).
 - Conduct Rules: the FCA Conduct Rules themselves do not introduce broader requirements on NDFs and only introduce one additional requirement on all approved persons, individual Conduct Rule 4 ('Rule 4'), and one additional requirement on FCA SIF holders, Significant Influence Conduct Rule 3 ('SI3'). Both Rule 4 and SI3 are aligned with existing guidance in APER.
3. The detailed implementation of the following items is not yet finalised:
 - Information on SIF applicants' proposed scope of responsibilities: the FCA already requires information to ascertain whether individuals applying for Controlled Function roles are fit and proper. The proposal is to include information on the scope of the responsibilities for SIFs.
 - Transitional arrangements for possible grandfathering or migration of those individuals performing functions which the PRA proposes to stop designating, but which we wish to make subject to our pre-approval.
4. Much of the administrative burden on firms and the FCA's operations and systems will depend on this detail. The FCA will consult on this and, if necessary, provide a CBA in a later CP.
5. We welcome views from affected firms on whether this is an accurate assessment of the costs that they will face as a result of the proposals set out in this CP.

FCA costs

6. The proposals contained in this consultation will have an impact on the FCA's existing authorisations, supervision and enforcement processes and systems. However, the impact on resources is expected to be minimal as existing capacity is likely to be deployed.

Benefits

7. The changes proposed in this document will further the FCA's objectives by :
- supporting fitness and propriety and supervision through the provision and maintenance of information on the scope of SIF applicants'/ holders' responsibilities
 - ensuring that key individuals remain in scope of conduct regulation and
 - emphasising the importance of treating customers fairly and of responsible delegation in the new Conduct Rules

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

1. This Annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This Annex also sets out our view of how the proposed rules are compatible with our duty, so far as is compatible with acting in a way which advances the consumer protection or market integrity objectives, to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA).
3. For our assessments of the equality and diversity implications, and impact on mutuals of these proposals, see paragraphs 1.18 and 1.19, respectively.

The FCA's strategic objective and regulatory principles

4. The proposals set out in this consultation paper are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. They will clarify responsibilities at the top of NDFs. This should, over time, result in improved governance within this sector of the industry.
5. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

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

6. The proposals set out in this consultation will impact the FCA's existing authorisations, supervision and enforcement processes and systems. But the impact on resources is expected to be minimal as existing capacity is likely to be deployed.

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

7. The proposals set out in this consultation are intended to support fitness and propriety, retain key individuals within the scope of conduct regulation and emphasise the importance of treating customers fairly, and of responsible delegation by SIF holders. As stated in our cost benefit analysis, we consider that our proposals are likely to result in minimal cost increases to firms, compared to the potential benefits to consumers. We therefore believe the proposals in this consultation paper are proportionate to the benefits.

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

8. NDFs are generally small firms and have little capability to support economic growth. However, the proposed changes are intended to have a positive impact on the behaviour and culture of firms, which should contribute the advancement of this objective in so far as is possible with these small firms.

The general principle that consumers should take responsibility for their decisions

9. The proposals we have made concern the requirements applying to NDFs' staff. These are not matters over which consumers can have any influence.

The responsibilities of senior management

10. The proposals contained in this consultation paper aim to ensure that individuals with significant influence within NDF insurers are fit and proper to execute all their responsibilities. The new Conduct Rule for SIF holders on delegation will also emphasise senior accountability for activity in the area of business for which they are responsible but which they are not personally managing.

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

11. We believe our proposals comply with this principle. Our implementation of changes to the Approved Persons Regime for NDFs are designed to take into account the different statutory and regulatory provisions that apply to such firms compared to deposit-takers and larger insurers. The Conduct Rules are also written at a reasonably high level, which allows them to be applied so as to reflect the differing levels of complexity and riskiness of different firms' businesses.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

- 12.** We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter or any of our findings or conclusions of an investigation public except in the circumstances described in chapter 6 of the Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.
- 13.** The FCA has a range of powers, contained in FSMA, which can be used to bring firms into compliance with regulatory requirements. There are a number of legal constraints in FSMA that apply to the FCA's ability to publish confidential information about its use of these powers against specific firms. We see no additional benefit to our objectives by requiring firms to publish information about this.

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

- 14.** We are an open and transparent regulator. The FCA will engage actively with relevant stakeholders throughout the consultation process.

The FCA's operational objectives

Consumer protection and market integrity

- 15.** The proposals contained in this consultation paper are intended to create a structure within NDFs that will make it more likely that individuals and roles are appropriately matched and that high standards of conduct are observed. We therefore consider that these aims and objectives support our consumer protection and market integrity objectives.

Promoting competition

- 16.** The proposals in this CP act principally to advance our consumer protection objective. The scope for promoting effective competition in a way that would remain compatible with advancing that objective is limited. However, we consider that these proposals promote effective competition in the interests of consumers in so far as is compatible with acting in a way which advances the consumer protection objective, in accordance with our duty under section 1B(4)FSMA. The approach we have taken puts lighter obligations on NDFs which are generally smaller than Solvency II firms. We think this is a proportionate approach, and also potentially benefits new entrants to the market, supporting competition.
- 17.** An alternative approach we could have taken would be to allow those individuals in governing functions not pre-approved by the PRA to fall out of FCA regulation. However, we do not believe this would be compatible with advancing our consumer protection objective.

Annex 4

List of questions

- Q1:** Do you agree with the proposed scope of our SIF regime for NDFs?
- Q2:** Do you agree with our proposals for allocating responsibility for apportionment of responsibilities?
- Q3:** Do you agree with our proposals for requiring firms to submit and maintain information on the scope of SIF holders' responsibilities?
- Q4:** Do you agree that these are the right Conduct Rules for the FCA to apply to approved persons in NDFs?
- Q5:** Does the proposed guidance attached at Appendix 1 give helpful clarity on the behaviours the FCA expects under each of the Conduct Rules?

Appendix 1

Draft Handbook text

[*Editor’s note:* The text in this annex takes into account the changes suggested by CP14/25 *Changes to the Approved Persons regime for Solvency II firms* (November 2014), CP14/31 *Strengthening Accountability in banking: forms, consequential and transitional aspects* (December 2014), CP15/5 *Approach to non-executive directors in banking and Solvency II firms* (February 2015), the near final rules in CP 15/9 *Strengthening accountability in banking: a new regulatory framework for individuals – feedback on FCA CP 14/13* (March 2015), and the proposals in CP 15/16 *Changes to Approved Persons Regime for Solvency II firms ... and governance proposals and feedback to CP14/25* (March 2015), as if they were made.]

**SOLVENCY II DIRECTIVE (NON-DIRECTIVE FIRMS ACCOUNTABILITY)
INSTRUMENT 2015**

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 64 (Conduct: statements and codes);
 - (3) section 64A (Rules of conduct);
 - (4) section 137A (The FCA’s general rules);
 - (5) section 137T (General supplementary powers);
 - (6) section 139A (Power of the FCA to give guidance); and
 - (7) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 7 March 2016.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
The Senior Management and Arrangements, Systems and Controls sourcebook	Annex B
The Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
The Fit and Proper test for Approved Persons (FIT)	Annex D
Supervision manual (SUP)	Annex E

Decision Procedure and Penalties manual (DEPP)	Annex F
--	---------

[Amendments to proposed FCA Handbook rules and guidance currently subject to consultation

- E. In CP14/13, the FCA proposed the introduction of a new FCA module to the FCA's Handbook of rules and guidance, the Code of Conduct sourcebook (COCON). In CP14/25 *Changes to the Approved Persons regime for Solvency II firms* the FCA proposed further changes to COCON to take into account Solvency II firms. If made, Annex G shows how that module and amendments from CP 14/25 would be further amended to reflect the proposals in this CP.]

Citation

- F. This instrument may be cited as the Solvency II Directive (Non-Directive Firms Accountability) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[date]

Annex A

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.

<i>chair of the audit committee function</i>	the function of chairing, and overseeing the performance of the role of, a <i>firm's</i> audit committee, if it has one, as described in <i>SUP</i> 10A.6.15G.
<i>chair of the remuneration committee function</i>	the function of chairing, and overseeing the performance of the role of, a <i>firm's</i> remuneration committee, if it has one, as described in <i>SUP</i> 10A.6.15E.
<i>chair of the risk committee function</i>	the function of chairing, and overseeing the performance of the role of, a <i>firm's</i> risk committee, if it has one, as described in <i>SUP</i> 10A.6.15F.
<i>chairman function</i>	the function of chairing, and overseeing the performance of the role of, the management body of a <i>firm</i> , as described in <i>SUP</i> 10A.6.15C.
<i>non-directive firm under £25m</i>	a <i>firm</i> that is not a <i>Solvency II firm</i> and which also satisfies the conditions in the definition of a 'small non-directive insurer' in the PRA Rulebook: Glossary.
<i>senior independent director function</i>	the function of performing the role of a senior independent director of a <i>firm</i> , and leading the assessment of the performance of the person performing the <i>chairman function</i> , as described in <i>SUP</i> 10A.6.15D.

Amend the following definitions as shown.

<i>chair of the nomination committee function</i>	(1) ...
	(2) (for a <i>Solvency II firm</i> <u>and a <i>non-directive firm under £25m</i></u>) the <i>FCA controlled function</i> CF 7 in Part 2 of the <i>table of FCA controlled functions</i> , described more fully in <i>SUP</i> 10A.6.15R. ...
<i>chief executive function</i>	(in the <i>FCA Handbook</i>) <i>FCA controlled function</i> CF3 in Part 1 <u>and Part 2</u> of the <i>table of FCA controlled functions</i> , described more fully in <i>SUP</i> 10A.6.17R.
<i>controlled function</i>	(B) (in the <i>FCA Handbook</i>): a function relating to the carrying on of a <i>regulated activity</i> by a <i>firm</i> , which is specified by:

- (1) either the *FCA* in:
 - (a) the *table of FCA controlled functions*; or
 - (b) ...
- (2) the *PRA* in:
 - (a) the *table of PRA controlled functions*; or
 - (b) the part of the *PRA*'s rulebook titled "Senior Management Functions", which specifies *controlled functions*; or
 - (c) (for Solvency II firms and non-directive firms under £25m) PRA Rulebook: Solvency II Firms Insurance - Senior Insurance Management Functions and PRA Rulebook: non-Solvency II Firms: Insurance - Senior Insurance Management Functions;

under section 59 of the *Act* (Approval for particular arrangements).

director function

- (1) (in the *FCA Handbook*) *FCA controlled function* CF1 in Part 1 and, for a *Solvency II firm only and a non-directive firm under £25m*, Part 2 of the *table of FCA controlled functions*, described more fully in *SUP 10A.6.7R* and *SUP 10A.6.8R*.

director of unincorporated association function

- (1) (in the *FCA Handbook*) *FCA controlled function* CF5 in Part 1 and Part 2 of the *table of FCA controlled functions*, described more fully in *SUP 10A.6.29R*.

FCA governing functions

- (B) (in the *FCA Handbook*):
any of the following *FCA controlled functions*:
 - (1) (for *UK relevant authorised persons*) ...
 - (2) [overseas firms to follow¹]; or
 - (3) (for a *Solvency II firm*) *FCA controlled function* CF1, and CF7, in Part 2 of the *table of FCA controlled functions*); or
 - (4) (in the case of a non-directive firm under £25m) FCA controlled functions CF1, CF 3 and CF 5 to CF7E, in Part 2 of the *table of FCA controlled functions*); or
 - (5) (for other firms) *FCA controlled functions*...

PRA controlled (B) (in the *FCA Handbook*)

¹ In relation to *relevant authorised persons* only.

- function* a *controlled function* which is specified by the *PRA* under section 59 of the *Act* (Approval for particular arrangements) in:
- (1) the *table of PRA controlled functions*; or
 - (2) the part of the *PRA*'s rulebook titled "Senior Management Functions"; or
 - (3) PRA Rulebook: Solvency II Firms: Insurance - Senior Insurance Management Functions and PRA Rulebook: non-Solvency II Firms: Insurance - Senior Insurance Management Functions.
- significant-influence function* ... a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *authorised person's* affairs, so far as relating to the activity, and for the purposes of ~~€-CON~~ COCON, SYSC 2 and DEPP, also means a *PRA controlled function* specified in PRA Rulebook: Solvency II Firms: Insurance - Senior Insurance Management Functions and PRA Rulebook: non-Solvency II Firms: Insurance - Senior Insurance Management Functions.
- small friendly society function* (1) (in the *FCA Handbook*) *FCA controlled function* CF6 in Part 1 and Part 2 of the *table of FCA controlled functions*, described more fully in SUP 10A.6.31R to SUP 10A.6.32R.

Annex B

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

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

2 Senior management arrangements

2.1 Apportionment of Responsibilities

...

2.1.3 R *A firm that is not a Solvency II firm or a non-directive firm under £25m* must appropriately allocate to one or more individuals, in accordance with SYSC 2.1.4R, the functions of:

...

...

2.1.3B G ...

2.1.3C R *A non-directive firm under £25m must appropriately allocate to one or more approved persons performing a significant influence function, the function of dealing with the apportionment of responsibilities under SYSC 2.1.1R.*

2.1.4 R Allocation of functions

This table belongs to SYSC 2.1.3R and SYSC 2.1.3AR(2)

1. Firm type	2: (a) For a <i>firm that is not a Solvency II firm and that is not a non-directive firm under £25m</i> . Allocation of both functions must be to the following individual, if any (see Note): (b) for a <i>Solvency II firm</i> allocation of the oversight function must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
...		

2.1.5 G SYSC 2.1.3R, SYSC 2.1.3AR and SYSC 2.1.4R give a *firm* some flexibility in the individuals to whom the functions may be allocated. In a *firm* that is not a *Solvency II firm* and is not non-directive firm under £25m, it will be common for both the functions to be allocated solely to the *firm's chief executive*. SYSC 2.1.6G contains further *guidance* on the requirements of SYSC 2.1.3R, SYSC 2.1.3AR(2) and SYSC 2.1.4 R in a question and answer

form.

2.1.6 G ...

	Question	Answer
...		
11	How does the requirement to allocate the functions in SYSC 2.1.3R or SYSC 2.1.3AR(2) apply to an overseas firm which is not an incoming EEA firm, incoming Treaty firm or UCITS qualifier?	The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 2.1.4R, but: ... The <i>apportionment and oversight function</i> applies to such a <i>firm</i> , unless it is a <i>Solvency II firm</i> or a <i>non-directive firm under £25m</i> , or falls within a particular exception from the <i>approved persons</i> regime (see Question 1).
...		

2.2 Recording the apportionment

...

2.2.4 R ...

2.2.5 R A non-directive firm under £25m must:

- (1) retain a scope of responsibilities document for each approved person performing an FCA significant influence function for ten years;
- (2) where the document in (1) is amended, retain the document for ten years from the date on which it was superseded by a more up-to-date document; and
- (3) provide a copy of any version to the FCA on request.

Transitional Provisions and Schedules (SYSC transchedule)

...

SYSC TP 5 Transitional Provision 5

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
1.	SYSC 2.2.4	R	Where this <i>rule</i> imposes requirements relating to a document recording a <i>person's</i> scope of responsibilities, a <i>firm</i> is only required to comply with these requirements to the extent that such a document already exists.	From 1 January 2016 until the date on which any such scope of responsibilities document is produced or <i>firms</i> are required to produce one.	1 January 2016
<u>2.</u>	<u>SYSC 2.2.5</u>	<u>R</u>	<u>Where this <i>rule</i> imposes requirements relating to a document recording a <i>person's</i> scope of responsibilities, a <i>firm</i> is only required to comply with these requirements to the extent that such a document already exists.</u>	<u>From 7 March 2016 until the date on which any such scope of responsibilities document is produced or <i>firms</i> are required to produce one.</u>	<u>7 March 2016</u>

Annex C

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text.

1.1A Application

Who?

- 1.1A.1 R *APER applies to FCA-approved persons and PRA-approved persons who fall under (1) or (2):*
- (1) *approved persons of firms that are not relevant authorised persons, non-directive firms under £25m, or Solvency II firms; or*
 - (2) *approved persons approved to perform a controlled function in SUP 10A.1.16BR (appointed representatives of relevant authorised persons) or in SUP 10A.1.15R (appointed representatives).*
- 1.1A.1A G *APER does not apply to FCA-approved persons and PRA-approved persons of relevant authorised persons, non-directive firms under £25m, or Solvency II firms. COCON applies instead.*

Annex D

Amendments to the Fit and Proper test for Approved Persons (FIT)

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

1.2 Introduction

...

- 1.2.4A G However, if the *firm* is a *PRA-authorised person*, the *governing functions* do not apply. The ~~exception~~ exceptions to this ~~is~~ are a *Solvency II firm* and a non-directive under £25m firm. For a *Solvency II firm*, the *FCA governing functions* CF1 and CF7 may apply if the *person* carrying out the function is not already approved to carry out a *PRA controlled function* and the conditions in *SUP 10A.11.11AR* (minimising overlap with the PRA approved persons regime) are satisfied. For a non-directive firm under £25m, the FCA governing functions CF1, CF3 and CF5 to CF7E may apply if the person carrying out the function is not already approved to carry out a PRA controlled function and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.

Annex E

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

10A.1 Application

...

10A.4.4 R FCA controlled functions

...

Part 2 (FCA controlled functions for PRA-authorised persons)		
Type	CF	Description of FCA controlled function
FCA governing function <u>functions*</u> (Solvency II firms and non-directive firms under <u>£25m</u> only)	1	Director function
<u>(non-directive firms under £25m only)</u>	3	Chief executive function
<u>(non-directive firms under £25m only)</u>	5	Director of unincorporated association function
<u>(non-directive firms under £25m only)</u>	6	Small friendly society function
<u>(Solvency II firms (other than third-country undertakings) and non-directive firms under £25m)</u>	7	Chair of the nominations committee function
<u>(non-directive firms under £25m only)</u>	<u>7A</u>	<u>chairman function</u>
<u>(non-directive firms under £25m only)</u>	<u>7B</u>	<u>senior independent director function</u>
<u>(non-directive firms under £25m only)</u>	<u>7C</u>	<u>chair of the remuneration committee function</u>
<u>(non-directive firms under £25m only)</u>	<u>7D</u>	<u>chair of the risk committee function</u>

<i>(non-directive firms under £25m only)</i>	7E	<i>chair of the audit committee function</i>
<i>FCA required functions* (not applicable to a Solvency II firm or a non-directive firm under £25m)</i>	8	<i>Apportionment and oversight function</i>
	...	

...

10A.6 FCA governing functions

Introduction

10A.6.1 G (1) Every *firm* will have one or more *persons* responsible for directing its affairs. These *persons* will be performing the *FCA governing functions* and will be required to be *FCA-approved persons* unless the application provisions in SUP 10A.1, or the particular description of an *FCA controlled function*, provide otherwise. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA governing function*. However, if the *firm* is a *PRA-authorised person*, the *governing functions* do not apply. Instead, those *persons* will be performing the *PRA governing functions* and will be required to be *PRA-approved person*.

(2) The ~~exception~~ exceptions to this is are a Solvency II firm and a non-directive firm under £25m. For a Solvency II firm and a non-directive firm under £25m, the *FCA governing functions* CF1 and CF7 may apply if the *person* carrying out the function is not approved to carry out a *PRA controlled function* and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied. In addition, for a non-directive firm under £25m the FCA governing functions CF3, CF5, CF6 and CF7A to CF7E may apply if the person carrying out the function is not approved to carry out a PRA controlled function and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.

...

10A.6.11 G The *director function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead. The ~~exception~~ exceptions to this is are a Solvency II firm and a non-directive firm under £25m. For a Solvency II firm and a non-directive firm under £25m, the *FCA director*

function may apply if the person carrying out the function is not approved to carry out a *PRA controlled function* and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.

...

Chair of the nomination committee function (CF 7) (Solvency II firms and non-directive firms under £25m only)

- 10A.6.15A R For a *Solvency II firm and a non-directive firm under £25m only*, if the *firm* has a nomination committee, the *chair of the nomination committee function* is the function of acting in the capacity of chairman of that committee. The *chair of the nomination committee function* does not apply to a *Solvency II firm* that is a third-country insurance undertaking.
- 10A.6.15B G For a *Solvency II firm and a non-directive firm under £25m*, the *chair of the nomination committee function* may not apply if a *person* carrying out the function is already approved to carry out a *PRA controlled function* and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.

Chairman function (CF 7A)

- 10A.6.15C R For a non-directive firm under £25m the chairman function is the function of chairing, and overseeing the performance of the role of, the management body of a firm.

Senior independent director function (CF 7B)

- 10A.6.15D R For a non-directive firm under £25m, the senior independent director function is the function of performing the role of a senior independent director of a firm, and leading the assessment of the performance of, the person performing the Chairman function.

Chair of the remuneration committee function (CF 7C)

- 10A.6.15E R For a non-directive firm under £25m, if the firm has a remuneration committee, the chair of the remuneration committee function is the function of chairing, and overseeing the performance of the role of, a firm's remuneration committee.

Chair of the risk committee function (CF 7D)

- 10A.6.15F R For a non-directive firm under £25m, if the firm has a risk committee, the chair of the risk committee function is the function of chairing, and overseeing the performance of the role of, a firm's risk committee.

Chair of the audit committee function (CF 7E)

- 10A.6.15G R For a non-directive firm under £25m, if the firm has an audit committee, the chair of the audit committee function is the function of chairing,

and overseeing the performance of the role of, a firm's audit committee.

Chief executive function (CF 3)

...

10A.6.21 G Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved (if the *firm* in question is an *FCA-authorized person* or a *non-directive firm under £25m*) to perform the *chief executive function*.

10A.6.22 G The *chief executive function* does not apply in relation to a *PRA-authorized person* unless it is a *non-directive firm under £25m* PRA approval is required instead.

Director of unincorporated association function (CF 5)

...

10A.6.30 G The *director of unincorporated association function* does not apply in relation to a *PRA-authorized person* unless it is a *non-directive firm under £25m*. PRA approval is required instead.

Small friendly society function (CF 6)

...

10A.6.34 G In practice, the *FCA* expects that most *non-directive friendly societies* will be *PRA-authorized persons*. Where that is the case, the *small friendly society function* will not apply, unless the *firm* is a *non-directive firm under £25m*. PRA approval is required instead.

10A.7 FCA required functions

Apportionment and oversight function (CF 8)

10A.7.1 R The *apportionment and oversight function* is the function of acting in the capacity of a *director* or *senior manager* responsible for either or both of the apportionment function and the oversight function set out in *SYSC 2.1.3R* or *SYSC 4.4.5R*. The *apportionment and oversight function* does not apply in relation to a *Solvency II firm* or a *non-directive firm under £25m*.

10A.7.2 G In requiring someone to apportion responsibility, ~~neither a common platform firms, or a Solvency II firm~~ *firms and non-directive firms under £25m* should apply for that *person* or *persons* to be *FCA*-approved to perform the *apportionment and oversight function* (see *SUP 10A.7.1R*, *SYSC 2.1.3R* and *SYSC 1 Annex 1*).

...

10A.11 Minimising overlap with the PRA approved persons regime

...

Guidance on how SUP 10A.11 works

10A.11.8 G SUP 10A.11:

...

- (2) disappplies, in the case of a *Solvency II firm* and a non-directive firm under £25m only, the *FCA governing function* for a person who is the subject of an application for approval to perform a *PRA controlled function*, subject to the conditions in SUP 10A.11.11AR.

...

Annex F

Amendments to the Decision Procedure and Penalties manual (DEPP)

[*Editorial note:* The amendments proposed in this Annex build upon the draft Handbook text proposed by the FCA in CP14/13 as if it was made (and so is not shown as underlined or deleted text), even though that proposed text is subject to the outcome of consultation and may change.]

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

6 Penalties

...

- 6.2.7 G The *FCA* will not discipline individuals on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see *APER* 4.6.13G, *APER* 4.6.14G, and ~~*COCON* 4.1.9G~~ to ~~*COCON* 4.1.12G~~). In particular, disciplinary action will not be taken against an *approved person* performing a *significant influence function* simply because a regulatory failure has occurred in an area of business for which he is responsible. The *FCA* will consider that an *approved person* performing a *significant influence function* may have breached *Statements of Principle* 5 to 7, or that an *SMF manager*₂ or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m*, may have breached *Rules* SM1/SI1 to SM4/SI4 in ~~*COCON* 2.2~~, only if his conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also *APER* 3.1.8AG and ~~*COCON* 3.1.6G~~).

Annex G

Amendments to the Code of Conduct sourcebook (COCON)

[*Editorial note:* The proposed changes in this annex are based on the Handbook text proposed to be made in CP14/13. As such, it has not been made and is subject to change as a result of consideration of feedback from the consultation. For ease of reference we have included the applicable guidance here even though in large part the text will not be amended.

Underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1 Application

...

To whom does it apply?

1.1.2 R (1) ~~€-CON~~ COCON applies to:

...

(d) any other *employee* of a *relevant authorised person* except an *employee* whose role is listed under ~~€-CON~~ COCON 1.1.2R(2); and

(e) an *FCA-approved person* or *PRA-approved person* approved to perform a *controlled function* in a *Solvency II firm* or a non-directive firm under £25m.

...

To what conduct does it apply?

1.1.6 R In the case of a *person* (P) who is an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m, ~~€-CON~~ 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 *relevant authorised person* ~~or~~, *Solvency II firm* or non-directive firm under £25m on whose application approval was given to P.

1.1.7 R In the case of a *person* (P) subject to ~~€-CON~~ COCON who is not an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m, ~~€-CON~~ 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*.

Where does it apply?

- 1.1.8 R ~~€-CON COCON~~ applies to the conduct of an *SMF manager* (and to the conduct of *employees* who perform the function of an *SMF manager* as specified in ~~€-CON COCON~~ 1.1.2R(1)(b)), or of an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m*, wherever it is performed.
- 1.1.9 R ~~€-CON COCON~~ only applies to the conduct of *persons* other than an *SMF manager* (or an *employee* who performs the function of an *SMF manager* as specified in ~~€-CON COCON~~ 1.1.2R(1)(b)), or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m*, if that conduct:

...

...

Purpose

- 1.1.12 G The purpose of this chapter is to set out *rules* about the conduct of *SMF managers*, *approved persons* approved to perform a *controlled function* in *Solvency II firms* or *non-directive firms under £25m*, *certification employees* and *other conduct rules staff* and to provide *guidance* to *relevant authorised persons* and *Solvency II firms* and *non-directive firms under £25m* in relation to the *conduct rules*.

General

- 1.1.13 G ~~€-CON COCON~~ 1 Annex 1 has *guidance* on the role and responsibilities of *non-executive directors* of *relevant authorised persons*, *non-directive firms under £25m* and *Solvency II firms*.

2 The conduct rules

...

2.2 Senior manager and Solvency II/non-directive firms under £25m significant influence function conduct rules

...

3 Compliance with ~~€-CON COCON~~

3.1 General factors for assessing compliance

...

- 3.1.5 G In determining whether or not the conduct of an *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m complies with *rules* SM1/SI1 to SM4/SI4 in ~~€-CON~~ COCON, factors the *FCA* would expect to take into account include:
- ...
- 3.1.6 G In assessing whether an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m may have breached a *rule* in ~~€-CON~~ 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 amplified 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 ~~€-CON~~ COCON. In forming an opinion of whether an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m has complied with the *rules* in ~~€-CON~~ COCON, the *FCA* will give due credit if they followed corresponding provisions in the *UK Corporate Governance Code* and related guidance.

...

4 More specific guidance on conduct

...

4.2 **More specific guidance regarding senior manager and Solvency II/non-directive firm under £25m significant influence function conduct rules**

SM1/SI1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively

...

- 4.2.2 G Strategy and plans will often dictate the risk which the business is prepared to take on and high level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, an *SMF manager* or an *approved person* performing a *significant influence*

function in a Solvency II firm or a non-directive firm under £25m should bear this in mind.

- 4.2.3 G To comply with the obligations of *rule SM1 or SI1 in ~~E-CON~~ COCON* 2.2.1R, an *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.
- ...
- 4.2.6 G An *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible, has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.
- 4.2.7 G (1) If an individual's performance is unsatisfactory, then the relevant *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* should review carefully whether to allow that individual to continue in their position. In particular, if they are aware of concerns relating to the compliance with requirements and standards of the *regulatory system* (or internal controls) of the individual concerned, or of staff reporting to that individual, the *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.
- (2) An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the *regulatory system*.
- 4.2.8 G As part of organising the business, an *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* should ensure that there is an orderly transition when another *SMF manager* or *approved person* performing a *significant influence function in a Solvency II firm or a non-directive firm under £25m* under his oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set

of handover-notes for his successor. Those notes should at a minimum specify for the successor any matter that is ongoing which the successor would reasonably expect to be aware to:

...

- 4.2.9 G In organising the business, an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m should pay attention to any temporary vacancies which exist. They should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m should assess the risk that is posed to compliance with the requirements and standards of the *regulatory system* as a result of the vacancy, and the higher the risk the greater the steps he should take to fill the vacancy. It may be appropriate to limit or suspend the activity if adequate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of *controlled functions*, they may only be filled by *persons* approved for that function.

- 4.2.10 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.

...

- (4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing a *senior management function*, or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m, including the following:

...

SM2/SI2: 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

- 4.2.11 G An *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m must take reasonable steps both to ensure his *firm's* compliance with the relevant requirements and standards of the *regulatory system* and to ensure that all staff are aware of the need for compliance.

- 4.2.12 G An *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a non-directive firm under £25m need not themselves put in place the systems of control for the business. Whether they do this depends on their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems which include well-

defined steps for complying with the detail of relevant requirements and standards of the *regulatory system* and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the *regulatory system*, and the nature, scale and complexity of the business.

- 4.2.13 G Where an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the *regulatory system* falling within his area of responsibility, then they should take reasonable steps to ensure that they are dealt within a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures may have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.
- 4.2.14 G If an issue raises questions of law or interpretation, an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.
- 4.2.15 G Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.
- 4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- ...
- (8) In the case of an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* who is responsible for the compliance function failing to ensure that:
- ...
- SM3/SI3: 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

- 4.2.17 G An *SMF manager* or an *approved person* performing a *significant*

influence function in a *Solvency II firm* or a *non-directive firm under £25m* may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

- 4.2.18 G An *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.
- 4.2.19 G The *FCA* recognises that an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* will not be in breach of rule SM3 or SI3 in ~~C-CO~~ COCON 2.2.3R unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although they cannot delegate to the *FCA* the responsibility for dealing with the problem or issue, they can speak to the *FCA* to discuss his approach.
- 4.2.20 G An *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The *FCA* will look to the *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.
- ...
- 4.2.22 G Although an *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that *person's* responsibility to ensure that they receive reports on progress and questions those reports where appropriate. For instance, if progress appears to be

slow or if the issue is not being resolved satisfactorily, then the *SMF manager* may need to challenge the explanations he receives and possibly take action personally to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities.

...

- 4.2.24 G In determining whether or not the conduct of an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* complies with *rule SM3/SI3* in ~~€-CON~~ COCON 2.2.3R, the factors which the *FCA* would expect to take into account include:

...

SM4/SI4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice

...

- 4.2.26 G SM4/SI4 applies to an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* in addition to *rule 3* in ~~€-CON~~ COCON 2.1.3R. Although, the *rules* have some overlap, they are different. *Rule 3* normally relates to responses from individuals to requests from the regulator, whereas SM4/SI4 imposes a duty on *SMF managers* and *approved persons* performing *significant influence functions* in a *Solvency II firm* or a *non-directive firm under £25m* to disclose appropriately any information of which the *appropriate regulator* would reasonably expect, including making a disclosure in the absence of any request or enquiry from the *appropriate regulator*. By virtue of his position, an *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* is likely both to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the *appropriate regulator* would reasonably expect notice.
- 4.2.27 G Where a *person* is, or is one of the *persons*, performing a *senior management function* or is an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* who is responsible within the *firm* for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of *rule SM4/SI4* in ~~€-CON~~ COCON 2.2.4R.

- 4.2.28 G If an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* were to come across a piece of information that was something in relation to which they thought the *FCA* or *PRA* could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities (for an *SMF Manager*, by virtue of his *statement of responsibilities*). If it does, then they should ensure that, if it otherwise appropriate to do so, it is disclosed to the *appropriate regulator*. If it does not fall within the scope of their responsibilities, then in the absence of any reason to the contrary, they might reasonably assume that the matter of its disclosure to the *appropriate regulator* was being dealt with by the *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* who has responsibility for dealing with information of that nature. If an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m* was not sure that the matter was being dealt with by another *SMF manager* or another *approved person* performing a *significant influence function* in a *Solvency II firm* or a *non-directive firm under £25m*, or if they were not sure whether this was in their area or not, then the *FCA* would expect them to make enquiries to inform themselves, rather than disregard the matter.

...

Financial Conduct Authority



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