

# CP12/26\*\*

Financial Services Authority

## Regulatory reform: the PRA and FCA regimes for Approved Persons

October 2012



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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 7 December 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: [www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-26-response.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-26-response.shtml).

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A confidential response may be requested from us 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 Tribunal.

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# Abbreviations used in this paper

<b>APER</b>	The Statements of Principle and Code of Practice for Approved Persons
<b>CBA</b>	Cost Benefit Analysis
<b>CF</b>	Controlled function
<b>CP</b>	Consultation Paper
<b>Dual-regulated firm</b>	Firms regulated by both PRA and FCA
<b>FCA</b>	Financial Conduct Authority
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>Lloyd's</b>	Society of Lloyd's
<b>ONA</b>	Online Notifications and Applications system
<b>PRA</b>	Prudential Regulation Authority
<b>SIF</b>	Significant-influence function
<b>Single-regulated firm</b>	Firms regulated by FCA but not PRA
<b>SUP</b>	The Supervision Manual
<b>The Bill</b>	Financial Services Bill



# 1

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## Overview

### **The Financial Services Bill**

- 1.1** The Financial Services Bill (the Bill) was introduced in the House of Commons on 26 January 2012 and provides a new framework for financial regulation in the UK. The Bill remains under consideration by Parliament, and is likely to become law over the coming months.
- 1.2** The Bill (and the necessary secondary legislation that will support it) provides for the creation of the new UK regulatory architecture. The Financial Policy Committee (FPC), within the Bank of England, will be responsible for protecting the stability of the financial system as a whole and for macro-prudential regulation. The new Prudential Regulation Authority (PRA), a subsidiary of the Bank of England, will prudentially supervise deposit takers, insurers and a small number of significant investment firms. The Financial Conduct Authority (FCA) will be responsible for regulating conduct in retail and wholesale markets; supervising the trading infrastructure that supports those markets; and for the prudential regulation of firms not prudentially regulated by the PRA.<sup>1</sup> The Bill proposes changes to a number of existing legislative acts, most notably the Financial Services and Market Act (FSMA), the Bank of England Act 1998 and the Banking Act 2009.
- 1.3** This paper consults on a set of changes to existing regulatory rules and guidance which are necessitated by the new regime, focusing on approved persons. The paper has been prepared by the FSA in consultation with the Bank of England.

### **Creating two new Handbooks**

- 1.4** The FSA is undertaking work to help the PRA and FCA create their new rulebooks, which will come into effect when the new regulators acquire their legal powers (a point we refer to

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<sup>1</sup> Further detail on the proposed new UK regulatory framework has been set out in a number of papers published by the Government and by the FSA and Bank of England. Please see the FSA's webpages on Regulatory Reform at [www.fsa.gov.uk/about/what/reg\\_reform](http://www.fsa.gov.uk/about/what/reg_reform).

as ‘legal cutover’). The overall approach to amending the rulebook ready for legal cutover is based on only making the changes that are required to implement the Bill and to support the creation of the new regulatory structure. This approach aims to control the degree of change for the regulators and for firms at legal cutover.

- 1.5 A key element of this approach is that when the PRA and FCA acquire their new powers, provisions in the existing FSA Handbook will be adopted, or ‘designated’ by the PRA, by the FCA or by both regulators, to form new PRA and FCA rulebooks. As a result, the majority of the provisions in the existing FSA Handbook will be carried forward to the new regulators in their respective rulebooks. Readers will be able to see which provisions have been adopted, or ‘designated’, by each regulator to form new PRA and FCA rulebooks. From legal cutover, the PRA and FCA will amend those provisions in line with their respective objectives and functions, consulting and co-ordinating with each other as appropriate. More information can be found in a ‘one minute guide’ to designation, which was published in June 2012.<sup>2</sup>
- 1.6 In addition to designation, however, some more substantive changes to the existing FSA Handbook are required to align the new rulebooks with the future objectives and functions of the PRA and FCA, as set out in the Bill, and the resulting adjustments to the regulatory procedures of the new regulators. It is this category of substantive changes that this paper consults on.
- 1.7 For clarity, when we refer to ‘amending the FSA Handbook’ in this paper, we mean substantively changing the current FSA text to create new PRA and FCA rulebooks.

## Structure and content of this Consultation Paper (CP)

- 1.8 The current arrangements established by FSMA are largely focused on the authorisation and regulation of financial services businesses, or ‘firms’ themselves, and most of our duties and powers relate directly to firms. However, FSMA also gives the FSA responsibilities over individuals carrying out certain roles within firms. These roles are described as ‘controlled functions’ and the individuals themselves are described as ‘approved persons’. The existing categories of approved persons, which FSMA gives the regulator discretion to define, are set out in Chapter 10 of the Supervision Manual (SUP 10) in the FSA Handbook.
- 1.9 Individuals carrying out controlled functions (CFs) must be approved by the FSA before beginning to perform their function – hence the term approved person – and must comply with the Statements of Principle and Code of Practice for Approved Persons (APER) in our Handbook. A breach of APER can lead to enforcement action against the individual, and can result in penalties, ranging from a fine to being banned from the industry.
- 1.10 The Bill amends the powers to regulate approved persons and sets out how the powers may be exercised by the PRA and FCA. In light of the Bill, this CP sets out proposed amendments

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<sup>2</sup> [www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/about\\_fsa/handbook-pra-fca.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml)



to the current FSA regime that seek to make it fit for purpose for the PRA and the FCA, including amendments required as part of the creation of the PRA and FCA Handbooks. The main aspects of change are:

- a split of the current list of controlled functions for firms regulated by both the PRA and FCA (dual-regulated firms), seeking to minimise unnecessary duplication for dual-regulated firms (something required by the Bill); and
- an extension of the Statements of Principle in APER to a wider set of activities, and their application to people approved by either regulator – meaning that both regulators will have the ability to discipline certain categories of approved person.

**1.11** We have set out the chapters as follows.

- **Chapter 2:** Background and high-level approach. This chapter sets out the PRA and the FCA's approach to approved persons and controlled functions. It provides some of the background required to navigate through the CP and the accompanying Handbook changes.
- **Chapter 3:** Controlled functions and changes to SUP 10. This chapter outlines the specific handbook rule and guidance changes related to controlled functions that will affect (i) dual-regulated firms and (ii) firms that will be regulated by the FCA only (single-regulated firms). The amendments result in a SUP 10A in the FCA Handbook and a SUP 10B for the PRA Handbook. There are tables to assist with the explanations as well as specific examples to illustrate what the proposed changes will mean for firms. This chapter also covers the procedural changes that are resulting from the creation of two regulators.
- **Chapter 4:** Changes to APER. An explanation of the proposed changes, including an increase in the coverage of the activities APER applies to for both the PRA and the FCA. Both regulators are proposing a similar approach to APER and this is reflected in the joint text.
- **Annex 1 and Annex 2** contain the cost benefit analysis and compatibility statement.
- **Appendix 1** contains the draft handbook text for SUP 10 (including for SUP 10 Annex 1: *Frequently asked questions*, and SUP 10 Annex 2: *Summary of forms and their use*) and APER setting out the proposed changes as a result of this transition. There are also changes to the Handbook Glossary; these reflect changes made by the Bill to terms used in FSMA and some new concepts, which are needed as a result of the wider changes described in Chapters 3 and 4.<sup>3</sup>
- **Appendix 2** explains how the Handbook provisions will be designated between the PRA and FCA.

<sup>3</sup> These changes to the Glossary will require some minor consequential changes to other parts of the Handbook, including certain chapters where other, more substantive, changes are being consulted on in preparation for legal cutover. These consequential changes are not consulted on here, but will be dealt with when the final rules are confirmed or 'made' by the PRA and FCA Boards.

## Transitional arrangements

- 1.12** This CP does not provide detail on the treatment of people who are already approved, or how those approvals will be transferred to the new regulatory system. This is because the government has not yet published details of its proposed legislation in this area, and therefore we do not know the exact powers the PRA and FCA will have to specify transitional rules.
- 1.13** However, it is currently our expectation that the approvals currently held by individuals will be transferred, or ‘grandfathered’, to one or other of the new regulators, without a need to make any new application or notification.
- 1.14** We expect to set out further details of this approach – i.e. which people and which approvals will transfer to which regulator and how pipeline applications will be dealt with at legal cutover – as part of a broader programme of proposals on transitional arrangements over the coming months.
- 1.15** Therefore, the proposals in Chapter 3 focus on how the controlled functions will operate where an application for approval is made after legal cutover.

## Timetable and next steps

- 1.16** Comments on this CP should reach us by **7 December 2012**. We will review responses to the consultation, and final rule instruments and policy statements will be issued by the new regulators once the PRA and the FCA acquire their legal powers. The consultation period is shorter than the usual three months. However, we believe this is appropriate in this case, to ensure we have sufficient time to finalise our proposals in light of the responses, and to give ourselves and firms sufficient time to prepare for the changes.
- 1.17** Because the Bill is still proceeding through the Parliamentary process, final rules and guidance may be subject to any changes to the Bill (or associated secondary legislation). If any such change has a significant policy effect on proposed FCA and PRA Handbook text on which the FSA has already consulted, we may need to re-consult.
- 1.18** Some references in the revised PRA and FCA Handbook text have not yet been finalised; for example online addresses, and names of some departments within the new regulators. These have been left in square brackets and will be completed before the final provisions are made. Such practical information will also be made available to firms in good time before the new regime is operational.
- 1.19** There will also be further PRA and FCA Handbook consultations driven by regulatory reform over the coming months.
- 1.20** We intend to publish a draft designation of our Handbook before legal cutover, to indicate how the existing provisions are being transitioned to the PRA and FCA.

## Equality and diversity

- 1.21 We have considered the equality and diversity issues that may arise in the proposals in this CP. With reference to SUP 10, we are not proposing to change who falls within the overall scope of the approved persons regime (rather we are concerned with how the existing scope is divided between the PRA and FCA), nor to change the standards which people will be assessed against when seeking approval.
- 1.22 With reference to APER, the proposals relate to the standards of behaviour and conduct expected of an individual once approved, both in relation to the activities they perform in their controlled function and also more widely.
- 1.23 As the proposals consulted on here are not digressing in a material way from the current FSA policy, we do not feel it is necessary to complete an Equality Impact Assessment at this point. However, if in future the PRA or the FCA consider more substantial policy changes in relation to approved persons, they will consider the impact in detail to ensure that they are facilitating diversity of candidates where appropriate and taking into account the findings from previous process Equality Impact Assessments completed in this area.
- 1.24 We have concluded that the proposals do not give rise to discrimination against different protected groups.
- 1.25 We would welcome any comments respondents may have on any equality and diversity issues they believe arise from our proposals.

## Who should read this CP?

### Firms

- 1.26 This CP should be read by all firms.

### CONSUMERS

This consultation will primarily be of interest to firms, but consumers may be interested to know how we are changing the way individuals within firms must be approved in their own right.

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# 2

## Background and high-level approach

- 2.1 This section sets out the background to the policy proposals which follow in the remainder of the CP. It describes the relevant provisions in the Bill and outlines the high level approach that the PRA and FCA intend to take to the approved persons regime.
- 2.2 The Bill provides for the continuation of the existing approved persons regime, and for the continuation of the regulators' powers to make rules applying to these persons. The Bill also follows the current legislation in providing that the regulators can bring different roles within their regimes, or 'specify' functions, only if they involve either:
- a) a function that enables the person concerned to exercise a significant influence over the conduct of a firm's affairs, known as 'significant-influence functions' (SIFs); or
  - b) a person dealing with the customers of the firm, or with the property of these customers, known as 'the customer dealing functions'.
- 2.3 Under the proposed new arrangements only the FCA may specify customer dealing functions (for any type of firm), and only the FCA may specify SIFs for single-regulated firms. This means that for approved persons within these groups, and the firms they work for, there will be no material difference between the existing and the new SUP 10 arrangements. Firms will need to send in applications for future approved persons to the FCA rather than the FSA, but otherwise matters will continue very much as before.
- 2.4 However, there will be a number of important changes applying to the arrangements for appointing SIFs to dual-regulated firms, and this CP sets out how these changes will operate. It also describes the changes we are making to APER, which will affect approved persons of both dual and single-regulated firms.

## Provisions in the Bill

2.5 The Bill amends FSMA to include the following detailed provisions on approved persons<sup>4</sup>:

- a) Both regulators may specify in their rules SIFs for dual-regulated firms, but the FCA must keep its specification of SIFs under review and exercise this power in a way it considers will minimise the likelihood that SIF approvals fall to be given by both the FCA and the PRA to the same person in relation to the same dual-regulated firm.
- b) The FCA can also specify functions that will involve the person performing them dealing with customers of a regulated firm, or the property of those customers.
- c) The FCA and PRA must consult each other before specifying SIFs in relation to dual-regulated firms.
- d) The PRA must obtain the FCA's consent before approving a PRA SIF application submitted by a dual-regulated firm (although the FCA may arrange with the PRA that FCA consent is not needed for certain cases).
- e) Either regulator may withdraw approval from a person who is carrying on a SIF in connection with a dual-regulated firm, regardless of which regulator gave approval. If withdrawing an approval given by the other regulator, it must consult that other regulator first.
- f) Each regulator can discipline an approved person who has breached a statement of principle that it has issued, irrespective of whether or not it has approved the individual. The FCA may issue statements of principle in relation to any person approved by either regulator; the PRA may issue statements of principle in relation to any person approved by either regulator to perform a SIF for a dual-regulated firm.
- g) The statements of principle (contained in APER), can relate to conduct expected of persons not just in relation to the controlled functions they perform, but also in relation to other functions they perform where those functions relate to the firm for which they hold their approval carrying on regulated activities.

## What the new arrangements for dual-regulated firms' approved persons mean for firms

2.6 Individuals carrying out significant-influence functions tend, by the nature of their roles, to occupy relatively senior positions within firms. In many cases, particularly those of the most senior roles, such as the chief executive, this means they will inevitably have responsibilities for both conduct and prudential issues. The amendments proposed to FSMA in the Bill take account of this. The Bill makes it clear that the PRA and the FCA should not specify the same controlled functions for dual-regulated firms, and therefore we have split the list of

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<sup>4</sup> Contained in sections 59 to 66 of FSMA as amended by the Bill.

existing SIF functions between the two regulators as set out in Table 1 in paragraph 3.2. However, the Bill recognises that both regulators can have an interest in the functions specified in the other's rules. It provides that the PRA must obtain the FCA's consent before approving an application for a PRA SIF function,<sup>5</sup> and that either regulator can discipline or withdraw approval from a SIF of a dual-regulated firm, regardless of which of them approved the person.

- 2.7 The Bill requires the FCA to minimise the overlap of SIFs for people in dual-regulated firms (the 'minimal duplication' requirement<sup>6</sup>) to reduce the burden on firms. If a firm is seeking approval for a single SIF, whether that is a PRA or an FCA function, it only needs to send in a single application to the relevant regulator. Once the application has been received, the relevant regulator can then involve the other in the process, if and when this is appropriate.
- 2.8 This is relatively straightforward when a single individual is applying to carry out a single controlled function, for example, an application to be appointed only as CF3: chief executive would go to the PRA, while an application to be appointed only as CF1: director would go to the FCA.
- 2.9 If a person is applying for two functions – say CF1 and CF3 – within the same firm at the same time, the situation becomes more complex. The procedures for dealing with that will differ depending on which two (or more) functions are involved, and are described in more detail in Chapter 3.
- 2.10 In 2010 we published plans to introduce a number of new significant influence controlled functions and changes to the scope and definition of certain existing SIFs within the approved persons regime (PS10/15, *Effective Corporate Governance* and the *Walker Review*). Implementation of these plans was deferred due to a considerable amount of work scheduled on our Online Notifications and Applications system (ONA). These plans will now also need to be considered in light of the regulatory reform and the split in controlled functions between the FCA and PRA for dual-regulated firms. Therefore, this CP is based on the current list of controlled functions only and does not include plans to introduce the deferred changes to the SIF regime.

### **The PRA's approach to approved persons and specifying controlled functions**

- 2.11 In exercising its power to specify controlled functions, the PRA will focus on roles that it believes are particularly important in determining whether a firm's business is run in a safe and sound manner and, in the case of insurers, in ensuring appropriate protection of policyholders.
- 2.12 However, it is important to note that the powers in the Bill described above, and the proposals discussed in Chapter 4 mean that the PRA will also be able to set out and

<sup>5</sup> There is no equivalent power for the FCA to obtain PRA consent. That is because the PRA has first choice in specifying SIF functions, and it is assumed that if it has not specified a function, it does not believe (given the powers PRA will have over people approved by the FCA) that being involved in the initial assessment of the fitness and propriety of a person performing one of these roles is a high priority for delivering its objectives.

<sup>6</sup> See s. 59A (1) of FSMA as amended by the Bill.

enforce against standards of conduct for people approved by the FCA to perform a SIF, not just those people approved by the PRA itself. Therefore, the split of functions set out in this paper does not mean that the PRA will have no supervisory interest in any of the functions that will be specified in the FCA's Handbook. In particular the PRA will expect all members of a firm's board (or other governing body) to take responsibility, both collectively and individually, for the firm's actions.

- 2.13** As indicated in Chapter 1, the general approach to preparing the PRA and FCA Handbooks for legal cutover has been to focus on the changes that are required to properly implement the requirements set out in the Bill. Therefore, the framework of controlled functions and the amendments to APER proposed here do not represent the PRA's final view on the approved persons regime. A more fundamental review of the regime will be undertaken once the PRA comes into existence, and further changes may be considered necessary to ensure that the regime is fully aligned with, and effective in delivering, the PRA's statutory objectives. For example it is expected that, in addition to the roles we propose will become PRA controlled functions in Chapter 3, the PRA will wish to be able to capture any other roles with responsibility for managing significant parts of the business where that is considered significant in the context of the supervision of that individual firm. Any further changes will be subject to a separate consultation process.

### **The FCA's approach to approved persons and specifying controlled functions**

- 2.14** For dual-regulated firms, the FCA proposes to specify all of the SIF functions that the FSA has currently specified and that are not being specified by the PRA at legal cutover.
- 2.15** For single-regulated firms the FCA intends to specify all existing FSA SIF functions (excluding the actuarial controlled functions CF12: actuarial function, CF12A: with-profits actuary and CF12B: Lloyd's actuary).
- 2.16** The FCA also proposes to specify the existing customer function (CF30), which will apply to both dual-regulated and single-regulated firms.
- 2.17** The immediate priority has been to put in place the minimum changes necessary for legal cutover.
- 2.18** In due course, the FCA will review what longer-term changes are necessary to the approved persons regime. Any further changes will be subject to a separate consultation process.
- 2.19** There is one particular controlled function that will fall within the FCA's area of responsibility, and that has already been consulted on, but not yet implemented. This is the proposed mortgage customer function (CF31). We remain committed to the outcomes we were trying to achieve with the introduction of CF31<sup>7</sup> (i.e. to help to clamp down on mortgage fraud to make all mortgage advisers personally accountable, requiring them to demonstrate they are 'fit and proper', and to enable the FSA and the industry to track individuals as they move between

<sup>7</sup> See the Mortgage Market Review documents CP10/2 [www.fsa.gov.uk/library/policy/cp/2010/10\\_02.shtml](http://www.fsa.gov.uk/library/policy/cp/2010/10_02.shtml) and PS10/9: [www.fsa.gov.uk/library/policy/policy/2010/10\\_09.shtml](http://www.fsa.gov.uk/library/policy/policy/2010/10_09.shtml)

firms). However, as a result of regulatory reform we are now undergoing an essential Information Systems programme of work (relating to ONA, which is used for submitting and processing applications for approval of controlled functions), which must take priority over the introduction of CF31. We recognise that this is not ideal and welcome suggestions about how we could achieve the outcomes earlier as an interim measure.

- Q1:** Do you have any suggestions about how we could achieve the desired outcomes we were trying to achieve with the introduction of CF31, as an interim measure and without the need for systems developments?



# 3

## Controlled functions and changes to SUP 10

### Controlled functions in the PRA and FCA (dual-regulated firms)

- 3.1** This chapter sets out how we propose that the framework of controlled functions will operate under the PRA and FCA, and explains the resulting changes to the SUP 10 chapter of the Handbook which are set out in Appendix 1.
- 3.2** Table 1 sets out the proposed split of controlled functions between the PRA and FCA for dual-regulated firms. This approach is based on the requirements and principles set out in Chapter 2. The controlled functions in the left-hand column would be specified in the PRA Handbook, and those on the right in the FCA Handbook. We propose that this new framework of functions would take effect for any new approvals being granted after legal cutover.

**Table 1**

Column A		Column B	
PRA SIFs		FCA SIFs	
<b>Governing functions</b>			
		CF1	Director
CF2 (PRA)	PRA Non executive director*	CF2 (FCA)	FCA Non-executive director*
CF3	Chief executive	CF4	Partner
		CF5	Director of an unincorporated association
		CF6	Small friendly society
<b>Required functions</b>			
CF12	Actuarial	CF8	Apportionment and oversight
CF12A	With-profits actuary	CF10	Compliance oversight
CF12B	Lloyd's actuary	CF10a	Client assets
CF28	Systems and controls	CF11	Money laundering reporting
<b>Significant management function</b>			
		CF29	Significant management
<b>Customer functions</b>			
		CF30	Customer function

\* See paragraphs 3.26 to 3.34, and 3.41, for the details of these new controlled functions.

## Interaction between PRA CFs and FCA CFs

- 3.3 The Bill states that the FCA should exercise its powers in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and the PRA regarding the performance by a person of significant-influence functions. The minimal duplication requirement is an ongoing duty and therefore something that will be reviewed periodically after legal cutover.
- 3.4 The FCA is required to minimise the duplication of approvals, not to eliminate the possibility entirely. We have removed the possibility that an application must be made to both regulators for the same function, by taking care that the FCA does not designate functions which the PRA has specified. But we also need to deal with the situation in which a person would otherwise have to apply to both the PRA and the FCA, because they will be carrying out a combination of the PRA and FCA functions.
- 3.5 In situations where we think there is a likelihood of a combination of two functions being performed frequently (e.g. a chief executive is also likely to be an executive director) we have taken a pragmatic approach in designing our rules to avoid dual approval. But for other combinations that we think will arise less frequently, or possibly not at all, dual approval could still occur. (To eliminate the possibility altogether would require us to make rules dealing with every conceivable combination of functions. This would itself create a system that might be unduly burdensome for firms and the regulators to understand and operate.)
- 3.6 Our provisional conclusion is that the greatest likelihood of dual approvals occurring is between the following controlled functions.

**Table 2**

PRA		FCA	Reason for likely overlap
CF2(PRA)	and	CF2(FCA)	Both controlled functions are applicable to non-executive directors.
CF3	and	CF1 CF4 CF5 CF6 CF8	Most chief executives will also be directors or equivalent. We expect a significant number of chief executives will also be performing the apportionment and oversight function.
CF28	and	CF1 CF4 CF5 CF6	We expect that a significant volume of individuals performing the systems and controls functions will also be directors or equivalent.

- 3.7 Where an individual is applying to perform any of the PRA functions CF2(PRA), CF3 or CF28, and they also intend to carry out one of the FCA functions in Table 2, we propose that they would be required to apply to the PRA only. There will be no need for a separate application to the FCA. Instead the PRA approval will effectively expand to cover the FCA controlled function as well. This means that the PRA functions have been defined differently, in the proposed PRA SUP 10 Handbook changes (see Appendix 1), from how they are currently defined in the FSA Handbook.

**3.8** It is proposed that this arrangement will only be applicable where a person is applying for both roles at or around the same time. Where a person changes their role or takes on additional roles, we propose that they will need to apply to the PRA or FCA as appropriate for the relevant controlled function.

**3.9** Dual applications for approval among the FCA's other SIFs (CF10, CF10a, CF11 and CF29) and PRA controlled functions may occur, but our initial assessment is that the extent to which these are likely to occur is much less than the overlaps identified in Table 2.

*What does this mean for applications for approval after legal cut over?*

**3.10** Some people will hold fewer controlled functions than they currently do under the FSA's regime, because their PRA function may also cover an FCA function.

**3.11** We think it is important that this approach – which is designed to reduce the administrative burden that might arise if approval had to be routinely sought from both regulators – does not reduce either regulator's ability to ensure that people performing key roles within firms are suitable to do so, and that they perform them appropriately once approval has been granted.

**3.12** So, when a person submits their PRA SIF application, they will be required to declare if they also need approval for one of the FCA functions in Table 2. This information is required so that the PRA can assess the person's suitability to perform both roles. As FCA consent is required before the PRA can approve an application, the FCA will also be involved in the assessment process.

**3.13** On approval by the PRA the individual's PRA controlled function will include the FCA role. Only the PRA controlled function will be shown on the public Register.

**3.14** Both the PRA and the FCA will be able to refuse the application.

**3.15** To give an example, where someone is appointed to be both a chief executive and a (board level) executive director, under our proposals they would only need to apply to the PRA for the chief executive function (CF3). They would not also need separate approval for CF1, as they would at present. However, the PRA's chief executive function will also cover the individual's actions as an executive director.

**Q2:** Do you agree with this approach to ensuring that the PRA and FCA will continue to be able to assess a person's suitability for all the key aspects of their role, without routinely requiring applications to be made to both regulators? If not please explain your concerns and any suggestions for an alternative approach.

**Q3:** Do you agree that we have identified where PRA and FCA controlled functions are most likely to overlap (see Table 2)?

*What happens when moving between the PRA and FCA controlled functions in Table 2?*

- 3.16** The fact that people will in many cases no longer hold multiple controlled functions will mean some changes in what happens when they move between controlled functions.

*Scenario 1*

- 3.17** Where a person's PRA SIF encompasses an FCA function, if that person's role changes so that they stand down from their PRA SIF role but retain the FCA element of it, an application to the FCA will be required.

- 3.18** Continuing the example used in paragraph 3.15, if the person approved as CF3 steps down from being chief executive but remains an executive director, under the current FSA approach they would also hold CF1, so would just give up the CF3, with no further application needed. But under our proposed approach to deliver the Bill's requirement for minimal duplication, they will not already hold CF1 (assuming they received their approvals after legal cutover). So in this scenario an application to FCA for CF1 would be needed in addition to the withdrawal to PRA for CF3. The application for CF1<sup>8</sup> should be made in advance, and state the date the withdrawal of the CF3 function is to be effective, and the date the approval of CF1 should start.

- 3.19** In this situation, the FCA application process will be streamlined. What we mean by this is that we will not undertake a further assessment of fitness and propriety on the basis that: i) the individual would have been assessed for the FCA role as part of their original PRA approval; and ii) there is no change to the persons fitness and propriety. If there has been a change to the person's fitness a further assessment will be undertaken.

- 3.20** In such circumstances, the individual's PRA function will continue to run (in respect of the FCA element of the function - in the case of the example in paragraph 3.18, this would be the executive director element of the PRA function), if necessary, for up to three months after their stepping down from the PRA role, to allow time for approval from the FCA to be received. We recognise that this means that a person will temporarily hold a function that does not fully reflect the role they are performing and that the Register may show a firm as having, for example, two chief executives for a brief period. However, we think this scenario will be quite rare and that this is preferable to the alternative situation where a person is not approved at all.

*Scenario 2*

- 3.21** Where an FCA-approved SIF subsequently takes on a PRA role, they would not be required to cancel their FCA SIF if they continued to carry out that function, but they would need to apply to the PRA for approval for their additional role. An assessment of the candidate's fitness and propriety would be undertaken.

<sup>8</sup> This application should be made using a paper version of Form E.

- 3.22 For example, if a person was already approved as CF1 because they are an executive director of a firm, and subsequently they become chief executive of the firm, they will retain their CF1, but will need to apply to the PRA for CF3.

### *Scenario 3*

- 3.23 If a person is approved as a PRA SIF in the first instance and subsequently takes on one of the FCA controlled functions, they would need to make an application to the FCA to enable an assessment of that person's suitability to perform the FCA role.
- 3.24 For example, if a person is already approved for the CF28 function because they are the head of internal audit, and subsequently they are appointed to be an executive director of the firm, they will retain their CF28 if they are retaining their internal audit responsibilities, but would need to apply to the FCA for CF1.

**Q4:** Do you agree with our proposed approach for managing situations where someone changes their role and moves between the PRA and FCA controlled functions?

### **Changes to PRA functions**

- 3.25 This section sets out how some of the PRA's controlled functions will operate somewhat differently from the way they do in the FSA's current regime.

#### *The non-executive director function*

- 3.26 While the majority of the existing FSA controlled functions will be transferred in their entirety to either the PRA or the FCA, we are proposing an exception to this for the non-executive director function (CF2). Two new non-executive director functions will be created, one PRA and one FCA.
- 3.27 The CF2 (PRA) function will cover anyone who falls within the current definition of CF2 and performs one of the following roles:
- chairman;
  - senior independent director;
  - chair of the audit committee;
  - chair of the remuneration committee; or
  - chair of the risk committee;
- 3.28 The CF2 (PRA) function will also apply to a member of a committee (including the Franchise Board) of the Society of Lloyd's to which the Council has delegated authority to

perform regulatory functions, in the same way as it applies to other non-executives – i.e. they will fall within the role if they perform the equivalent of one of the roles set out above.

- 3.29** The CF2 (PRA) function will also – as the current FSA CF2 function does – apply to a non-executive in an unregulated parent undertaking or holding company whose decisions or actions are regularly taken into account by the governing body of the firm. (Those performing an executive function at the parent entity will continue to fall within CF1 and will therefore be approved by the FCA.)
- 3.30** In another change to our current approach, we are proposing that when anyone who is already approved for the CF2 (PRA) functions takes up one of these separate elements of the CF2 (PRA) function for the first time (e.g. if they move from chair of the audit committee to chair of the risk committee), they should be required to notify the PRA. However, they will not need to make a new application or require the PRA's prior approval before taking up the new role.
- 3.31** Our CF2 function also currently includes people who sit on a **with-profits** committee (and who do not otherwise fall within the definition of CF1 or CF2).<sup>9</sup> The treatment of members of the with-profits committee within the approved persons regime is an area where our thinking is still evolving.
- 3.32** Accordingly, while this CP does not contain any specific proposals on the approval of with-profits committee members, this should not be taken as an indication that such individuals will not require approval in future. We will communicate more detail on our approach to this issue once the precise arrangements in relation to this matter have been confirmed.
- 3.33** The CF2 (FCA) function will cover all the remaining aspects of our CF2 function (including the members of a Lloyd's committee who are currently approved and who don't fall within the PRA's CF2). The combined scope of the PRA and FCA functions will be exactly the same as the existing FSA function – i.e. no-one who does not currently need approval will need it as a result of these changes.
- 3.34** It does, however, mean that where someone moves from CF2 (FCA) to CF2 (PRA), or vice versa, they will be performing a new controlled function and will need to make a new application. This will mean some additional applications are required compared to the current FSA regime.

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<sup>9</sup> See SUP 10.6.8R(2) in the current FSA Handbook.

**Q5:** Do you agree with our proposed approach to the non-executive director function?

*The chief executive function*

- 3.35** The FSA Handbook currently says that someone who is approved for a governing function, including the chief executive function, does not need separate approval for that part of the customer function (CF30) which relates to bidding in emissions auctions.<sup>10</sup> The amendments to FSMA proposed in the Bill will mean that the PRA no longer has any power to specify customer functions, and therefore the chief executive function can no longer encompass this element of CF30.
- 3.36** The result is that in future someone holding the chief executive function in a dual-regulated firm who wants to act as a bidder's representative will need to apply to the FCA for separate approval as CF30. We think such cases are likely to be rare in practice.

*The systems and controls function and its relation to the governing functions*

- 3.37** Currently, under our rules, an individual approved to perform a governing function (other than CF2) does not need additional approval to perform the systems and control function (CF28).<sup>11</sup>
- 3.38** We are proposing to reverse this for the governing functions which will be specified by the FCA, i.e. an individual applying to be approved by the PRA to perform CF28 does not also need to apply to the FCA for approval to perform an FCA governing function.<sup>12</sup> That is to say, if a person wishes to perform both a role that would fall within the systems and controls function, and an FCA governing function – for example, someone appointed as finance director – they would, under the approach explained at paragraph 3.7, need to apply to the PRA for approval to perform the CF28 function. We see this change as part of ensuring that the PRA is responsible for granting approval for functions relevant to the safety and soundness of a dual-regulated firm.
- 3.39** As described in the 'Interaction between PRA CFs and FCA CFs' section, if they take up both positions at the same time, they would only need approval for CF28 but, as described in paragraph 3.12, the person's FCA role would have to be declared in their PRA application and their suitability to perform their role as a director will be taken into account as part of the assessment of their fitness and propriety for the systems and controls function.
- 3.40** Should a person be approved for CF28 by the PRA and subsequently be appointed to an FCA governing function position, an application to the FCA will be required.

<sup>10</sup> See SUP 10.6.2A R in current FSA Handbook and EU Commission Regulation 1031/2010 of 12 November 2010 as amended by the EU Commission Regulation 1210/2011 of 23 November 2011.

<sup>11</sup> By virtue of SUP 10.6.2 R(1) in the current FSA Handbook.

<sup>12</sup> However, we will still say that a person approved by the PRA to perform the chief executive function (CF3) can perform the systems and controls function without needing to hold a separate CF28 approval.



**Q6:** Do you agree with our approach to CF28, and how it operates where someone also performs an FCA governing function?

### Changes to FCA controlled functions for dual-regulated firms

**3.41** The only change to the controlled functions proposed to be specified by FCA is as a result of the split of CF2, for dual-regulated firms, into CF2(PRA) and CF2(FCA). As explained in paragraph 3.33, CF2(FCA) will cover all the remaining aspects of the FSA's CF2 function that are not covered by CF2(PRA). The combined scope of the PRA and FCA functions will not be greater than the scope of the existing FSA functions – i.e. no-one who does not currently need approval will need it as a result of these changes.

### The FCA approach to specifying controlled functions for firms regulated by the FCA (but not the PRA) and appointed representatives

**3.42** The proposed table of controlled functions for a single-regulated firms will be as in Table 3:

**Table 3**

<b>FCA</b>	
<b>Governing functions</b>	
CF1	Director
CF2	Non-executive director
CF3	Chief executive
CF4	Partner
CF5	Director of an unincorporated association
CF6	Small friendly society
<b>Required functions</b>	
CF8	Apportionment and oversight
CF10	Compliance oversight
CF10a	Client assets
CF11	Money laundering reporting
<b>Significant management function</b>	
CF28	Systems and controls
CF29	Significant management
<b>Customer functions</b>	
CF30	Customer function

**3.43** For single-regulated firms the current table of controlled function remains unchanged except that CF12, 12A and 12 B would not apply (because these cover actuarial functions that are only carried out in dual-regulated firms).

**3.44** The governing and customer controlled functions in Table 3 will also apply to an appointed representative firm, whether its principal is an FCA-authorized or PRA-authorized firm.



## Operational implications

- 3.45 This section sets out the operational implications arising from the split of controlled functions between the PRA and the FCA. In accordance with the provisions of the Bill, our general approach is to minimise the burden on firms and to avoid duplication of effort for firms where possible.

### Form and method of submitting applications

- 3.46 For legal cutover we are not proposing substantive changes to the way applications for approved persons are made and we will retain all current forms. Firms seeking to make an application for an individual to be approved for one or more controlled functions should continue to submit the application form via the ONA system, irrespective of the regulator responsible for the relevant controlled function(s) and the number of controlled functions for which approval is sought.
- 3.47 In exceptional circumstances where the ONA system becomes unavailable, firms can submit the application form via post. Credit unions, who do not currently use the ONA system, should continue to submit paper applications.
- 3.48 Paper applications will only need to be submitted to one regulator – applications for a PRA controlled function will need to be sent to the PRA, and those for an FCA controlled function should be sent to the FCA. If an application from a dual-regulated firm relates to both a PRA function and an FCA function, then the paper form should be sent to the PRA only. The PRA will then pass the relevant information to the FCA.

### Determining an application made by a dual-regulated firm

- 3.49 Once an application form has been submitted, the PRA and the FCA will, in accordance with the split of controlled functions between the two regulators, assess the competency of the individual for all controlled functions for which approval is sought.
- 3.50 Because the PRA must have the FCA's consent before determining an application, both regulators may ask for additional information when considering an application for a PRA controlled function. Although the PRA and the FCA will try to coordinate their actions to avoid duplication, both regulators will reserve the right to request additional information. Irrespective of the regulator asking for the information, this will, as set out in the Bill, 'stop the clock' (there will only be one 'clock' operating per application) on the statutory time limit for determining the application until the relevant regulator has received the requested information.
- 3.51 As part of the approval process, both the PRA and FCA will continue to interview candidates applying for certain SIFs and the criteria for determining whether or not to conduct an interview will remain unchanged. Again, our general approach will be to act in a coordinated way where possible and to conduct one interview to help both regulators

assess suitability in relation to all the controlled functions for which approval is sought. However, both regulators will reserve the right to conduct separate interviews in certain circumstances where that is deemed the most appropriate approach, whether for operational or other reasons.

### **The fit and proper test**

- 3.52** For legal cutover, we will not be making substantive changes to the fit and proper test as set out in the FIT module of the Handbook (only minor consequential changes to reflect changes to the names of the regulators, and similar issues, which are not being consulted on here). We will expect individuals to satisfy the same standards that they are currently required to satisfy to get approved for specified controlled functions.

# 4

## Changes to the Statements of Principle and Code of Practice for Approved Persons

### Changes to the scope of APER

- 4.1** We currently sets out our expectations of the conduct of approved persons through our Statements of Principle and Code of Practice for Approved Persons.<sup>13</sup> These are found in the APER module of the FSA Handbook.
- 4.2** The Bill includes some changes to the ability of the regulators to issue statements of principle. It allows the FCA to issue statements of principle for the conduct expected of persons approved by either regulator, and the PRA to issue statements of principle for:
- a) the conduct expected of people it has approved to perform a controlled function; and
  - b) the conduct expected of people in dual-regulated firms whom the FCA has approved to perform a significant-influence function.
- 4.3** The Bill also allows a statement of principle issued by either regulator to relate to conduct expected of approved persons outside of their controlled function, which is a change to the current position in FSMA. We set out in paragraphs 4.11 and 4.12 how the PRA and FCA versions of APER will apply to wider activities, given this change.
- 4.4** Either regulator can take disciplinary action against a person who has failed to comply with a statement of principle it has issued.

<sup>13</sup> In line with s. 64 of FSMA.

- 4.5 We are proposing that both regulators will exercise these additional powers, and will amend the application of APER in two ways.
- 4.6 Firstly, there is the question of the **population** APER applies to. The PRA's version of APER and the FCA's version of APER will both apply, in line with the new powers set out in the Bill, to any person at a dual-regulated firm performing a function that has been designated as a significant-influence function by either the PRA or the FCA.
- 4.7 The FCA's version of APER will also apply to any person at a single-regulated firm, performing a function which has been designated as a SIF by the FCA.
- 4.8 In addition, the relevant parts of the FCA's version of APER will apply to any person at either a dual-regulated firm or single-regulated firm, performing a function which has been designated as a customer dealing function by the FCA.
- 4.9 These changes effectively just preserve the status quo, in that an approved person will, as now, be expected to meet standards, and be liable to disciplinary proceedings if they fail to meet them, in relation to both prudential and conduct matters.
- 4.10 Secondly, there is a change to the scope of **activities** APER applies to. The standards laid out in both regulators' versions of APER will apply beyond the function for which the person has been approved.
- 4.11 The PRA's APER will therefore apply to the performance of any activity which could be a significant-influence function, insofar as it relates to the carrying on of a regulated activity by the firm which originally sought the approval.
- 4.12 The FCA's APER will therefore apply to the performance of any activity, insofar as it relates to the carrying on of a regulated activity by the firm which originally sought the approval.
- 4.13 We recognise that extending the scope of APER to also include activities outside of a person's controlled function could be seen as a significant change. However, it would make it clear that we expect individuals to apply the same standards of behaviour in their wider roles regardless of whether specific activities are caught under a controlled function or not. We do not believe this will result in any significant changes for most people – for example, we would expect that the vast majority of approved persons still act with integrity and due skill, care and diligence when they perform aspects of their role that fall outside of their controlled function.

**Q7:** Do you agree with our proposals to extend the scope of the APER standards in the ways set out above? If not, please explain the reasons for your objection.

## Other changes to APER

- 4.14** Statement of Principle 4 currently requires all approved persons to ‘deal with the FSA and other regulators in an open and cooperative way’. We are proposing to amend this statement in the PRA and FCA Handbooks to make it clear that the FCA could take action against a person for failing to report something to the PRA of which the PRA could reasonably have expected notice, and vice-versa. While we would not expect it to be common practice for one regulator to take action on behalf of the other, there may be cases where misconduct or negligence by an individual crosses prudential and conduct matters, and it is more efficient for one regulator to bring a single enforcement case. This change is intended to facilitate such an approach.
- 4.15** We are also proposing that the PRA’s version of APER will not include Statement of Principle 3, which currently states that ‘An approved person must observe proper standards of market conduct in carrying out his or her controlled function’. Given that the FCA will have the statutory responsibility for market issues in the new regulatory system, we believe that it is appropriate that this Statement of Principle does not form part of the PRA Handbook.

**Q8:** Do you agree that these proposals to amend the wording and application of the Statements of Principle in APER are appropriate given the responsibilities of the PRA and FCA?



## Annex 1

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# Cost benefit analysis

1. This annex provides a cost benefit analysis of the policy changes outlined in this CP.
2. It is our expectation that the changes proposed in this CP will be made by the boards of the FCA and the PRA, rather than by the FSA. As a result, the relevant cost benefit analysis (CBA) requirements are those set out in sections 138I and 138J of the revised version of FSMA rather than those in section 155 of the original version of FSMA.<sup>1</sup>
3. We consider that this CBA meets the draft revised FSMA CBA requirements. Sections 138I and 138J of the revised version of FSMA are currently before Parliament and we will review the CBA if those requirements change.

### **Proposals to operate the Approved Persons regime under the new UK regulatory structure**

4. Most of the proposals in this CP are driven by legal considerations relating to the requirements of the Bill and the creation of the new UK regulatory structure. In particular, it is envisaged that once the PRA and FCA come into existence, the PRA will undertake a more fundamental review of the Approved Persons regime to ensure that it is fully aligned with the PRA's statutory objectives, and in due course the FCA will also review what longer term changes are necessary.
5. Therefore, most of the proposals in this CP do not address market failures so we do not expect any additional economic benefits to arise. Nevertheless, the proposals seek to minimise the risk of regulatory failure in the future by helping to ensure that there is legal certainty and clarity for firms in relation to the PRA and FCA regimes for Approved Persons from legal cut over. We consider below the extent of any direct costs to the PRA and FCA and any additional compliance costs for firms arising from these proposed amendments. We do not believe that these costs will be material.

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<sup>1</sup> The FCA and PRA will be required to carry out and publish a CBA when proposing draft rules and when making rules which are significantly different from the draft consulted on. In particular, they will be required to publish 'an analysis of the costs together with an analysis of the benefits...and an estimate of those costs and of those benefits'. However, if, in a regulator's opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, an estimate need not be provided; but in this case, the regulator must explain why it is of that opinion. Finally, no CBA is required if a regulator considers that there will be no increase in costs or there will be a cost increase of minimal significance.

*Direct cost to PRA/FCA*

6. There will be some additional one-off and ongoing costs for both the FCA and the PRA in implementing these proposed changes.
7. The respective regulators will need to familiarise themselves with the new regime, and update existing forms, systems and processes to operationalise the changes. They will also have to develop effective arrangements to ensure they consult each other as required. These changes are expected to generate a small increase in staff numbers.
8. There will also be ongoing costs associated with dealing with additional applications and notifications, for example:
  - There are several functions (paragraphs 3.17 to 3.20 refer) where a person changing their role after approval for a PRA SIF may need to make an additional application (compared to what is currently required) to the FCA. We expect such applications will occur infrequently, and therefore the extra costs will not be significant.
  - Similarly, because of the change described at paragraphs 3.37 and 3.38, a new application will be required if a person already approved for an FCA governing function subsequently takes on a CF28 role (whereas currently this would not require an additional approval). Again, we expect that such applications will not occur often, and therefore the extra cost will not be significant.
  - Someone moving from the FCA CF2 function to the PRA CF2 or vice versa will need to make a new application. We estimate that this could result in approximately 125 additional applications and 40 additional interviews per year.
  - Someone moving from one of the roles within the PRA CF2 function to another will have to notify the PRA. We estimate there will be approximately 125 such notifications per year.
  - In CP10/3 we estimated that the cost to the regulator is £1,050 per interview, £44 per approved persons application, and £7.50 per notification of minor administrative change.
9. In addition, approval processes will be streamlined to minimise the cost implications of cases involving an element of re-approval, for example when a CF3 steps down but remains as an executive director and will be required to gain CF1 approval despite the fact that the original CF3 approval already covers CF1 approval.

*Compliance costs to firms*

10. As firms adjust to the new UK regulatory structure, it is likely they will incur some additional compliance costs, initially in understanding and adjusting to the new PRA and FCA Approved Persons processes, and on an ongoing basis where additional applications are required. The additional application costs for firms will be minimised, for example by streamlining processes, so that the need for dual or duplicate applications is avoided where possible. In the case of the



division of the CF2 function into two separate PRA and FCA functions, some additional costs for firms will arise. We estimate there will be approximately 125 additional applications, and 40 additional interviews per year compared with the current FSA approach. Also as above there will be approximately 125 additional notifications per year compared to the FSA's current approach. CP10/3 estimates suggest that the average cost to the firm is £1,850 per interview, £200 per application and £25 per notification.

11. We do not expect that the increase in firms' compliance costs will be material.

### **Changes to the scope of APER**

12. The proposed change to the scope of activities to which APER applies will impose some new requirements on approved individuals, as they will now need to adhere to the standards in APER for their wider conduct relating to regulated activities, rather than just in relation to their controlled function.
13. This proposal supports the PRA's proposed approach of holding the senior management of PRA-authorized firms accountable for all of their actions. Similarly, with FCA approved individuals they will now be required to adhere to the enhanced standards in APER for their wider conduct relating to regulated activities, not just those activities specific to their controlled function. This supports the FCA's wider remit to make markets work well for consumers, by holding those in senior management functions responsible and accountable for all of their actions. The PRA and FCA are expected to use these powers in a targeted and proportionate manner, taking into account the likely impact of the various other measures aimed at incentivising improved behaviour by individuals in PRA and FCA firms.
14. It is not reasonably practicable to estimate the costs or benefits for the proposed increase scope of APER. We do not believe that there will be significant implications, for either firms or the PRA and the FCA, as the changes essentially maintain the benefits of the existing approved persons regime at legal cutover and we would not expect approved persons to apply lesser standards to any wider role they may undertake for a firm.

### **The FCA's consideration of obligations towards both consumer protection and financial crime**

15. When considering the changes in this CP the FCA has been required to consider obligations towards both consumer protection and financial crime as stipulated in FSMA. We believe that the changes we are proposing are in line with these obligations without presenting undue regulatory burden on the financial services industry.

### **Impact on mutual societies**

16. Amended FSMA s.148K requires the PRA and the FCA to determine whether the impact of the proposed rules on mutual societies differs significantly from the impact on other firm.

17. To the extent that firms, mutual societies or otherwise, will be dual-regulated and not FCA-only regulated, the cost of complying with the amended rules will be marginally higher than they will be for FCA-only regulated firms (mutual or otherwise). However, as we do not expect our proposed amendments to incur material costs to firms, we believe the impact these rules will have on mutual societies will not be significant.

## Annex 2

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# Compatibility statement

1. It is envisaged that the final changes will be made by the boards of the FCA and PRA, rather than by the FSA. We are therefore commenting on the compatibility of our proposals with the draft duties and objectives of the PRA and FCA as set out in the Financial Services Bill.

### **PRA general duties and principles of good regulation**

2. Section 138J(2)(d) of FSMA (as proposed by the Bill) states that a consultation undertaken by the PRA must include an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties.
3. In carrying out its general functions the PRA must, so far as is reasonably possible, act in a way that advances its general objective – i.e. promoting the safety and soundness of PRA authorised persons (section 2B(1) and (2) FSMA as proposed to be amended by the Financial Services Bill). We believe all proposed changes covered by this CP are compatible with this general duty.
4. In carrying out its general functions relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance, or PRA-authorised persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way which: (a) is compatible with its general objective and its insurance objective; and (b) the PRA considers most appropriate for the purpose of advancing those objectives (as set out sections 2B(2) and 2C(2) FSMA, as proposed to be amended by the Financial Services Bill). We believe all proposed changes are compatible with this duty.
5. In carrying out its general functions, the PRA must also have regard to the regulatory principles (sections 2G and 3B of FSMA as amended by the Bill). We believe all proposed changes in this CP are compatible with the general principles of good regulation. We have endeavoured to minimise disruption and costs – both to firms and to the regulators. For example, we are continuing to use the existing application system and processes at legal cutover, and we are proposing that the PRA and FCA will coordinate and share information to reduce the burden on firms, and therefore will only require information relating to an

application for approval to be sent to one regulator. We therefore believe that an appropriate balance has been struck between the need to ensure the PRA's regulatory objectives are fulfilled and the need to keep regulatory burdens to a minimum.

### **FCA general duties and principles of good regulation**

6. Section 138I(2)(d) of FSMA (as proposed by the Bill) requires that a consultation undertaken by the FCA includes an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties. We comment on these below.
7. In carrying out its general functions, the FCA must, so far as is reasonably possible, act in a way that: (a) is compatible with its strategic objective; and (b) advances one or more of its operational objectives (section 1B(1) FSMA, as proposed to be amended by the Financial Services Bill).
8. Our approach to proposing the changes to the provisions and requirements covered by this CP is to preserve the benefits of the original requirements, standards and processes being amended, while making the necessary adjustments required, or allowed for, by the Bill and the creation of the new UK regulatory structure, and making any legal updates that we believe are necessary as part of the review we have undertaken. We believe that the proposed changes covered by this CP are also compatible with the draft FCA operational objectives – particularly to protect and enhance the integrity of the UK financial system and to secure an appropriate degree of protection for consumers.
9. In carrying out its general functions the FCA must have regard to the regulatory principles set out in the Act (section 1B(5)(a) FSMA (as proposed to be amended by the Financial Services Bill)).
10. We believe that all proposed changes covered by this CP are compatible with the draft principles of good regulation. In particular, we have endeavoured to minimise additional costs while preserving benefits (see our CBA at Annex 1), and we believe that an appropriate balance has been struck between the need to ensure the FCA's regulatory objectives are fulfilled and the need to keep regulatory burdens to a minimum.

## Annex 3

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# List of questions

- Q1:** Do you have any suggestions about how we could achieve the desired outcomes we were trying to achieve with the introduction of CF31, as an interim measure and without the need for systems developments?
- Q2:** Do you agree with this approach to ensuring that the PRA and FCA will continue to be able to assess a person's suitability for all the key aspects of their role, without routinely requiring applications to be made to both regulators? If not please explain your concerns and any suggestions for an alternative approach.
- Q3:** Do you agree that we have identified where PRA and FCA controlled functions are most likely to overlap (see Table 2)?
- Q4:** Do you agree with our proposed approach for managing situations where someone changes their role and moves between the PRA and FCA controlled functions?
- Q5:** Do you agree with our proposed approach to the non-executive director function?
- Q6:** Do you agree with our approach to CF28, and how it operates where someone also performs an FCA governing function?

- Q7:** Do you agree with our proposals to extend the scope of the APER standards in the ways set out above? If not, please explain the reasons for your objection.
- Q8:** Do you agree that these proposals to amend the wording and application of the Statements of Principle in APER are appropriate given the responsibilities of the PRA and FCA?

## Appendix 1

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# Draft Handbook text

## APPROVED PERSONS LEGAL CUTOVER INSTRUMENT

### Powers exercised by the Financial Conduct Authority

- 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 60 (Applications for approval);
  - (3) section 64 (Conduct: statements and codes);
  - (4) section 137A (The FCA’s general rules);
  - (5) section 137R (General supplementary powers); and
  - (6) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

### Powers exercised by the Prudential Conduct Authority

- C. The Prudential 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 60 (Applications for approval);
  - (3) section 64 (Conduct: statements and codes);
  - (4) section 137E (The PRA’s general rules); and
  - (5) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

### Commencement

- E. This instrument comes into force on *[date]*

### Amendments to the Handbook

- F. The modules of the FCA and PRA Handbooks of rules and guidance listed below are amended as follows:
- (1) The Glossary of definitions is amended in accordance with Annex A;
  - (2) The Statements of Principle and Code of Practice for Approved Persons (APER) is amended in accordance with Annex B;
  - (3) Chapter 10 of the Supervision Manual (SUP) is deleted and replaced with:
    - (a) (in the case of the Financial Conduct Authority) chapter 10A as set out in Annex C;



- (b) (in the case of the Prudential Conduct Authority) chapter 10B as set out in Annex D;

**Citation**

- G. This instrument may be cited as the Approved Persons Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority

[*date*]

By order of the Board of the Prudential Conduct Authority

[*date*]

## Annex A

### Amendments to the Glossary of definitions

#### Part 1

##### New definitions

In this part of this Annex, all the text is new and is not underlined

<i>accountable functions</i> [FCA]	<p>(in the <i>FCA Handbook</i> and in relation to an <i>approved person</i>) the functions described in <i>APER 1.1A.2P</i>, which are in summary:</p> <ul style="list-style-type: none"><li>(a) <i>FCA controlled functions</i>;</li><li>(b) <i>PRA controlled functions</i>; and</li><li>(c) any other functions in relation to the carrying on of a <i>regulated activity</i>;</li></ul> <p>in relation to the <i>authorised persons</i> in relation to which that <i>person</i> is an <i>approved person</i>.</p>
<i>accountable functions</i> [PRA]	<p>(in the <i>PRA Handbook</i> and in relation to an <i>approved person</i>) the functions described in <i>APER 1.1B.2P</i>, which are in summary:</p> <ul style="list-style-type: none"><li>(a) <i>PRA controlled functions</i>;</li><li>(b) <i>FCA controlled functions</i> that are <i>significant-influence functions</i>; and</li><li>(c) any other <i>significant-influence functions</i>;</li></ul> <p>in relation to the <i>PRA-authorised persons</i> in relation to which that <i>person</i> is an <i>approved person</i>.</p>
<i>accountable significant-influence function</i> [FCA]	<p>(in the <i>FCA Handbook</i>) any <i>accountable function</i> that is a <i>significant-influence function</i>.</p>
<i>customer-dealing function</i> [FCA/PRA]	<p>(in accordance with section 59(7A) of the <i>Act</i> (Approval for particular arrangements) in relation to the carrying on of a <i>regulated activity</i> by an <i>authorised person</i> (“A”) a function that will involve the <i>person</i> performing it in dealing with:</p> <ul style="list-style-type: none"><li>(a) customers of A; or</li><li>(b) property of customers of A;</li></ul>

	in a manner substantially connected with the carrying on of the activity.
<i>FCA-approved person</i> [FCA/PRA]	an <i>approved person</i> in relation to whom the <i>FCA</i> has given its approval under section 59 of the <i>Act</i> (Approval for particular arrangements) for the performance of an <i>FCA controlled function</i> .
<i>FCA-authorised person</i> [FCA/PRA]	an <i>authorised person</i> who is not a <i>PRA-authorised person</i> .
<i>FCA candidate</i> [FCA/PRA]	a <i>person</i> in respect of whom an application is made for approval under section 59 of the <i>Act</i> (Approval for particular arrangements) of the performance of an <i>FCA controlled function</i> .
<i>FCA controlled function</i> [FCA/PRA]	a <i>controlled function</i> which is specified by the <i>FCA</i> under section 59 of the <i>Act</i> (Approval for particular arrangements), in the <i>table of FCA controlled functions</i> .
<i>FCA governing functions</i> [FCA/PRA]	any of the <i>FCA controlled functions</i> 1 to 6 in Part 1 of the <i>table of FCA controlled functions</i> or any of the <i>FCA controlled functions</i> 1 to 2 FCA and 4 to 6 in Part 2 of the <i>table of FCA controlled functions</i> .
<i>FCA required functions</i> [FCA/PRA]	any of the <i>FCA controlled functions</i> 8 to 11 in Part 1 or Part 2 of the <i>table of FCA controlled functions</i> .
<i>FCA significant-influence functions</i> [FCA/PRA]	any of the <i>FCA controlled functions</i> 1 to 29 in Part 1 or Part 2 of the <i>table of FCA controlled functions</i> .
<i>non-executive director function (FCA)</i> [FCA/PRA]	the <i>non-executive director function</i> or the <i>PRA firm non-executive director function (FCA)</i> .
<i>non-executive director function (PRA)</i> [FCA/PRA]	<i>PRA controlled function</i> CF2 PRA in the <i>table of PRA controlled functions</i> , described more fully in SUP 10B.6.1R to SUP 10B.6.2R.
<i>PRA-approved person</i> [FCA/PRA]	an <i>approved person</i> in relation to whom the <i>PRA</i> has given its approval under section 59 of the <i>Act</i> (Approval for particular arrangements) for the performance of a <i>PRA controlled function</i> .
<i>PRA-authorised person</i> [FCA/PRA]	[To follow Act]
<i>PRA chief executive function</i> [FCA]	(in the <i>FCA Handbook</i> ) <i>PRA controlled function</i> CF3 in the <i>table of PRA controlled functions</i> .

<i>PRA controlled function</i> [FCA/PRA]	a <i>controlled function</i> which is specified by the <i>PRA</i> under section 59 of the <i>Act</i> (Approval for particular arrangements), in the <i>table of PRA controlled functions</i> .
<i>PRA firm non-executive director function (FCA)</i> [FCA/PRA]	<i>FCA controlled function</i> CF2 FCA in Part 2 of the <i>table of FCA controlled functions</i> (which relates to <i>PRA-authorised persons</i> ) described more fully in <i>SUP</i> 10A.6.15R.
<i>PRA governing function</i> [FCA/PRA]	any of the <i>PRA controlled functions</i> CF2 PRA or CF3 in the <i>table of PRA controlled functions</i> .
<i>PRA required functions</i> [FCA/PRA]	any of the <i>PRA controlled functions</i> CF12 to CF12B in the <i>table of PRA controlled functions</i> .
<i>significant-influence function</i> [FCA/PRA]	(in accordance with section 59(7B) of the <i>Act</i> and in relation to the carrying on of a <i>regulated activity</i> by an <i>authorised person</i> ) a function that is likely to enable the <i>person</i> responsible for its performance to exercise a significant influence on the conduct of the <i>authorised person's</i> affairs, so far as relating to the activity.
<i>PRA systems and controls function</i> [FCA]	(in the <i>FCA Handbook</i> ) <i>PRA controlled function</i> CF28 in the <i>table of PRA controlled functions</i> .
<i>table of FCA controlled functions</i> [FCA/PRA]	the table of <i>controlled functions</i> in <i>SUP</i> 10A.4.5R.
<i>table of PRA controlled functions</i> [FCA/PRA]	the table of controlled functions in <i>SUP</i> 10B.4.3R.

## Part 2

### Amended definitions

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

<i>actuarial function</i> [PRA]	( <u>in the <i>PRA Handbook</i></u> ) <u><i>PRA controlled function</i> CF12</u> in the <u><i>table of PRA controlled functions</i></u> , described more fully in <i>SUP</i> 4.3.13R and <del><i>SUP</i> 10.7.17R</del> <u><i>SUP</i> 10B.7.1R</u> .
<i>apportionment and oversight function</i> [FCA/PRA]	<u><i>FCA controlled function</i> CF8</u> in <u>Parts 1 and Part 2</u> of the <u><i>table of FCA controlled functions</i></u> , described more fully in <del><i>SUP</i> 10.7.1R</del> <u><i>SUP</i> 10A.7.1R</u>

<p><i>approved person</i> [FCA/PRA]</p>	<p>a <i>person</i> in relation to whom the <del>FSA</del> <u>FCA</u> or the <u>PRA</u> has given its approval under section 59 of the <i>Act</i> (Approval for particular arrangements) for the performance of a <i>controlled function</i>.</p>
<p><i>candidate</i> [FCA/PRA]</p>	<p>a <i>person</i> in respect of whom an application is made for approval under section 59 of the <i>Act</i> (Approval for particular arrangements) <u>of the performance of an FCA controlled function or a PRA controlled function</u>.</p>
<p><i>CASS operational oversight function</i> [FCA]</p>	<p><u>(in the FCA Handbook) FCA controlled function CF10a in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.7.9R</del> SUP 10A.7.8R.</u></p>
<p><i>chief executive function</i> [FCA]</p>	<p><u>(in the FCA Handbook) FCA controlled function CF3 in Part 1 of the table of FCA controlled functions, described more fully in <del>SUP 10.6.11R</del> SUP 10A.6.17R.</u></p>
<p>[PRA]</p>	<p><u>(in the PRA Handbook) PRA controlled function CF3 in the table of PRA controlled functions, described more fully in SUP 10B.6.4R.</u></p>
<p><i>Code of Practice for Approved Persons</i> [FCA]</p>	<p><u>(in the FCA Handbook) the provisions in APER 3 and APER 4 indicated by an “E” in the margin or heading, the purpose of which is to help determine whether or not an <i>approved person’s</i> conduct complies with the <i>Statements of Principle</i> and which are issued by the <del>FSA</del> <u>FCA</u> under section 64(2) of the <i>Act</i> (Conduct: statements and codes). <u>The provisions of APER 1 marked with an “E” in the margin form part of the Code of Practice for Approved Persons.</u></u></p>
<p>[PRA]</p>	<p><u>(in the PRA Handbook) the provisions in APER 3 and APER 4 indicated by an “E” in the margin or heading, the purpose of which is to help determine whether or not an <i>approved person’s</i> conduct complies with the <i>Statements of Principle</i> and which are issued by the <u>PRA</u> under section 64(2) of the <i>Act</i> (Conduct: statements and codes). <u>The provisions of APER 1 marked with an “E” in the margin form part of the Code of Practice for Approved Persons.</u></u></p>
<p><i>compliance oversight function</i> [FCA]</p>	<p><u>(in the FCA Handbook) FCA controlled function CF10 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.7.8R</del> SUP 10A.7.7R.</u></p>
<p><i>controlled function</i> [FCA/PRA]</p>	<p>a function, relating to the carrying on of a <i>regulated activity</i> by a <i>firm</i>, which is specified by either the <u>FCA</u> in the <u>table of FCA controlled functions</u> or the <u>PRA</u> in the <u>table of PRA controlled functions</u>, under section 59 of the <i>Act</i> (Approval for particular arrangements) <del>in the table of controlled functions</del>.</p>

<i>customer function</i> [FCA]	<i>(in the FCA Handbook) FCA controlled function CF30 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.10.7AR</del> SUP 10A.10.7R.</i>
<i>director function</i> [FCA/PRA]	<i>FCA controlled function CF1 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.6.4R</del> SUP 10A.6.7R and SUP 10A.6.8R.</i>
<i>director of unincorporated association function</i> [FCA/PRA]	<i>FCA controlled function CF5 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.6.24R</del> SUP 10A.6.28R.</i>
<i>governing function</i>	<i>any of the <del>controlled functions 1 to 6 in the table of controlled functions.</del></i>
<i>Lloyd's actuary function</i> [PRA]	<i>(in the PRA Handbook) PRA controlled function CF12B in the table of PRA controlled functions, described more fully in <del>SUP 10.7.22R</del> SUP 10B.7.3R.</i>
<i>money laundering reporting function</i> [FCA]	<i>(in the FCA Handbook) FCA controlled function CF11 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.7.13R</del> SUP 10A.7.9R.</i>
<i>non-executive director function</i> [FCA/PRA]	<i>FCA controlled function CF2 in Part 1 of the table of FCA controlled functions, described more fully in <del>SUP 10.6.17R</del> SUP 10A.6.11R and SUP 10A.6.12R.</i>
<i>partner function</i> [FCA/PRA]	<i>FCA controlled function CF4 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.6.17R</del> SUP 10A.6.23R.</i>
<i>required function</i>	<i>any of <del>controlled functions 8 to 12B in the table of controlled functions (SUP 10.4.5R).</del></i>
<i>significant influence function</i>	<i>any of <del>controlled functions 1 to 12B, and 28 and 29 in the table of controlled functions.</del></i>
<i>significant management function</i> [FCA]	<i>(in the FCA Handbook) FCA controlled function CF29 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.9.10R</del> SUP 10A.9.9R.</i>
<i>small friendly society function</i> [FCA/PRA]	<i>FCA controlled function CF6 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in <del>SUP 10.6.26R</del> SUP 10A.6.29R.</i>
<i>Statement of Principle</i> [FCA]	<i>(in the FCA Handbook) one of the Statements of Principle issued by the <del>FSA</del> FCA under section 64(1) of the Act (Conduct: Statements and codes) with respect to the conduct of approved persons and set out in <u>APER 2.1A</u>. <u>The provisions of APER 1.1A marked with a "P" in the margin form part of the Statements of Principle.</u></i>

[PRA]	<u>(in the PRA Handbook) one of the Statements of Principle issued by the PRA under section 64(1A) of the Act (Conduct: Statements and codes) with respect to the conduct of approved persons and set out in APER 2.1B. The provisions of APER 1.1B marked with a “P” in the margin form part of the Statements of Principle.</u>
<i>systems and controls function</i> [FCA]	<u>(in the FCA Handbook) FCA controlled function CF28 in Part 1 of the table of FCA controlled functions, described more fully in SUP-10.8.1R SUP 10A.8.1R.</u>
[PRA]	<u>(in the PRA Handbook) PRA controlled function CF28 in the table of PRA controlled functions, described more fully in SUP 10B.8.1R.</u>
<i>table of controlled functions</i>	<del>the table of controlled functions in SUP 10.4.5R.</del>
<i>with-profits actuary function</i> [PRA]	<u>(in the PRA Handbook) PRA controlled function CF12A in the table of PRA controlled functions, described more fully in SUP 4.3.13R and SUP-10.7.17AR SUP 10B.7.2R.</u>

## Annex B

### Amendments to the Statement of Principle and Code of Practice for Approved Persons

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

- 1 Application and purpose**
- 1.1 Application [deleted]**
  - Who?
  - 1.1.1 ~~G APER applies to approved persons.~~
  - 1.1.2 ~~G The Statements of Principle apply only to the extent that a person is performing a controlled function for which approval has been sought and granted.~~
  - 1.1.3 ~~G Section 64(11) of the Act states that the power to issue Statements of Principle and codes of practice includes power to make different provisions in relation to persons, cases or circumstances of different descriptions. Statements of Principle 1, 2, 3 and 4 apply to all approved persons, and Statements of Principle 5, 6 and 7 apply to those approved to perform significant influence functions.~~
  - 1.1.4 ~~G The relevance of MiFID to the Statements of Principle will depend on the extent to which the corresponding requirement imposed on firms under MiFID is reserved to a Home State regulator or has been disapplied under MiFID (see APER 2.1.1AP and FIT 1.2.4AG. See also COBS 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).~~
    - Where?
  - 1.1.5 ~~G The territorial scope of the approved persons regime and its application to incoming EEA firms is set out in SUP 10.1 (see SUP 10.1.13R and SUP 10.1.14R).~~



After APER 1.1 (deleted) insert the following new sections. The text is not underlined.

**FCA 1.1A Application**

Who?

- 1.1A.1 P *APER* applies to *FCA-approved persons* and *PRA-approved persons*.

What?

- 1.1A.2 P (1) *APER* applies to the performance by an *approved person* of:
- (a) *FCA controlled functions* (whether or not approval has been sought and granted); and
  - (b) *PRA controlled functions* (whether or not approval has been sought and granted);
- in relation to the *authorised persons* in relation to which that *person* is an *approved person*.
- (2) *APER* also applies to the performance by an *approved person* of any other functions in relation to the carrying on of a *regulated activity* by the *authorised persons* referred to in (1).

- 1.1A.3 G The functions described in *APER* 1.1A.2P are called *accountable functions*.

- 1.1A.4 G The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER* 2.1A.2P and *FIT* 1.2.4AG. See also *COBS* 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).

Where?

- 1.1A.5 G The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP* 10A.1 (see *SUP* 10A.1.12R and *SUP* 10A.1.14R).

Coverage of *APER*

1.1A.6 G *APER* 1.1A.7G gives examples of the effect of *APER* 1.1A.1P and *APER* 1.1A.2P. The first column says whether the example involves an *FCA-approved person* and the second column says whether the example involves a *PRA-approved person*. So for example if there is a “Yes” in both columns that means that the example concerns a *person* who has been approved both by the *FCA* and by the *PRA*. The third column explains what functions *APER* covers in the scenario set out in the first two columns. The table is divided between cases in which the *person* performs the *controlled function* for an *FCA-authorized person* and ones where the *person* does so for a *PRA-authorized person*.

1.1A.7 G Table: Examples of what activities *APER* covers

FCA approved	PRA approved	Coverage of <i>APER</i>
FCA-authorized person		
Yes	Not applicable	Applies to the <i>FCA controlled function</i> . Also applies to any other function in relation to the carrying on of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	Not applicable	In relation to <i>firm A</i> , applies to the <i>FCA controlled function</i> . <i>APER</i> also applies to any other function in relation to the carrying on of a <i>regulated activity</i> by <i>firm A</i> even if it is not a <i>controlled function</i> . However <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However if the function that he performs in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see <i>SUP</i> 10A.13.1G to <i>SUP</i> 10A.13.21G).
PRA-authorized person		
Yes	No	Applies to <i>FCA controlled function</i> . Also applies to any other function in relation to the carrying on of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .

No	Yes	Applies to <i>PRA controlled function</i> . Also applies to any other function in relation to the carrying on of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
Yes	Yes	Applies to <i>FCA controlled function</i> and <i>PRA controlled function</i> . Also applies to any other function in relation to the carrying on of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , applies to the <i>FCA controlled function</i> and <i>PRA controlled function</i> . <i>APER</i> also applies to any other function in relation to the carrying on of a <i>regulated activity</i> by <i>firm A</i> even if it is not a <i>controlled function</i> . However <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However if the function that he performs in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see <i>SUP 10A.13.1G</i> to <i>SUP 10A.13.21G</i> ).  The answer would be the same if A was not approved by the <i>PRA</i> in relation to <i>firm A</i> .

- 1.1A.8 G A *person* may be an *approved person* in relation to more than one *firm*. When that is the case *APER* applies in relation to all those *firms*.
- 1.1A.9 G (1) *APER 1.1A.2P* refers to the *authorised person* in relation to which a *person* is an *approved person*.
- (2) Under section 59 of the *Act* (Approval for particular arrangements) there are two kinds of *approved person*.
- (3) Section 59(1) of the *Act* describes the first. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by an *authorised person* (“A”). In this case *APER 1.1A.2P* refers to A.

- (4) Section 59(2) of the *Act* describes the second. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by a contractor (“B”) of an *authorised person* (“A”). In this case *APER* 1.1A.2P refers to A (and not B).

Rule in GEN about provisions shared between the FCA and PRA

- 1.1A.10 E *GEN 2.2.23R* (Cutover: Application of provisions made by both the FCA and the PRA) does not apply to any provision of *APER* marked with an “E” in the margin.
- 1.1A.11 G *GEN 2.2.23R* does not apply to any of *APER*. It does not apply to any part of *APER* that is not shared as *GEN 2.2.23R* only applies to *Handbook* provisions made by both the *FCA* and the *PRA*. Hence *GEN 2.2.23R* does not apply to the *Statements of Principle*. *APER* 1.1A.10E means that *GEN 2.2.23R* does not apply to shared provisions marked with an “E” in the margin. *GEN 2.2.23R* does not apply to shared *guidance* in *APER* because the *guidance* is about material to which *GEN 2.2.23R* does not apply.

PRA      **1.1B      Application**

Who?

- 1.1B.1      P      *APER* applies to:
- (1)      *PRA-approved persons*; and
  - (2)      *FCA-approved persons* in relation to whom the *FCA* has given its approval under section 59 of the *Act* in respect of the performance by them of *significant-influence functions* in relation to the carrying on by *PRA-authorized persons* of *regulated activities*.

What?

- 1.1B.2      P      (1)      *APER* applies to the performance by an *approved person* of:
- (a)      *PRA controlled functions* (whether or not approval has been sought and granted); and
  - (b)      *FCA controlled functions* that are *significant-influence functions* (whether or not approval has been sought and granted);
- in relation to the *PRA-authorized persons* in relation to which that *person* is an *approved person*.
- (2)      *APER* also applies to the performance by an *approved person* of any other *significant-influence functions* in relation to the *PRA-authorized persons* referred to in (1).

1.1B.3      G      The functions described in *APER* 1.1B.2P are called *accountable functions*.

1.1B.4      G      The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER* 2.1B.2P and *FIT* 1.2.4AG).

Where?

1.1B.5      G      The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP* 10B.1 (see *SUP* 10B.1.11R and *SUP* 10B.1.13R).

Coverage of *APER*

1.1B.6 G *APER* 1.1B.7G gives examples of the effect of *APER* 1.1B.1P and *APER* 1.1B.2P. The first column says whether the example involves an *FCA-approved person* and the second column says whether the example involves a *PRA-approved person*. So for example if there is a “Yes” in both columns that means that the example concerns a *person* who has been approved both by the *FCA* and by the *PRA*. The third column explains what functions *APER* covers in the scenario set out in the first two columns. The table is divided between cases in which the *person* performs the *controlled function* for an *FCA-authorised person* and ones where the *person* does so for a *PRA-authorised person*.

1.1B.7 G Table: Examples of what activities *APER* covers

FCA approved	PRA approved	Coverage of APER
FCA-authorised person		
Yes	Not applicable	Does not apply
PRA-authorised person		
No	Yes	Applies to <i>PRA controlled function</i> . Also applies to any other <i>significant-influence functions</i> even if they are not <i>controlled functions</i> .
Yes (for a <i>significant-influence function</i> )	No	Applies to <i>FCA controlled function</i> . Also applies to any other <i>significant-influence functions</i> even if they are not <i>controlled functions</i> .
Yes (for a <i>customer-dealing function</i> )	No	Does not apply. If he is also performing a <i>significant-influence function</i> that is not a <i>controlled function</i> <i>APER</i> does not apply to that function either.
Yes (for a <i>customer-dealing function</i> )	Yes	Applies to <i>PRA controlled function</i> . Does not apply to <i>customer-dealing function</i> . Also applies to any other <i>significant-influence functions</i> even if they are not <i>controlled functions</i> .
Yes (for a <i>significant-influence function</i> )	Yes	Applies to <i>FCA controlled function</i> and <i>PRA controlled function</i> . Also applies to any other <i>significant-influence functions</i> even if they are not <i>controlled functions</i> .

Yes (for a <i>significant-influence function</i> and <i>customer-dealing function</i> )	Yes	Same answer. Does not apply to <i>customer-dealing function</i> .
Yes, in relation to <i>firm A</i> (for a <i>significant-influence function</i> ). No, in relation to <i>firm B</i> ,	Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , applies to the <i>FCA controlled function</i> and the <i>PRA controlled function</i> . <i>APER</i> also applies to any other <i>significant-influence function</i> in relation to <i>A</i> even if it is not a <i>controlled function</i> . However <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function is a <i>significant-influence function</i> . However if the function that he performs in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see <i>SUP 10B.11.1G</i> and <i>SUP 10B.11.3G</i> ).  The answer would be the same if <i>A</i> was not approved by the <i>FCA</i> in relation to <i>firm A</i> .

1.1B.8 G A *person* may be an *approved person* in relation to more than one *PRA-authorised person*. When that is the case *APER* applies in relation to all those *firms*.

1.1B.9 G (1) *APER 1.1B.2P* refers to the *PRA-authorised person* in relation to which a *person* is an *approved person*.

(2) Under section 59 of the *Act* (Approval for particular arrangements) there are two kinds of *approved person*.

(3) Section 59(1) of the *Act* describes the first. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by an *authorised person* (“A”). In this case *APER 1.1B.2P* refers to A.

(4) Section 59(2) of the *Act* describes the second. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by a contractor (“B”) of an *authorised person* (“A”). In this case *APER 1.1B.2P* refers to A (and not B).

Rule in GEN about provisions shared between the FCA and PRA

- 1.1B.10 E *GEN 2.2.23R* (Cutover: Application of provisions made by both the FCA and the PRA) does not apply to any provision of *APER* marked with an “E” in the margin.
- 1.1B.11 G *GEN 2.2.23R* does not apply to any of *APER*. It does not apply to any part of *APER* that is not shared as *GEN 2.2.23R* only applies to *Handbook* provisions made by both the *FCA* and the *PRA*. Hence *GEN 2.2.23R* does not apply to the *Statements of Principle*. *APER 1.1A.10E* means that *GEN 2.2.23R* does not apply to shared provisions marked with an “E” in the margin. *GEN 2.2.23R* does not apply to shared *guidance* in *APER* because the *guidance* is about material to which *GEN 2.2.23R* does not apply.



Amend the following as shown.

	<b>1.2</b>	<b>Purpose</b>
FCA and PRA	1.2.1	G <del>The <i>Statements of Principle</i> contained in <i>APER 2</i> are issued under section 64(1) of the <i>Act</i> (Conduct: statements and codes).</del> [deleted]
FCA	<u>1.2.1A</u>	<u>G The <i>Statements of Principle</i> contained in <i>APER 2</i> are issued under section 64(1) of the <i>Act</i> (Conduct: statements and codes). The paragraphs of the application section in <i>APER 1.1A</i> labelled “P” also form part of the <i>Statements of Principle</i>.</u>
PRA	<u>1.2.1B</u>	<u>G The <i>Statements of Principle</i> contained in <i>APER 2</i> are issued under section 64(1A) of the <i>Act</i> (Conduct: statements and codes). The paragraphs of the application section in <i>APER 1.1B</i> labelled “P” also form part of the <i>Statements of Principle</i>.</u>
FCA and PRA	1.2.2	G Section 64(2) of the <i>Act</i> states that if <del>the FSA</del> <u>an appropriate regulator</u> issues <i>Statements of Principle</i> it must also issue a code of practice for the purpose of helping to determine whether or not a <i>person's</i> conduct complies with the <i>Statements of Principle</i> . The <i>Code of Practice for Approved Persons</i> in <i>APER 3</i> and <i>APER 4</i> fulfils this requirement.
FCA	1.2.3	G The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the <del>FCA FSA</del> , do not comply with a <i>Statement of Principle</i> and, in the case of <i>Statement of Principle 3</i> , conduct which tends to show compliance within that statement. The <i>Code of Practice for Approved Persons</i> also sets out, in certain cases, factors which, in the opinion of the <del>FCA FSA</del> , are to be taken into account in determining whether or not an <i>approved person's</i> conduct complies with a <i>Statement of Principle</i> . The guidance set out in <i>APER 3</i> and <i>APER 4</i> does not form part of the <i>Code of Practice for Approved Persons</i> .
PRA	<u>1.2.3A</u>	<u>G The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the <i>PRA</i>, do not comply with a <i>Statement of Principle</i>. The <i>Code of Practice for Approved Persons</i> also sets out, in certain cases, factors which, in the opinion of the <i>PRA</i>, are to be taken into account in determining whether or not an <i>approved person's</i> conduct complies with a <i>Statement of Principle</i>. The guidance set out in <i>APER 3</i> and <i>APER 4</i> does not form part of the <i>Code of Practice for Approved Persons</i>.</u>
FCA and PRA	1.2.4	G [deleted]

FCA	1.2.5	G	<p>As set out in <del>SUP 10.3.1R (Arrangements and regulated activities)</del> <u>10A.3.1R (Provisions related to the Act)</u>, a function is a <i>controlled function</i> only to the extent that it is performed under an <i>arrangement</i> entered into by:</p> <p>(1) a <i>firm</i>; or</p> <p>(2) a contractor of the <i>firm</i>;</p> <p>in relation to the carrying on by the <i>firm</i> of a <i>regulated activity</i>.</p>
FCA and PRA	1.2.6	G	<p><del>The <i>Statements of Principle</i> apply only to the performance of a <i>controlled function</i> (that is, to the activities carried on under the arrangement described in the <i>firm's</i> application for approval).</del> <u>[deleted]</u></p>
FCA and PRA	1.2.7	G	<p><del>The <i>FSA</i> recognises that an <i>approved person</i> may be performing functions which are unrelated to <i>regulated activities</i> or are otherwise outside the description of a <i>controlled function</i>. The fact that a <i>person</i> may be approved for one purpose does not have the effect of bringing all his functions within the <i>controlled function</i>, nor of making those functions subject to the <i>Statements of Principle</i>.</del> <u>[deleted]</u></p>
FCA and PRA	1.2.8	G	<p><del>The territorial scope of the <i>approved persons</i> regime is set out in SUP 10.1 (Application).</del> <u>[deleted]</u></p>
FCA and PRA	1.2.9	G	<p><del>The <i>Statements of Principle</i> apply only to the extent that a <i>person</i> is performing a <i>controlled function</i> for which approval has been sought and granted.</del> <u>[deleted]</u></p>

FCA and PRA 2.1 The Statements of Principle ~~[deleted]~~

- 2.1.1 G ~~APER 2.1.2P sets out the Statements of Principle issued by the FSA to which APER 1.2.1G refers and to which the provisions of the Code of Practice for Approved Persons and guidance in APER 3 and APER 4 apply.~~
- 2.1.1A P ~~An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK's obligations under a Single Market Directive or the auction regulation.~~
- 2.1.2 P ~~Statements of Principle issued under section 64 of the Act~~

<p>Statement of Principle 1</p> <p><del>An approved person must act with integrity in carrying out his controlled function.</del></p>
<p>Statement of Principle 2</p> <p><del>An approved person must act with due skill, care and diligence in carrying out his controlled function.</del></p>
<p>Statement of Principle 3</p> <p><del>An approved person must observe proper standards of market conduct in carrying out his controlled function.</del></p>
<p>Statement of Principle 4</p> <p><del>An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice.</del></p>
<p>Statement of Principle 5</p> <p><del>An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively.</del></p>
<p>Statement of Principle 6</p> <p><del>An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.</del></p>

Statement of Principle 7

~~An *approved person* performing a *significant influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *controlled function* complies with the relevant requirements and standards of the *regulatory system*.~~

After APER 2.1 (deleted) insert the following new sections. The text is not underlined.

**FCA 2.1A The Statements of Principle**

- 2.1A.1 G *APER 2.1A.3P sets out the Statements of Principle issued by the FCA to which APER 1.2.1AG refers and to which the provisions of the Code of Practice for Approved Persons and guidance in APER 3 and APER 4 apply. The paragraphs of APER 1.1A labelled “P” also form part of the Statements of Principle.*
- 2.1A.2 P *An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK's obligations under a Single Market Directive or the auction regulation.*
- 2.1A.3 P Statements of Principle issued under section 64 of the Act

<p>Statement of Principle 1</p> <p><i>An approved person must act with integrity in carrying out his accountable functions.</i></p>
<p>Statement of Principle 2</p> <p><i>An approved person must act with due skill, care and diligence in carrying out his accountable functions.</i></p>
<p>Statement of Principle 3</p> <p><i>An approved person must observe proper standards of market conduct in carrying out his accountable functions.</i></p>
<p>Statement of Principle 4</p> <p><i>An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.</i></p>
<p>Statement of Principle 5</p> <p><i>An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively.</i></p>
<p>Statement of Principle 6</p> <p><i>An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.</i></p>

Statement of Principle 7

*An approved person performing an accountable significant- influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system.*

PRA **2.1B The Statements of Principle**

- 2.1B.1 G *APER 2.1B.3P sets out the Statements of Principle issued by the PRA to which APER 1.2.1BG refers and to which the provisions of the Code of Practice for Approved Persons and guidance in APER 3 and APER 4 apply. The paragraphs of APER 1.1B labelled “P” also form part of the Statements of Principle.*
- 2.1B.2 P *An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK's obligations under a Single Market Directive or the auction regulation.*
- 2.1B.3 P Statements of Principle issued under section 64 of the Act

<p>Statement of Principle 1</p> <p><i>An approved person must act with integrity in carrying out his accountable functions.</i></p>
<p>Statement of Principle 2</p> <p><i>An approved person must act with due skill, care and diligence in carrying out his accountable functions.</i></p>
<p>Statement of Principle 3</p> <p>[Not used]</p>
<p>Statement of Principle 4</p> <p><i>An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.</i></p>
<p>Statement of Principle 5</p> <p><i>An approved person performing an accountable function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively.</i></p>
<p>Statement of Principle 6</p> <p><i>An approved person performing an accountable function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.</i></p>

Statement of Principle 7

An *approved person* performing an *accountable function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *accountable function* complies with the relevant requirements and standards of the *regulatory system*.



Amend the following as shown.

### **3 Code of Practice for Approved Persons: general**

#### **3.1 Introduction**

- |             |       |   |  |
|-------------|-------|---|--|
| FCA and PRA | 3.1.1 | G | <p>This <i>Code of Practice for Approved Persons</i> is issued under section 64 of the <i>Act</i> (Conduct: statements and codes) for the purpose of helping to determine whether or not an <i>approved person's</i> conduct complies with a <i>Statement of Principle</i>. The code sets out descriptions of conduct which, in the <del>FSA's</del> <u>appropriate regulator's</u> opinion, do not comply with the relevant <i>Statements of Principle</i>. The code also sets out certain factors which, in the opinion of the <del>FSA</del>-<u>appropriate regulator</u>, are to be taken into account in determining whether an <i>approved person's</i> conduct complies with a particular <i>Statement of Principle</i>. The description of conduct, the factors and related provisions are identified in the text by the letter 'E' as explained in chapter 6 of the Reader's Guide.</p> |
| FCA and PRA | 3.1.2 | G | <p>The <i>Code of Practice for Approved Persons</i> in issue at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a <i>Statement of Principle</i>.</p>   |
| FCA and PRA | 3.1.3 | G | <p>The significance of conduct identified in the <i>Code of Practice for Approved Persons</i> as tending to establish compliance with or a breach of a <i>Statement of Principle</i> will be assessed only after all the circumstances of a particular case have been considered. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular <i>controlled accountable function</i> and the behaviour to be expected in that function.</p>  |
| FCA         | 3.1.4 | G | <p>(1) An <i>approved person</i> will only be in breach of a <i>Statement of Principle</i> where he is personally culpable. Personal culpability arises where an <i>approved person's</i> conduct was deliberate or where the <i>approved person's</i> standard of conduct was below that which would be reasonable in all the circumstances (see <i>DEPP</i> 6.2.4G (Action against approved persons under section 66 of the <i>Act</i>)).</p> <p>(2) For the avoidance of doubt, the <i>Statements of Principle</i> do not extend the duties of <i>approved persons</i> beyond those which the <i>firm</i> owes in its dealings with <i>customers</i> or others.</p>   |

- PRA 3.1.4A G (1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- (2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others.
- FCA and PRA 3.1.5 G In particular, in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*, the *FSA appropriate regulator* will take into account the extent to which an *approved person* has acted in a way that is stated to be in breach of a *Statement of Principle*.
- FCA and PRA 3.1.6 G The *Code of Practice for Approved Persons* (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the *Statements of Principle*. The purpose of the code is to help determine whether or not a *person's* conduct complies with a *Statement of Principle*. The code may be supplemented from time to time. The *FSA appropriate regulator* will amend the code if there is a risk that unacceptable practice may become prevalent, so as to make clear what conduct falls below the standards expected of *approved persons* by the *Statements of Principle*.
- FCA 3.1.7 G *Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to "his controlled function" is a reference to the controlled function to which the approval relates. A person performing a an accountable significant-influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled accountable function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see in particular APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see in particular APER 4.7.3E).*

- FCA 3.1.8 G In applying *Statements of Principle 5 to 7*, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a an accountable significant-influence function within the *firm* will be relevant in assessing whether an *approved 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. The ~~FCA FSA~~ will be of the opinion that an individual performing a an accountable significant-influence function may have breached *Statements of Principle 5 to 7* only if his conduct was below the standard which would be reasonable in all the circumstances. (See also *APER 3.3.1E(3) to (5)*).
- PRA 3.1.8A G In applying *Statements of Principle 5 to 7*, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable function within the firm will be relevant in assessing whether an approved 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. The PRA will be of the opinion that an individual performing an accountable function may have breached *Statements of Principle 5 to 7* only if his conduct was below the standard which would be reasonable in all the circumstances. (See also *APER 3.3.1E(3) to (5)*).
- FCA 3.1.9 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. ~~Firms FSA~~ regulated ~~firms~~ by the appropriate regulator in this category will thus be subject to that code as well as to the requirements and standards of the *regulatory system*. In forming an opinion whether *approved persons* have complied with its requirements, the ~~FSA~~ appropriate regulator will give due credit for their following corresponding provisions in the *UK Corporate Governance Code* and related *guidance*.

### 3.2 Factors relating to all Statements of Principle

FCA and PRA 3.2.1

- E In determining whether or not the particular conduct of an *approved person* within his *accountable controlled function* complies with the *Statements of Principle*, the following are factors which, in the opinion of the ~~FSA~~ *appropriate regulator*, are to be taken into account:
- (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 his *firm*.

### 3.3 Factors relating to Statements of Principle 5 to 7

FCA 3.3.1 E In determining whether or not the conduct of an *approved person* performing a an accountable significant-influence function complies with *Statements of Principle 5 to 7*, the following are factors which, in the opinion of the FCA FSA, are to be taken into account:

- (1) whether he exercised reasonable care when considering the information available to him;
- (2) whether he reached a reasonable conclusion which he acted on;
- (3) the nature, scale and complexity of the *firm's* business;
- (4) his role and responsibility as an *approved person* performing a an accountable significant-influence function;
- (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

PRA 3.3.2 E In determining whether or not the conduct of an *approved person* performing an accountable function complies with *Statements of Principle 5 to 7*, the following are factors which, in the opinion of the *PRA*, are to be taken into account:

- (1) whether he exercised reasonable care when considering the information available to him;
- (2) whether he reached a reasonable conclusion which he acted on;
- (3) the nature, scale and complexity of the *firm's* business;
- (4) his role and responsibility as an *approved person* performing an accountable function;
- (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

## 4 Code of Practice for Approved Persons: specific

### 4.1 Statement of Principle 1

FCA and PRA	4.1.1	G	<del>The <i>Statement of Principle 1</i> (see <i>APER 2.1.2P</i>) is in the following terms: "An <i>approved person</i> must act with integrity in carrying out his <i>controlled function</i>." [deleted]</del>
FCA	<u>4.1.1A</u>	G	<u>The <i>Statement of Principle 1</i> (see <i>APER 2.1A.3P</i>) is in the following terms: "An <i>approved person</i> must act with integrity in carrying out his <i>accountable functions</i>."</u>
PRA	<u>4.1.1B</u>	G	<u>The <i>Statement of Principle 1</i> (see <i>APER 2.1B.3P</i>) is in the following terms: "An <i>approved person</i> must act with integrity in carrying out his <i>accountable functions</i>."</u>
FCA and PRA	4.1.2	E	In the opinion of the <i>FSA appropriate regulator</i> , conduct of the type described in <i>APER 4.1.3E</i> , <i>APER 4.1.5E</i> , <i>APER 4.1.6E</i> , <i>APER 4.1.8E</i> , <i>APER 4.1.10E</i> , <i>APER 4.1.12E</i> , <i>APER 4.1.13E</i> , <i>APER 4.1.14E</i> or <i>APER 4.1.15E</i> does not comply with <i>Statement of Principle 1</i> ( <del><i>APER 2.1.2P</i></del> ).
FCA and PRA	4.1.3	E	Deliberately misleading (or attempting to mislead) by act or omission:  (1) a <i>client</i> ; or  (2) his <i>firm</i> (or its auditors or an <i>actuary</i> appointed by his <i>firm</i> under <i>SUP 4</i> (Actuaries)); or  (3) the <del><i>FSA</i></del> <u><i>FCA</i></u> or the <u><i>PRA</i></u> ;  falls within <i>APER 4.1.2E</i> .
FCA and PRA	4.1.4	E	Behaviour of the type referred to in <i>APER 4.1.3E</i> includes, but is not limited to, deliberately:  (1) falsifying <i>documents</i> ;  (2) misleading a <i>client</i> about the risks of an <i>investment</i> ;  (3) misleading a <i>client</i> about the charges or surrender penalties of <i>investment</i> products;  (4) misleading a <i>client</i> about the likely performance of <i>investment</i> products by providing inappropriate <i>projections</i> of future <i>investment</i> returns;  (5) misleading a <i>client</i> by informing him that products require only a single payment when that is not the case;

- (6) mismarking the value of *investments* or trading positions;
- (7) procuring the unjustified alteration of prices on illiquid or *off-exchange* contracts, or both;
- (8) misleading others within the *firm* about the credit worthiness of a borrower;
- (9) providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience;
- (10) providing false or inaccurate information to the *firm* (or to the *firm's* auditors or an *actuary* appointed by the *firm* under *SUP* 4 (Actuaries));
- (11) providing false or inaccurate information to the ~~FS~~SA FCA or the PRA;
- (12) destroying, or causing the destruction of, *documents* (including false documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a *client*, his *firm*, the FCA or the ~~FS~~SA PRA;
- (13) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*;
- (14) misleading others in the *firm* about the nature of risks being accepted.

FCA and PRA 4.1.5 E Deliberately recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *approved person* knows that he is unable to justify its suitability for that *customer*, falls within *APER* 4.1.2E.

FCA and PRA 4.1.6 E Deliberately failing to inform, without reasonable cause:

- (1) a *customer*; or
- (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under *SUP* 4 (Actuaries)); or
- (3) the ~~FS~~SA FCA or the PRA;

of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, falls within *APER* 4.1.2E.

FCA and PRA 4.1.7 E Behaviour of the type referred to in *APER* 4.1.6E includes, but is not limited to, deliberately:

			(1) failing to disclose the existence of falsified <i>documents</i> ;
			(2) failing to rectify mismarked positions immediately.
FCA and PRA	4.1.8	E	Deliberately preparing inaccurate or inappropriate records or returns in connection with <del>a</del> <u>an</u> <i>accountable controlled function</i> , falls within <i>APER</i> 4.1.2E.
FCA and PRA	4.1.9	E	Behaviour of the type referred to in <i>APER</i> 4.1.8E includes, but is not limited to, deliberately: <ul style="list-style-type: none"> <li>(1) preparing performance reports for transmission to <i>customers</i> which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);</li> <li>(2) preparing inaccurate training records or inaccurate details of qualifications, past employment record or experience;</li> <li>(3) preparing inaccurate trading confirmations, contract notes or other records of <i>transactions</i> or holdings of <i>securities</i> for a <i>customer</i>, whether or not the <i>customer</i> is aware of these inaccuracies or has requested such records.</li> </ul>
FCA and PRA	4.1.10	E	Deliberately misusing the assets or confidential information of a <i>client</i> or of his <i>firm</i> falls within <i>APER</i> 4.1.2E.
FCA and PRA	4.1.11	E	Behaviour of the type referred to in <i>APER</i> 4.1.10E includes, but is not limited to, deliberately: <ul style="list-style-type: none"> <li>(1) front running <i>client</i> orders;</li> <li>(2) carrying out unjustified trading on <i>client</i> accounts to generate a benefit (whether direct or indirect) to the <i>approved person</i> (that is, churning);</li> <li>(3) misappropriating a <i>client's</i> assets, including wrongly transferring to personal accounts cash or <i>securities</i> belonging to <i>clients</i>;</li> <li>(4) wrongly using one <i>client's</i> funds to settle margin calls or to cover trading losses on another <i>client's</i> account or on <i>firm</i> accounts;</li> <li>(5) using a <i>client's</i> funds for purposes other than those for which they were provided;</li> <li>(6) retaining a <i>client's</i> funds wrongly;</li> <li>(7) pledging the assets of a <i>client</i> as security or margin in circumstances where the <i>firm</i> is not permitted to do so.</li> </ul>



FCA and PRA	4.1.12	E	Deliberately designing <i>transactions</i> so as to disguise breaches of requirements and standards of the <i>regulatory system</i> falls within <i>APER</i> 4.1.2E.
FCA and PRA	4.1.13	E	Deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a <i>client</i> falls within <i>APER</i> 4.1.2E.
FCA and PRA	4.1.14	E	Deliberately not paying due regard to the interests of a <i>customer</i> falls within <i>APER</i> 4.1.2E.
FCA and PRA	4.1.15	E	Deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment fall within <i>APER</i> 4.1.2E.

## 4.2 Statement of Principle 2

FCA and PRA	4.2.1	G	<del>The <i>Statement of Principle 2</i> (see <i>APER 2.1.2P</i>) is in the following terms: "An <i>approved person</i> must act with due skill, care and diligence in carrying out his <i>controlled function</i>."</del> [deleted]
FCA	<u>4.2.1A</u>	G	<u>The <i>Statement of Principle 2</i> (see <i>APER 2.1A.3P</i>) is in the following terms: "An <i>approved person</i> must act with due skill, care and diligence in carrying out his <i>accountable functions</i>."</u>
PRA	<u>4.2.1B</u>	G	<u>The <i>Statement of Principle 2</i> (see <i>APER 2.1B.3P</i>) is in the following terms: "An <i>approved person</i> must act with due skill, care and diligence in carrying out his <i>accountable functions</i>."</u>
FCA and PRA	4.2.2	E	In the opinion of the <i>FSA appropriate regulator</i> , conduct of the type described in <i>APER 4.2.3E</i> , <i>APER 4.2.5E</i> , <i>APER 4.2.6E</i> , <i>APER 4.2.8E</i> , <i>APER 4.2.10E</i> , <i>APER 4.2.11E</i> , <del><i>APER 4.2.13E</i></del> or <i>APER 4.2.14E</i> does not comply with <i>Statement of Principle 2</i> ( <del><i>APER 2.1.2P</i></del> ).
FCA	<u>4.2.2A</u>	E	<u>In the opinion of the <i>FCA</i>, conduct of the type described in <i>APER 4.2.13E</i> does not comply with <i>Statement of Principle 2</i>.</u>
FCA and PRA	4.2.3	E	Failing to inform: <ul style="list-style-type: none"> <li>(1) a <i>customer</i>; or</li> <li>(2) his <i>firm</i> (or its auditors or an <i>actuary</i> appointed by his <i>firm</i> under <i>SUP 4 Actuaries</i>);</li> </ul> of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it, falls within <i>APER 4.2.2E</i> .
FCA and PRA	4.2.4	E	Behaviour of the type referred to in <i>APER 4.2.3E</i> includes, but is not limited to: <ul style="list-style-type: none"> <li>(1) failing to explain the risks of an <i>investment</i> to a <i>customer</i>;</li> <li>(2) failing to disclose to a <i>customer</i> details of the charges or surrender penalties of <i>investment</i> products;</li> <li>(3) mismarking trading positions;</li> <li>(4) providing inaccurate or inadequate information to a <i>firm</i>, its auditors or an <i>actuary</i> appointed by his <i>firm</i> under <i>SUP 4 Actuaries</i>;</li> </ul>

			(5) failing to disclose dealings where disclosure is required by the <i>firm's</i> personal account <i>dealing rules</i> .
FCA and PRA	4.2.5	E	Recommending an <i>investment</i> to a <i>customer</i> , or carrying out a discretionary <i>transaction</i> for a <i>customer</i> , where he does not have reasonable grounds to believe that it is suitable for that <i>customer</i> , falls within <i>APER</i> 4.2.2E.
FCA and PRA	4.2.6	E	Undertaking, recommending or providing advice on <i>transactions</i> without a reasonable understanding of the risk exposure of the <i>transaction</i> to a <i>customer</i> falls within <i>APER</i> 4.2.2E.
FCA and PRA	4.2.7	E	<i>Behaviour</i> of the type referred to in <i>APER</i> 4.2.6E includes, but is not limited to, recommending <i>transactions</i> in <i>investments</i> to a <i>customer</i> without a reasonable understanding of the liability (either potential or actual) of that <i>transaction</i> .
FCA and PRA	4.2.8	E	Undertaking <i>transactions</i> without a reasonable understanding of the risk exposure of the <i>transaction</i> to the <i>firm</i> falls within <i>APER</i> 4.2.2E.
FCA and PRA	4.2.9	E	<i>Behaviour</i> of the type referred to in <i>APER</i> 4.2.8E includes, but is not limited to, trading on the <i>firm's</i> own account without a reasonable understanding of the liability (either potential or actual) of the <i>transaction</i> .
FCA and PRA	4.2.10	E	Failing without good reason to disclose the existence of a conflict of interest in connection with dealings with a <i>client</i> falls within <i>APER</i> 4.2.2E.
FCA and PRA	4.2.11	E	Failing to provide adequate control over a <i>client's</i> assets falls within <i>APER</i> 4.2.2E.
FCA and PRA	4.2.12	E	<i>Behaviour</i> of the type referred to in <i>APER</i> 4.2.11E includes, but is not limited to: <ul style="list-style-type: none"> <li>(1) failing to segregate a <i>client's</i> assets;</li> <li>(2) failing to process a <i>client's</i> payments in a timely manner.</li> </ul>
FCA	4.2.13	E	Continuing to perform a <i>controlled function</i> despite having failed to meet the standards of knowledge and skill set out in the Training and Competence sourcebook ( <i>TC</i> ) for that <i>controlled function</i> falls within <del><i>APER</i> 4.2.2E</del> <i>APER</i> 4.2.2AE.
FCA and PRA	4.2.14	E	Failing to pay due regard to the interests of a <i>customer</i> , without good reason, falls within <i>APER</i> 4.2.2E.

### 4.3 Statement of Principle 3

- FCA 4.3.1 G The *Statement of Principle 3* (see ~~APER 2.1.2P~~ APER 2.1A.3P) is in the following terms: "An *approved person* must observe proper standards of market conduct in carrying out his ~~*controlled function*~~ *accountable functions*."
- FCA 4.3.2 G [deleted]
- FCA 4.3.3 E A factor to be taken into account in determining whether or not an *approved person's* conduct complies with this *Statement of Principle* ~~APER 2.1.2P~~) is whether he, or his *firm*, has complied with the *Code of Market Conduct MAR 1*) or relevant market codes and exchange rules.
- FCA 4.3.4 E Compliance with the code or *rules* described in *APER 4.3.3E* will tend to show compliance with this *Statement of Principle* (~~APER 2.1.2P~~).

#### 4.4 Statement of Principle 4

FCA and PRA	4.4.1	G	<del>The <i>Statement of Principle 4</i> (see <i>APER 2.1.2 P</i>) is in the following terms: "An <i>approved person</i> must deal with the <i>FSA</i> and with other regulators in an open and cooperative way and must disclose appropriately any information of which the <i>FSA</i> would reasonably expect notice." [deleted]</del>
FCA	<u>4.4.1A</u>	<u>G</u>	<u>The <i>Statement of Principle 4</i> (see <i>APER 2.1A.3P</i>) is in the following terms: "An <i>approved person</i> must deal with the <i>FCA</i>, <i>the PRA</i> and other regulators in an open and cooperative way and must disclose appropriately any information of which the <i>FCA</i> or the <i>PRA</i> would reasonably expect notice."</u>
PRA	<u>4.4.1B</u>	<u>G</u>	<u>The <i>Statement of Principle 4</i> (see <i>APER 2.1B.3P</i>) is in the following terms: "An <i>approved person</i> must deal with the <i>FCA</i>, <i>the PRA</i> and other regulators in an open and cooperative way and must disclose appropriately any information of which the <i>FCA</i> or the <i>PRA</i> would reasonably expect notice."</u>
FCA and PRA	4.4.2	G	<del>For the purpose of this <i>Statement of Principle</i> (<i>APER 2.1.2 P</i>), regulators in addition to the <i>FSA</i> are those which have recognised jurisdiction in relation to <i>regulated activities</i> and a power to call for information from the <i>approved person</i> in connection with his <i>controlled function</i> or (in the case of an individual performing a <i>significant influence function</i>) in connection with the business for which he is responsible. This may include an exchange or an <i>overseas regulator</i>. [deleted]</del>
FCA	<u>4.4.2A</u>	<u>G</u>	<u>For the purpose of this <i>Statement of Principle</i>, regulators in addition to the <i>FCA</i> and the <i>PRA</i> are those which have recognised jurisdiction in relation to <i>regulated activities</i> and a power to call for information from the <i>approved person</i> in connection with his <i>accountable function</i> or (in the case of an individual performing an <i>accountable significant-influence function</i>) in connection with the business for which he is responsible. This may include an exchange or an <i>overseas regulator</i>.</u>
PRA	<u>4.4.2B</u>	<u>G</u>	<u>For the purpose of this <i>Statement of Principle</i>, regulators in addition to the <i>FCA</i> and the <i>PRA</i> are those which have recognised jurisdiction in relation to <i>regulated activities</i> and a power to call for information from the <i>approved person</i> in connection with his <i>accountable function</i> or in connection with the business for which he is responsible. This may include an exchange or an <i>overseas regulator</i>.</u>

FCA and PRA	4.4.3	E	In the opinion of the <i>FSA appropriate regulator</i> , conduct of the type described in <i>APER 4.4.4E</i> , <i>APER 4.4.7E</i> , or <i>APER 4.4.9E</i> does not comply with <i>Statement of Principle 4 (APER 2.1.2P)</i> .
FCA and PRA	4.4.4	E	<p>Failing to report promptly in accordance with his <i>firm's</i> internal procedures (or if none exist direct to the <i>FSA regulator concerned</i>), information which it would be reasonable to assume would be of material significance to the <i>FSA regulator concerned</i>, whether in response to questions or otherwise, falls within <i>APER 4.4.3E</i>. <u>The regulator concerned is:</u></p> <p>(1) <u>the FCA if it would be reasonable to assume that it would be of material significance to it;</u></p> <p>(2) <u>the PRA if it would be reasonable to assume that it would be of material significance to it;</u></p> <p>(3) <u>both the FCA and the PRA if it would be reasonable to assume that it would be of material significance to both of them.</u></p>
FCA and PRA	4.4.5	G	There is no duty on an <i>approved person</i> to report such information directly to the <u>regulator concerned FSA</u> unless he is one of the <i>approved persons</i> responsible within the <i>firm</i> for reporting matters to the <i>FSA regulator concerned</i> . However, if an <i>approved person</i> takes steps to influence the decision so as not to report to the <i>FSA regulator concerned</i> or acts in a way that is intended to obstruct the reporting of the information to the <i>FSA regulator concerned</i> , then the <i>FSA appropriate regulator</i> will, in respect of that information, view him as being one of those within the <i>firm</i> who has taken on responsibility for deciding whether to report that matter to the <i>FSA regulator concerned</i> .
FCA and PRA	4.4.6	E	<p>In determining whether or not an <i>approved person's</i> conduct under <i>APER 4.4.4E</i> complies with <i>Statement of Principle 4</i>, the following are factors which, in the opinion of the <i>FSA appropriate regulator</i>, are to be taken into account:</p> <p>(1) the likely significance to the <u>regulator concerned (as defined in APER 4.4.4E) FSA</u> of the information which it was reasonable for the individual to assume;</p> <p>(2) whether the information related to the individual himself or to his <i>firm</i>;</p> <p>(3) whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation.</p>

- FCA and PRA 4.4.7 E Where the *approved person* is, or is one of the *approved persons* who is, responsible within the *firm* for reporting matters to the FSA regulator concerned (as defined in APER 4.4.4E), failing promptly to inform the FSA regulator concerned of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA regulator concerned, whether in response to questions or otherwise, falls within APER 4.4.3E.
- FCA and PRA 4.4.8 E In determining whether or not an *approved person's* conduct under APER 4.4.7E complies with *Statement of Principle 4 (APER 2.1.2P)*, the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:
- (1) the likely significance of the information to the FSA regulator concerned (as defined in APER 4.4.4E) which it was reasonable for the *approved person* to assume;
  - (2) whether any decision not to inform the FSA regulator concerned (as defined in APER 4.4.4E) was taken after reasonable enquiry and analysis of the situation.
- FCA and PRA 4.4.9 E Failing without good reason to:
- (1) inform a regulator of information of which the *approved person* was aware in response to questions from that regulator;
  - (2) attend an interview or answer questions put by a regulator, despite a request or demand having been made;
  - (3) supply a regulator with appropriate *documents* or information when requested or required to do so and within the time limits attaching to that request or requirement;
- falls within APER 4.4.3E.

## 4.5 Statement of Principle 5

FCA and PRA	4.5.1	G	<del>The <i>Statement of Principle 5</i> (see <i>APER 2.1.2P</i>) is in the following terms: "An <i>approved person</i> performing a <i>significant influence function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>controlled function</i> is organised so that it can be controlled effectively."</del> [deleted]
FCA	<u>4.5.1A</u>	<u>G</u>	<u>The <i>Statement of Principle 5</i> (see <i>APER 2.1A.3P</i>) is in the following terms: "An <i>approved person</i> performing an <i>accountable significant-influence function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i> is organised so that it can be controlled effectively."</u> References in <i>APER 4.5</i> to a <i>significant-influence function</i> are to an <i>accountable function</i> to which <i>Statement of Principle 5</i> applies.
PRA	<u>4.5.1B</u>	<u>G</u>	<u>The <i>Statement of Principle 5</i> (see <i>APER 2.1B.3P</i>) is in the following terms: "An <i>approved person</i> performing an <i>accountable function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i> is organised so that it can be controlled effectively."</u> References in <i>APER 4.5</i> to a <i>significant-influence function</i> are to an <i>accountable function</i> to which <i>Statement of Principle 5</i> applies.
FCA and PRA	4.5.2	E	In the opinion of the <i>FSA appropriate regulator</i> , conduct of the type described in <i>APER 4.5.3E</i> , <i>APER 4.5.4E</i> , <u>or <i>APER 4.5.6E</i></u> <del>or <i>APER 4.5.8E</i></del> does not comply with <i>Statement of Principle 5</i> ( <i>APER 2.1.2P</i> ).
FCA	<u>4.5.2A</u>	<u>E</u>	<u>In the opinion of the <i>FCA</i>, conduct of the type described in <i>APER 4.5.8AE</i> does not comply with <i>Statement of Principle 5</i>.</u>
PRA	<u>4.5.2B</u>	<u>E</u>	<u>In the opinion of the <i>PRA</i>, conduct of the type described in <i>APER 4.5.8BE</i> does not comply with <i>Statement of Principle</i>.</u>
FCA and PRA	4.5.3	E	Failing to take reasonable steps to apportion responsibilities for all areas of the business under the <i>approved person's</i> control falls within <i>APER 4.5.2E</i> (see <i>APER 4.5.11G</i> ).
FCA and PRA	4.5.4	E	Failing to take reasonable steps to apportion responsibilities clearly amongst those to whom responsibilities have been delegated falls within <i>APER 4.5.2E</i> (see <i>APER 4.5.11G</i> ).
FCA and PRA	4.5.5	E	Behaviour of the type referred to in <i>APER 4.5.4E</i> includes, but is not limited to:



			(1) implementing confusing or uncertain reporting lines (see <i>APER</i> 4.5.12G);
			(2) implementing confusing or uncertain authorisation levels (see <i>APER</i> 4.5.13G);
			(3) implementing confusing or uncertain job descriptions and responsibilities (see <i>APER</i> 4.5.13G).
FCA and PRA	4.5.6	E	In the case of an <i>approved person</i> who is responsible under <i>SYSC</i> 2.1.3R(1) or <i>SYSC</i> 4.4.5R(1) for dealing with the apportionment of responsibilities under <i>SYSC</i> 2.1.1R or <i>SYSC</i> 4.4.3R, failing to take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among the <i>firm's</i> directors and senior managers falls within <i>APER</i> 4.5.2E.
FCA and PRA	4.5.7	E	Behaviour of the type referred to in <i>APER</i> 4.5.6E includes, but is not limited to:
			(1) failing to review regularly the significant responsibilities which the <i>firm</i> is required to apportion;
			(2) failing to act where that review shows that those significant responsibilities have not been clearly apportioned.
	4.5.8	E	<del>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 <i>significant- influence function</i> falls within <i>APER</i> 4.5.2E (see <i>APER</i> 4.5.14G). [deleted]</del>
<u>FCA</u>	<u>4.5.8A</u>	<u>E</u>	<u>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 <i>significant- influence function</i> falls within <i>APER</i> 4.5.2AE (see <i>APER</i> 4.5.14AG).</u>
<u>PRA</u>	<u>4.5.8B</u>	<u>E</u>	<u>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 <i>significant- influence function</i> falls within <i>APER</i> 4.5.2BE (see <i>APER</i> 4.5.14BG).</u>
FCA and PRA	4.5.9	E	Behaviour of the type referred to in <i>APER</i> 4.5.8E includes, but is not limited to: [deleted]
			(1) <del>failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable (see <i>APER</i> 4.5.14G);</del>

- (2) ~~giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role (see *APER* 4.5.14G);~~
- (3) ~~allowing managerial vacancies which put at risk compliance with the requirements and standards of the *regulatory system* to remain, without arranging suitable cover for the responsibilities (see *APER* 4.5.15G).~~

FCA      4.5.9A      E      Behaviour of the type referred to in *APER* 4.5.8AE includes, but is not limited to:

- (1) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable (see *APER* 4.5.14AG);
- (2) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role (see *APER* 4.5.14AG);
- (3) allowing managerial vacancies which put at risk compliance with the requirements and standards of the *regulatory system* to remain, without arranging suitable cover for the responsibilities (see *APER* 4.5.16G).

PRA      4.5.9B      E      Behaviour of the type referred to in *APER* 4.5.8BE includes, but is not limited to:

- (1) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable (see *APER* 4.5.14BG);
- (2) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role (see *APER* 4.5.14BG);
- (3) allowing managerial vacancies which put at risk compliance with the requirements and standards of the *regulatory system* to remain, without arranging suitable cover for the responsibilities (see *APER* 4.5.17G).

FCA and PRA 4.5.10 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 he is responsible, the *approved person* performing a *significant\_influence function* should bear this in mind.

#### Apportionment of responsibilities

FCA and PRA 4.5.11 G In order to comply with the obligations of *Statement of Principle 5* (having regard to *APER 4.5.3E* and *APER 4.5.4E*), the *approved person* performing a *significant\_influence function* may find it helpful to review whether each area of the business for which he is responsible has been clearly assigned to a particular individual or individuals.

#### Reporting lines

FCA and PRA 4.5.12 G The organisation of the business and the responsibilities of those within it should be clearly defined (see *APER 4.5.5E(1)*). Reporting lines should be clear to staff. Where staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.

#### Authorisation levels and job descriptions

FCA and PRA 4.5.13 G Where members of staff have particular levels of authorisation (see *APER 4.5.5E(2)* and *APER 4.5.5E(3)*), these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which he is aware.

#### Suitability of individuals

FCA and PRA 4.5.13A G The appropriate *approved person* performing a *significant\_influence function* should take reasonable steps to satisfy himself, on reasonable grounds, that each area of the business for which he is responsible has in place appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

FCA and PRA 4.5.14 G ~~If an individual's performance is unsatisfactory, then the appropriate *approved person* (if any) performing a *significant\_influence function* should review carefully whether to allow that individual to continue in position. In particular, if he is 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 *approved person* performing a *significant\_influence function* 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. An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *approved person* performing a *significant\_influence function* should satisfy himself, 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* (see in particular *Statement of Principle 6* and *APER 4.5.8E* and *APER 4.5.9E(1)* and *APER 4.5.9E(2)*).~~

FCA 4.5.14A G If an individual's performance is unsatisfactory, then the appropriate *approved person* (if any) performing a *significant\_influence function* should review carefully whether to allow that individual to continue in position. In particular, if he is 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 *approved person* performing a *significant\_influence function* 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. An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *approved person* performing a *significant\_influence function* should satisfy himself, 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* (see in particular *Statement of Principle 6* and *APER 4.5.8AE* and *APER 4.5.9AE(1)* and *APER 4.5.9AE(2)*).

PRA      4.5.14B    G    If an individual’s performance is unsatisfactory, then the appropriate *approved person* (if any) performing a *significant-influence function* should review carefully whether to allow that individual to continue in position. In particular, if he is 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 *approved person* performing a *significant-influence function* 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. An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *approved person* performing a *significant-influence function* should satisfy himself, 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* (see in particular *Statement of Principle 6* and *APER 4.5.8BE* and *APER 4.5.9BE(1)* and *APER 4.5.9BE(2)*).

Temporary vacancies

FCA and PRA    4.5.15    G    ~~In organising the business, the *approved person* performing a *significant influence function* should pay attention to any temporary vacancies which exist (see *APER 4.5.9E(3)*). He should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *approved person* performing a *significant influence function* 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 appropriate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of one of the *customer* functions, they may only be filled by *persons* approved for that function.~~  
[deleted]

- FCA      4.5.16      G      In organising the business, the *approved person* performing a *significant-influence function* should pay attention to any temporary vacancies which exist (see *APER 4.5.9AE(3)*). He should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *approved person* performing a *significant-influence function* 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 appropriate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of the *customer function*, they may only be filled by *persons approved for that function*.
- PRA      4.5.17      G      In organising the business, the *approved person* performing a *significant- influence function* should pay attention to any temporary vacancies which exist (see *APER 4.5.9BE(3)*). He should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *approved person* performing a *significant-influence function* 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 appropriate cover for responsibilities cannot be arranged.

## 4.6 Statement of Principle 6

FCA and PRA	4.6.1	G	<p>The <del>Statement of Principle 6</del> (see <del>APER 2.1.2P</del>) is in the following terms: "An <del>approved person</del> performing a <del>significant influence function</del> must exercise due skill, care and diligence in managing the business of the <del>firm</del> for which he is responsible in his <del>controlled function</del>." [deleted]</p>
FCA	<u>4.6.1A</u>	G	<p>The <u>Statement of Principle 6</u> (see <u>APER 2.1A.3P</u>) is in the following terms: "An <u>approved person</u> performing an <u>accountable significant-influence function</u> must exercise due skill, care and diligence in managing the business of the <u>firm</u> for which he is responsible in his <u>accountable function</u>." References in <u>APER 4.6</u> to a <u>significant-influence function</u> are to an <u>accountable significant-influence function</u> to which <u>Statement of Principle 6</u> applies.</p>
PRA	<u>4.6.1B</u>	G	<p>The <u>Statement of Principle 6</u> (see <u>APER 2.1B.3P</u>) is in the following terms: "An <u>approved person</u> performing an <u>accountable function</u> must exercise due skill, care and diligence in managing the business of the <u>firm</u> for which he is responsible in his <u>accountable function</u>." References in <u>APER 4.6</u> to a <u>significant-influence function</u> are to an <u>accountable function</u> to which <u>Statement of Principle 6</u> applies.</p>
FCA and PRA	4.6.2	E	<p>In the opinion of the <u>FSA appropriate regulator</u>, conduct of the type described in <u>APER 4.6.3E</u>, <u>APER 4.6.5E</u>, <u>APER 4.6.6E</u> or <u>APER 4.6.8E</u> does not comply with <u>Statement of Principle 6</u> (<del>APER 2.1.2P</del>).</p>
FCA and PRA	4.6.3	E	<p>Failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible falls within <u>APER 4.6.2E</u>.</p>
FCA and PRA	4.6.4	E	<p>Behaviour of the type referred to in <u>APER 4.6.3E</u> includes, but is not limited to:</p> <ol style="list-style-type: none"><li>(1) permitting <i>transactions</i> without a sufficient understanding of the risks involved;</li><li>(2) permitting expansion of the business without reasonably assessing the potential risks of that expansion;</li><li>(3) inadequately monitoring highly profitable <i>transactions</i> or business practices or unusual <i>transactions</i> or business practices;</li><li>(4) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations;</li></ol>

- (5) failing to obtain independent, expert opinion where appropriate; (see *APER* 4.6.12G).
- FCA and PRA 4.6.5 E Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business, falls within *APER* 4.6.2E (see *APER* 4.6.13G).
- FCA and PRA 4.6.6 E Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) falls within *APER* 4.6.2E (see *APER* 4.6.14G).
- FCA and PRA 4.6.7 E Behaviour of the type referred to in *APER* 4.6.6E includes but is not limited to:
- (1) disregarding an issue or part of the business once it has been delegated;
  - (2) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated;
  - (3) accepting implausible or unsatisfactory explanations from delegates without testing their veracity.
- FCA and PRA 4.6.8 E Failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated falls within *APER* 4.6.2E.
- FCA and PRA 4.6.9 E Behaviour of the type referred to in *APER* 4.6.8E includes, but is not limited to:
- (1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided;
  - (2) failing to review the performance of an outside contractor in connection with the delegated issue or business.



FCA and PRA 4.6.10 E In determining whether or not the conduct of an *approved person* performing a *significant-influence function* under *APER* 4.6.5E, *APER* 4.6.6E and *APER* 4.6.8E complies with *Statement of Principle 6* (~~see *APER* 2.1.2P~~), the following are factors which, in the opinion of the *FSA appropriate regulator*, are to be taken into account:

- (1) the competence, knowledge or seniority of the delegate;  
and
- (2) the past performance and record of the delegate.

FCA and PRA 4.6.11 G An *approved person* performing a *significant-influence function* will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The *FSA appropriate regulator* will look to the *approved person* performing a *significant-influence function* 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 his attention, he should deal with them in an appropriate way.

#### Knowledge about the business

- FCA and PRA 4.6.12 G
- (1) It is important for the *approved person* performing a *significant-influence function* to understand the business for which he is responsible (*APER* 4.6.4E). An *approved person* performing a *significant-influence function* is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself about the business sufficiently to understand the risks of its trading, credit or other business activities.
  - (2) It is important for an *approved person* performing a *significant-influence function* to understand the risks of expanding the business into new areas and, before approving the expansion, he should investigate and satisfy himself, on reasonable grounds, about the risks, if any, to the business.

- (3) Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the *firm* beyond those reasonably anticipated, he should require explanations from those who report to him. Where those explanations are implausible or unsatisfactory, he should take steps to test the veracity of those explanations.
- (4) Where the *approved person* performing a *significant-influence function* is not an expert in a business area, he should consider whether he or those with whom he works have the necessary expertise to provide him with an adequate explanation of issues within that business area. If not he should seek an independent opinion from elsewhere within or outside the *firm*.

#### Delegation

- |             |        |   |   |
|-------------|--------|---|---|
| FCA and PRA | 4.6.13 | G | <ol style="list-style-type: none"> <li>(1) An <i>approved person</i> performing a <i>significant-influence function</i> 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 him or to others.</li> <li>(2) The <i>approved person</i> performing a <i>significant-influence function</i> 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.</li> <li>(3) If an issue raises questions of law or interpretation, the <i>approved person</i> performing a <i>significant-influence function</i> may need to take legal advice. If appropriate legal expertise is not available in-house, he may need to consider appointing an appropriate external adviser.</li> </ol> |
|-------------|--------|---|---|

- (4) The *FSA appropriate regulator* recognises that the *approved person* performing a *significant-influence function* will have to exercise his own judgment in deciding how issues are dealt with, and that in some cases that judgment will, with the benefit of hindsight, be shown to have been wrong. He will not be in breach of *Statement of Principle 6* unless he fails to exercise due and reasonable consideration before he delegates the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If he is in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although he cannot delegate to the *FSA appropriate regulator* the responsibility for dealing with the problem or issue, he can speak to the *FSA appropriate regulator* to discuss his approach (see *APER 4.6.5E*).

Continuing responsibilities where an issue has been delegated

FCA and PRA 4.6.14

- G Although an *approved person* performing a *significant-influence function* may delegate the resolution of an issue, or authority for dealing with a part of the business, he cannot delegate responsibility for it. It is his responsibility to ensure that he receives 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 *approved person* performing a *significant-influence function* may need to challenge the explanations he receives and take action himself 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 *approved person* performing a *significant-influence function* 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 (see *APER 4.6.6E*)

## 4.7 Statement of Principle 7

FCA and PRA	4.7.1	G	<p><del>The <i>Statement of Principle 7</i> (see <i>APER 2.1.2P</i>) is in the following terms: "An <i>approved person</i> performing a <i>significant-influence function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>controlled function</i> complies with the relevant requirements and standards of the <i>regulatory system</i>."</del></p>
FCA	<u>4.7.1A</u>	G	<p><u>The <i>Statement of Principle 7</i> (see <i>APER 2.1A.3P</i>) is in the following terms: "An <i>approved person</i> performing an <i>accountable significant-influence function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i> complies with the relevant requirements and standards of the <i>regulatory system</i>."</u> References in <i>APER 4.7</i> to a <i>significant-influence function</i> are to an <i>accountable significant-influence function</i> to which <i>Statement of Principle 7</i> applies.</p>
PRA	<u>4.7.1B</u>	G	<p><u>The <i>Statement of Principle 7</i> (see <i>APER 2.1B.3P</i>) is in the following terms: "An <i>approved person</i> performing an <i>accountable function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i> complies with the relevant requirements and standards of the <i>regulatory system</i>."</u> References in <i>APER 4.7</i> to a <i>significant-influence function</i> are to an <i>accountable function</i> to which <i>Statement of Principle 7</i> applies.</p>
FCA and PRA	4.7.2	E	<p>In the opinion of the <i>FSA appropriate regulator</i>, conduct of the type described in <i>APER 4.7.3E</i>, <i>APER 4.7.4E</i>, <i>APER 4.7.5E</i>, or <i>APER 4.7.7E</i>, <i>APER 4.7.9E</i>, <i>APER 4.7.10E</i> or <i>APER 4.7.11AE</i> does not comply with <i>Statement of Principle 7</i> (<del><i>APER 2.1.2P</i></del>).</p>
FCA	<u>4.7.2A</u>	E	<p><u>In the opinion of the <i>FCA</i>, conduct of the type described in <i>APER 4.7.9E</i>, <i>APER 4.7.10E</i> or <i>APER 4.7.11AE</i> does not comply with <i>Statement of Principle 7</i> (<del><i>APER 2.1.2P</i></del>).</u></p>
FCA and PRA	4.7.3	E	<p>Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the <i>regulatory system</i> in respect of its <i>regulated activities</i> falls within <i>APER 4.7.2E</i>. In the case of an <i>approved person</i> who is responsible, under <i>SYSC 2.1.3R(2)</i> or <i>SYSC 4.4.5R(2)</i>, with overseeing the <i>firm's</i> obligation under <i>SYSC 3.1.1R</i> or <i>SYSC 4.1.1R</i>, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within <i>APER 4.7.2E</i>.</p>

FCA and PRA	4.7.4	E	Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the <i>regulatory system</i> in respect of its <i>regulated activities</i> falls within <i>APER 4.7.2E</i> (see <i>APER 4.7.12G</i> ).
FCA and PRA	4.7.5	E	Failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the <i>regulatory system</i> in respect of its <i>regulated activities</i> may have arisen (taking account of the systems and procedures in place) falls within <i>APER 4.7.2E</i> .
FCA and PRA	4.7.6	E	Behaviour of the type referred to in <i>APER 4.7.5E</i> includes, but is not limited to, failing to investigate what systems or procedures may have failed including, where appropriate, failing to obtain expert opinion on the adequacy of the systems and procedures.
FCA and PRA	4.7.7	E	Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the <i>regulatory system</i> relating to its <i>regulated activities</i> , falls within <i>APER 4.7.2E</i> (see <i>APER 4.7.13G</i> ).
FCA and PRA	4.7.8	E	Behaviour of the type referred to in <i>APER 4.7.7E</i> includes, but is not limited to: <ul style="list-style-type: none"> <li>(1) unreasonably failing to implement recommendations for improvements in systems and procedures;</li> <li>(2) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.</li> </ul>
FCA	4.7.9	E	In the case of the <i>money laundering reporting officer</i> , failing to discharge the responsibilities imposed on him by the <i>firm</i> in accordance with <i>SYSC 3.2.6IR</i> or <i>SYSC 6.3.9R</i> falls within <del><i>APER 4.7.2E</i></del> <u><i>APER 4.7.2AE</i></u> .
FCA	4.7.10	E	In the case of an <i>approved person</i> performing a <i>significant-influence function</i> responsible for compliance under <i>SYSC 3.2.8R</i> , <i>SYSC 6.1.4R</i> or <i>SYSC 6.1.4AR</i> , failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within <del><i>APER 4.7.2E</i></del> <u><i>APER 4.7.2AE</i></u> (see <i>APER 4.7.14G</i> ).

- FCA and PRA 4.7.11 G The ~~FSA~~ *appropriate regulator* expects an *approved person* performing a *significant\_influence function* to 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.
- FCA 4.7.11A E Where the *approved person* is a *proprietary trader* under SUP 10A.9.10R ~~SUP 10.9.10R(1A)~~, failing to maintain and comply with appropriate systems and controls in relation to that activity falls within ~~APER 4.7.2E~~ APER 4.7.2AE.

#### Systems of control

- FCA and PRA 4.7.12 G An *approved person* performing a *significant\_influence function* need not himself put in place the systems of control in his business (*APER 4.7.4E*). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is 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.

#### Possible breaches of regulatory requirements

- FCA and PRA 4.7.13 G Where the *approved person* performing a *significant\_influence function* 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 he should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner (*APER 4.7.7E*). This may involve an adequate investigation to find out what systems or procedures may have failed and why. He may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

#### Review and improvement of systems and procedures

FCA and 4.7.14  
PRA

G Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *approved person* performing a *significant-influence function* should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner (~~APER 4.7.10E~~ APER 4.7.7E). What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the *approved person* performing a *significant-influence function* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.

## Annex C

### New chapter 10A of the Supervision Manual

After SUP 10 (deleted) insert the following new section. The text is not underlined.

Chapter 10A is designated to the FCA

#### 10A.1 Application

##### General

- 10A.1.1 R This chapter applies to every *firm*.
- 10A.1.2 G This chapter is also relevant to every *FCA-approved person*.
- 10A.1.3 G The *rules* in this chapter specify descriptions of *FCA-controlled functions* under section 59 of the *Act* (Approval for particular arrangements).
- 10A.1.4 G The directions in this chapter relate to the manner in which a *firm* must apply for the *FCA's* approval under section 59 of the *Act* and other procedures.

##### Overseas firms: UK services

- 10A.1.5 R This chapter does not apply to an *overseas firm* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.

##### Overseas firms: UK establishments

- 10A.1.6 R Only the following *FCA-controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (1) the *director function* where the *person* performing that function:
    - (a) has responsibility for the *regulated activities* of a *UK branch* which are likely to enable him to exercise significant influence over that *branch*; or
    - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
  - (2) the *non-executive director functions (FCA)* where the *person* performing one of those functions:



- (a) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that *branch*; or
- (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
- (3) the *chief executive function*;
- (4) the *FCA-required functions*;
- (5) the *systems and controls function*;
- (6) the *significant management function* in so far as the function relates to:
  - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
  - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters in so far as this relates to *designated investment business*; and
- (7) the *customer function*.

10A.1.7 G *SUP* 10A.11 (Minimising overlap with the PRA approved persons regime) means that some of the *FCA-controlled functions* that *SUP* 10A.1 says apply to an *overseas firm* are disapplied if the *firm* is a *PRA-authorised person*. Those that do not apply are instead likely to be *PRA-controlled functions*.

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.8 R This chapter does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*; or
- (3) a *UCITS qualifier*;

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, under any of the *Single Market Directives*, the *Treaty*, the *UCITS Directive* or the *auction regulation* to an authority in a country or territory outside the *United Kingdom*.

- 10A.1.9 G *SUP 10A.1.8R* reflects the provisions of section 59(8) of the *Act* and, in relation to an incoming *Treaty firm* and a *UCITS qualifier*, the *Treaty* and the *UCITS Directive*. It preserves the principle of *Home State* prudential regulation. In relation to an *incoming EEA firm* exercising an *EEA right*, or an *incoming Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. A member of the *governing body*, or the notified *UK branch manager*, of an *incoming EEA firm*, acting in that capacity, will not therefore have to be approved by the *FCA* under the *Act*.
- 10A.1.10 G Notwithstanding *SUP 10A.1.9G* an *incoming EEA firm* (other than an *EEA pure reinsurer*), or *incoming Treaty firm*, will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passport activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an *EEA pure reinsurer*) will have 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*.
- 10A.1.11 G An *incoming EEA firm* will have to consider, 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*.

Incoming EEA firms: passported activities from a branch

- 10A.1.12 R Only the following *FCA-controlled functions* apply to an *incoming EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:
- (1) the *money laundering reporting function*;
  - (2) the *significant management function* in so far as the function relates to:
    - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
    - (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to *designated investment business*; or
    - (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); and

- (3) the *customer function* other than where this relates to the function in SUP 10A.10.7R(4) and (7).

10A.1.13 R If an *incoming EEA firm* is an *EEA pure reinsurer* then SUP 10A.1.12R does not apply. Instead none of the *FCA-controlled functions* apply with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*.

Incoming EEA firms etc with top-up permission activities from a UK branch

10A.1.14 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *FCA-controlled functions* apply:

- (1) the *FCA-required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;
- (2) the *significant management function* in so far as it relates to:
  - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
  - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters in so far as this relates to *designated investment business*; or
  - (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); and
- (3) the *customer function*.

10A.1.15 R A *person* does not perform the *significant management function* for a *firm* under SUP 10A.1.12R or SUP 10A.1.14R if that *person* would not have been treated as performing any *FCA-controlled function* for that *firm* if that *firm* had been a *UK firm*.

Appointed representatives

10A.1.16 R The descriptions of the following *FCA-controlled functions* apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to an *FCA-authorized person*:

- (1) the *FCA-governing functions*, subject to SUP 10A.1.17R and except for a *tiered agent* of an *EEA MiFID investment firm*; and
- (2) the *customer function* other than in relation to acting in the capacity of an *investment manager* (see SUP 10A.10.7R(6)).

- 10A.1.17 R (1) *SUP 10A.1.16R* is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA-governing functions*:
- (a) *director function*; or
  - (b) *chief executive function*; or
  - (c) *partner function*; or
  - (d) *director of unincorporated association function*;
- applies, as appropriate, to an individual within that *appointed representative* who will be required to be an *FCA-approved person*.
- (2) The conditions are that:
- (a) the scope of appointment of the *appointed representative* includes *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*; and
  - (b) the principal purpose of the *appointed representative* is to carry on activities other than *regulated activities*.

#### Members of a profession

- 10A.1.18 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* (other than the *apportionment and oversight function*) only.

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

- 10A.1.19 R The descriptions of *FCA-significant-influence functions*, other than the *FCA-required functions*, and if the *firm* is a *MiFID investment firm*, the *FCA-governing functions*, do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:
- (1) an *oil market participant*; or

- (2) a *service company*; or
- (3) an *energy market participant*; or
- (4) a wholly owned *subsidiary* of:
  - (a) a local authority; or
  - (b) a registered social landlord; or
- (5) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*.

10A.1.20 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 SUP 10A.1.19R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

#### Committees of the Society of Lloyd's

- 10A.1.21 R (1) For the purpose of SUP 10A.6.7R and SUP 10A.6.8R (the *director function*), "director" includes an executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.
- (2) For the purpose of SUP 10A.6.15R (the *PRA firm non-executive director function (FCA)*), "*non-executive director*" includes a non-executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.

#### Insolvency practitioners

- 10A.1.22 R This chapter does not apply to a function performed by:
- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
  - (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
  - (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or

- (4) a *person* acting as 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.

#### Bidders in emissions auctions

- 10A.1.23 G For a *firm* that is exempt from *MiFID* under article 2(1)(i) and whose only *permission* is *bidding in emissions auctions*, the only *FCA-controlled functions* that apply to it are the *FCA-governing functions*, the *money laundering reporting function*, the *customer function* and (where it has exercised an opt-in to *CASS* in accordance with *CASS 1.4.9R* and is a *CASS medium firm* or a *CASS large firm*) the *CASS operational oversight function*. This is because the *FCA-approved persons* regime specifies a number of functions by incorporation of requirements in *SYSC*; however, a *firm* carrying on *auction regulation bidding* is only subject to *SYSC* to a limited extent in relation to that activity. This means that the *FCA-required functions* do not apply to *auction regulation bidding*, except for the *money laundering reporting function*. Similarly, the *significant management function* does not apply in relation to *auction regulation bidding* because in carrying on that activity, a *firm* is not subject to *SYSC 2.1.1R* or *SYSC 4.1.1R* and is not undertaking *proprietary trading*.

### 10A.2 Purpose

- 10A.2.1 G The immediate purpose of *SUP 10A.3* to *SUP 10A.11* is to specify, under section 59 of the *Act*, descriptions of the *FCA-controlled functions* which are listed in *SUP 10A.4.5R*. The underlying purpose is to establish, and mark the boundaries of, the "FCA-approved persons regime".
- 10A.2.2 G *SUP 10A* does not deal with the *PRA's approved persons* regime.
- 10A.2.3 G The *FCA* has certain powers in relation to *PRA-approved persons*, such as the requirement to give its consent in certain cases to the *PRA* granting approval for the performance of a *PRA-controlled function*. *SUP 10A* does not deal with these.

### 10.3 Provisions related to the Act

- 10A.3.1 R A function 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*.

- 10A.3.2 G Sections 59(1) and (2) of the *Act* provide that approval is necessary in respect of 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*.
- 10A.3.3 G *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* and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see *SUP* 10A.13.5G and *SUP* 10A.13.6G.
- 10A.3.4 G If, however, a *firm* is a member of a group, and the *arrangements* for the performance of an *FCA-controlled function* of the *firm* are made by, say, the *holding company*, the *person* performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the *firm* and *holding company* permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.
- 10A.3.5 G The *arrangement* must be “in relation to” the carrying on of a *regulated activity*. *Regulated activities* are defined in the *Glossary* by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.

#### 10A.4 Specification of functions

- 10A.4.1 R Each of the functions described in *SUP* 10A.4.5R (the table of *FCA-controlled functions*) is an *FCA-controlled function*.
- 10A.4.2 R Part 1 of the table of *FCA-controlled functions* applies in relation to an *FCA-authorized person*. It also applies in relation to an *appointed representative* for the purposes of *SUP* 10A.1.16R (Appointed representatives) whether its *principal* is an *FCA-authorized person* or a *PRA-authorized person*. Part 2 applies in relation to a *PRA-authorized person*.
- 10A.4.3 G The fact that a *person* may be *FCA-approved* for one purpose does not have the effect of bringing all his activities within that *FCA-controlled function*.
- 10A.4.5 R *FCA-controlled functions*

<b>Part 1 (FCA-controlled functions for FCA-authorized persons and appointed representatives)</b>		
<b>Type</b>	<b>CF</b>	<b>Description of FCA-controlled function</b>

<i>FCA-governing functions*</i>	1	<i>Director function</i>
	2	<i>Non-executive director function</i>
	3	<i>Chief executive function</i>
	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>
<i>FCA-required functions*</i>	8	<i>Apportionment and oversight function</i>
	10	<i>Compliance oversight function</i>
	10A	<i>CASS operational oversight function</i>
	11	<i>Money laundering reporting function</i>
<i>Systems and controls function*</i>	28	<i>Systems and controls function</i>
<i>Significant management function*</i>	29	<i>Significant management function</i>
<i>Customer-dealing functions</i>	30	<i>Customer function</i>
<i>*FCA-significant-influence functions</i>		

<b>Part 2 (FCA-controlled functions for PRA-authorised persons)</b>		
<b>Type</b>	<b>CF</b>	<b>Description of FCA-controlled function</b>
<i>FCA-governing functions*</i>	1	<i>Director function</i>
	2 FCA	<i>PRA firm non-executive director function (FCA)</i>
	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>



<i>FCA-required functions*</i>	8	<i>Apportionment and oversight function</i>
	10	<i>Compliance oversight function</i>
	10A	<i>CASS operational oversight function</i>
	11	<i>Money laundering reporting function</i>
<i>Significant management function*</i>	29	<i>Significant management function</i>
<i>Customer-dealing functions</i>	30	<i>Customer function</i>
<i>*FCA-significant-influence functions</i>		

## 10A.5 Significant influence functions

What are the significant influence functions?

- 10A.5.1 G The *FCA-significant influence functions*, which are specified in SUP 10A.4.1R, comprise the *FCA-governing functions* (see SUP 10A.6), the *FCA-required functions* (see SUP 10A.7), the *systems and controls function* (see SUP 10A.8) and the *significant management functions* (see SUP 10A.9). SUP 10A.5 applies to each of the *FCA-significant influence functions*.

Definition of FCA-significant influence function

- 10A.5.2 R Each *FCA-significant influence function* is one which comes within the definition of a *significant-influence function*.
- 10A.5.3 G Section 59(7B) of the *Act* says that a *significant-influence function*, in relation to the carrying on of a *regulated activity* by a *firm*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's* affairs, so far as relating to the activity.
- 10A.5.4 G SUP 10A.5.2R gives effect to section 59(5)(b) of the *Act*.
- 10A.5.5 G Whether an *FCA-controlled function* is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The *FCA* has identified the *FCA-significant influence functions* as satisfying this condition.

Periods of less than 12 weeks

- 10A.5.6 R If:
- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA-significant influence function*;
  - (2) the appointment is to provide cover for an *approved person* 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-significant influence function* does not relate to those activities of that individual.

- 10A.5.7 G *SUP* 10A.5.6R enables cover to be given for, say, 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-controlled function* for more than 12 weeks, the *firm* should apply for approval.

Minimising the need for approval from the FCA and the PRA

- 10A.5.8 G In the case of *PRA-authorized persons*, *SUP* 10A.11 cuts down the scope of many *FCA-significant influence functions* that would otherwise overlap with *PRA-controlled functions*.

## 10A.6 FCA-governing functions

Introduction

- 10A.6.1 G 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. If the *firm* is a *PRA-authorized person* some of those *persons* will be performing the *PRA-governing functions* and will be required to be *PRA-approved persons* instead. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA-governing function* or (in the case of a *PRA-approved person*) a *PRA-governing function* in relation to that *company*.
- 10A.6.2 G A *sole trader* does not fall within the description of the *governing functions*.

What the governing functions include

- 10A.6.3 R Each of the *governing functions* includes:
- (1) (where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R):
    - (a) the *systems and controls function* (if it applies to the *firm*); and
    - (b) the *significant management function*;
  - (2) (in respect of *bidding in emissions auctions*) that part of the *customer function* specified in SUP 10A.10.7R(7) (bidder's representative).

This does not apply to any of the *non-executive director functions (FCA)* or the function described in SUP 10A.10.8R.

- 10A.6.4 G (1) The effect of SUP 10A.6.3R is that a *person* who is approved to perform an *FCA-governing function* will not have to be specifically *FCA*-approved to perform the *systems and controls function* or the *significant management function* or the part of the *customer function* specified in SUP 10A.10.7R(7). However, a *person* who is approved to perform an *FCA-governing function* will have to be additionally *FCA*-approved before he can perform any of the *FCA-required functions* or the *customer function* (except the part specified in SUP 10A.10.7R(7)).
- (2) The inclusion of the *systems and controls function* in the *FCA-governing functions* is not relevant to a *PRA-authorized person* as the *systems and controls function* does not apply in relation to a *PRA-authorized person*.
- (3) SUP 10A.6.3R does not apply to any of the *non-executive functions (FCA)*. It does not apply to the *director function* if the only part of that function that the *FCA-approved person* is performing is the function described in SUP 10A.6.8R.

- 10A.6.5 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity (MIPRU 2.2.1R)*. MIPRU 2.2.2R(1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing an *FCA-governing function* (other than one of the *non-executive director functions (FCA)*).

- 10A.6.6 G Where a *person* performing an *FCA-governing function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after the relevant *FCA-controlled function* (see MIPRU 2.2.5G).

Director function (CF1)

- 10A.6.7 R If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *firm*.
- 10A.6.8 R (1) If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:
- (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee of a *parent undertaking* or *holding company* of the *firm*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- (3) (1) does not apply to the function falling into SUP 10A.6.12R (*non-executive director* of the *parent undertaking* or *holding company*).
- 10A.6.9 G Examples of where SUP 10A.6.8R might apply include (but are not limited to):
- (1) a chairman of an audit committee of a *parent undertaking* or *holding company* of a *UK firm* where that audit committee is working for that *UK firm* (that is, functioning as the audit committee for the *group*); or
  - (2) a *director* (other than a *non-executive director*) of a *parent undertaking* or *holding company* of a *UK firm* exercising significant influence by way of his involvement in taking decisions for that *UK firm*; or
  - (3) an individual (such as a *senior manager*) of a *parent undertaking* or *holding company* of a *UK firm* who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive *directors* of that *UK firm*; or
  - (4) an individual who is a *director* (other than a *non-executive director*) or a *senior manager* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influencing the operations of that *UK firm*, and acts in a manner in which it can reasonably be expected that an executive *director* or *senior manager* of that *UK firm* would act; or

- (5) an individual of an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

10A.6.10 G A *director* can be a *body corporate* and may accordingly require approval as an *FCA-approved person* in the same way as a *natural person* may require approval.

Non-executive director function for FCA firms (CF2)

10A.6.11 R If a *firm* is a *body corporate* that is an *FCA-authorised person*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that *firm*.

10.A.6.12 R (1) If a *firm* is a *body corporate* that is an *FCA-authorised person*, the *non-executive director function* is also the function of acting in the capacity of a *person*:

(a) who is a *non-executive director* of a *parent undertaking* or *holding company*; and

(b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.

(2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.

10A.6.13 G Examples of where *SUP 10A.6.12R* might apply include (but are not limited to):

(1) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* who takes an active role in the running of the business of a *UK firm*, for example, as a member of a board or committee (on audit or remuneration) of that *firm*; or

(2) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* having significant influence in setting and monitoring the business strategy of the *UK firm*; or

(3) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the *UK firm*; or

- (4) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influence the operations of the *UK firm*, and acts in a way in which it can reasonably be expected that a *non-executive director* of the *UK firm* would act; or
- (5) an individual who is a *non-executive director* of an *overseas firm* which maintains a *branch* in the *United Kingdom* from which *regulated activities* are carried on where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

Guidance on persons in a parent undertaking or holding company exercising significant influence

- 10A.6.14 G (1) This paragraph explains the basis on which the *director function* and the *non-executive director function* are applied to *persons* who have a position with the *firm's parent undertaking* or *holding company* under *SUP 10A.6.8R* or *SUP 10A.6.12R*.
- (2) The basic position is set out in *SUP 10A.3.4G*. As is the case with all *controlled functions*, *SUP 10A.6.8R* and *SUP 10A.6.12R* are subject to the overriding provisions in *SUP 10A.3.1R*, which sets out the requirements of sections 59(1) and (2) of the *Act*. This means that unless the *firm* has an arrangement or a contract permitting the performance of these roles by the *persons* concerned, these *persons* will not be performing these *controlled functions*. Therefore, the *FCA* accepts that there will be cases in which a *person* performing these roles will not require approval.

Non-executive director function for PRA firms (CF2 FCA)

- 10A.6.15 R If a *firm* is a *body corporate* that is a *PRA-authorised person*, the *PRA firm non-executive director function (FCA)* is the function of acting in the capacity of a *non-executive director* of that *firm*.

Non-executive director function: General

- 10A.6.16 G The *Handbook* uses the single term “*non-executive director function (FCA)*” to cover the *non-executive director function* and the *PRA firm non-executive director function (FCA)*.

Chief executive function (CF3)

- 10A.6.17 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.

- 10A.6.18 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); or, in the case of a *branch* in the *United Kingdom* of an *overseas firm*, for the conduct of all of the activities subject to the *UK regulatory system*.
- 10A.6.19 G For a *branch* in the *United Kingdom* of an *overseas firm*, the *FCA* would not normally expect the overseas *chief executive* of the *firm* as a whole to be *FCA*-approved for this function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *firm* responsible for *UK* operations may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function* (see *SUP* 10A.7.4G).
- 10A.6.20 G A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.
- 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-authorised person*) to perform the *chief executive function*.
- 10A.6.22 G The *chief executive function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

#### Partner function (CF4)

- 10A.6.23 R (1) If a *firm* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *firm*.
- (2) If the principal purpose of the *firm* is to carry on one or more *regulated activities*, each *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 he has 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 *partnership* has apportioned responsibility to another *partner* or group of *partners*.

- 10A.6.24 G Any apportionment referred to in *SUP* 10A.6.23R(3)(b) will have taken place under *SYSC* 2.1.1R or *SYSC* 4.3.1R and *SYSC* 4.4.3R. The *FCA* may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see *SYSC* 2.2).
- 10A.6.25 G The effect of *SUP* 10A.1.18R is that *regulated activity* in *SUP* 10A.6.23R (and elsewhere) is to be taken as not including an activity that is a *non-mainstream regulated activity*. Therefore, a *partner* whose only *regulated activities* are incidental to his professional services, in a *partnership* whose principal purpose is to carry on other than *regulated activities*, need not be an *FCA-approved person*. 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. Any *regulated activities* which such a partner carries on are not within the description of the *partner function*.
- 10A.6.26 R If a *firm* is a *limited liability partnership*, the *partner function* extends to the *firm* as if the *firm* were a *partnership* and a member of the *firm* were a *partner*.
- 10A.6.27 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.

Director of unincorporated association function (CF5)

- 10A.6.28 R If a *firm* is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.

Small friendly society function (CF6)

- 10A.6.29 R (1) If a *firm* is a *non-directive friendly society*, the *small friendly society function* is the function of directing its affairs, either alone or jointly with others.
- (2) 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*.
- (3) If the principal purpose of the *firm* is other than to carry on *regulated activities*, a *person* performs the *small friendly society function* only to the extent that he has responsibility for a *regulated activity*.
- 10A.6.30 R (1) Each *person* on the *non-directive friendly society's governing body* will be taken to have responsibility for its *regulated activities*, unless the *firm* has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.
- (2) The individual need not be a member of the *governing body*.



- 10A.6.31 G (1) Typically a *non-directive friendly Society* will appoint a “committee of management” to direct its affairs. 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. That individual may, for example, have the title of *chief executive* or similar. The individual would have to be an *FCA-approved person* under *SUP 10A.6.29R*.
- (2) Any apportionment of responsibilities will have taken place under *SYSC 2.1.1R*. The *FCA* may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see *SYSC 2.2*).

## 10A.7 FCA-required functions

### Apportionment and oversight function (CF8)

- 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*.
- 10A.7.2 G In requiring someone to apportion responsibility, a *common platform firm* should not 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 1.1.3R (5)*).
- 10A.7.3 G The fact that there is a *person* performing the *apportionment and oversight 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.
- 10A.7.4 G Generally, in relation to a *UK* establishment of an *overseas firm* or a *firm* which is part of an *overseas group*, where an overseas manager’s responsibilities in relation to the *United Kingdom* are strategic only, he will not need to be an *FCA-approved person*. However, where, in accordance with *SYSC 3* or *SYSC 4* to *SYSC 10*, he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing an *FCA-controlled function*, such as, for example, the *chief executive function* or a *PRA-controlled function*.

- 10A.7.5 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (MIPRU 2.2.1R). MIPRU 2.2.2R(2) provides that the *firm* may allocate this responsibility to the *person* performing the *apportionment and oversight function*.
- 10A.7.6 G Where the *person* performing the *apportionment and oversight function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after this *FCA-controlled function* (see MIPRU 2.2.5G).

Compliance oversight function (CF10)

- 10A.7.7 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function set out in SYSC 3.2.8R or SYSC 6.1.4R(2).

CASS operational oversight function (CF10a)

- 10A.7.8 R In relation to a *CASS medium firm* and a *CASS large firm*, the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in CASS 1A.3.1AR.

Money laundering reporting function (CF11)

- 10A.7.9 R The *money laundering reporting function* is the function of acting in the capacity of the *money laundering reporting officer* of a *firm*.
- 10A.7.10 G A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see SYSC 3.2.6IR and SYSC 6.3.9R and for their scope, see the application provisions in SYSC 1 Annex 1).

## 10A.8 Systems and controls functions

Systems and controls function (CF28)

- 10A.8.1 R The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:
- (1) its financial affairs;
  - (2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R);
  - (3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).

- 10A.8.2 R The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i).
- 10A.8.3 G The *systems and controls function* does not apply in relation to a *PRA-authorized person*. *PRA* approval is required instead.
- 10A.8.4 G Where an *employee* performs the *systems and controls function* the *FCA* would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

## 10A.9 Significant management functions

### Application

- 10A.9.1 R *SUP* 10A.9 applies only to a *firm* which:
- (1) under *SYSC* 2.1.1R or, *SYSC* 4.1.1R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit; or
  - (2) undertakes *proprietary trading*; or
  - (3) (in the case of an *EEA firm*) undertakes the activity of *accepting deposits* from *banking customers* and activities connected with this.
- 10A.9.2 G The *FCA* anticipates that there will be only a few *firms* needing to seek approval for an individual to perform the *significant management function* set out in *SUP* 10A.9.1R(1). In most *firms*, those approved for the *FCA-governing functions*, *FCA-required functions* and, where appropriate, the *systems and controls function* or the equivalent *PRA-controlled functions*, are likely to exercise all the significant influence at senior management level.
- 10A.9.3 G A *proprietary trader* undertakes activities with the *firm's* money and has the ability to commit the *firm*. By virtue of this role, all *proprietary traders* have potential to be able to exercise significant influence on the *firm* for the purposes of the definition of *significant-influence function*. It is therefore the *FCA's* expectation that all *firms* will assess all their *proprietary traders* to ascertain the ones for whom approval is required.

- 10A.9.4 G The scale, nature and complexity of the *firm's* business may be such that a *firm* apportions, under SUP 10A.9.1R(1) a significant responsibility to an individual who is not approved to perform the *FCA-governing functions*, *FCA-required functions* or, where appropriate, the *systems and controls function* or the equivalent *PRA-controlled functions*. If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, 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 *approved persons* (for example, in excess of 100 individuals); or a *firm* carrying on *general insurance business* may have gross written *premiums* in excess of £100m;
  - (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.
- 10A.9.5 G When considering whether a business unit is significant, 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; or
  - (2) its use or commitment of a *firm's* capital; or
  - (3) its contribution to the profit and loss account; or
  - (4) the number of *employees* or *approved persons* in the unit; or
  - (5) the number of *customers* of the unit; or
  - (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*.
- 10A.9.6 G The question may arise whether a manager who is based overseas will be performing the *significant management function* under SUP 10A.9.9R and should therefore be an *FCA-approved person*. This is especially true where the *firm* operates matrix management. The fact there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.

- 10A.9.7 G Generally, in relation to a *branch* of a *firm*, or a *firm* which is part of an overseas *group*, where an overseas *manager* is responsible for strategy, he will not need to be approved for the *significant management function*. However, where he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing that *FCA-controlled function*.
- 10A.9.8 G See also *SUP* 10A.7.3G to *SUP* 10A.7.6G in relation to matrix management.
- Significant management function (CF29)
- 10A.9.9 R The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:
- (1) carries on *designated investment business* or other activities not falling within (2) to (4);
  - (2) *effects contracts of insurance* (other than *contractually based investments*);
  - (3) makes material decisions on the commitment of a *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management and its overall cash and capital planning;
  - (4) processes confirmations, payments, settlements, insurance claims, client money and similar matters;
  - (5) (in the case of an *EEA firm*) undertakes the activity of *accepting deposits* from *banking customers* and activities connected with this.
- 10A.9.10 R The *significant management function* also includes the function of acting as a *proprietary trader*.
- 10A.9.11 R The *significant management function* does not include any of the activities described in any other *FCA-controlled function* or *PRA-controlled function* if that other *controlled function* applies to the *firm*.
- 10A.9.12 G A *senior manager* carrying on the *significant management function* under *SUP* 10A.9.9R with significant responsibility for a significant business unit that carries on activities other than *designated investment business* for the purposes of *SUP* 10A.9.9R(1) could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate lending, salvage or loan recovery, or *proprietary trading*, or a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions.
- 10A.9.13 G A *proprietary trader* also undertakes activities which may have a significant influence on the *firm*. Such activities may require approval for CF29 under *SUP* 10A.9.10R.

- 10A.9.14 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (MIPRU 2.2.1R). MIPRU 2.2.2R(3) provides that the *firm* may allocate this responsibility to the *person* performing the *significant management function*.
- 10A.9.15 G Where the *person* performing the *significant management function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after this *FCA-controlled function* (see MIPRU 2.2.5G).

## 10A.10 Customer-dealing functions

### Introduction

- 10A.10.1 R SUP 10A.10 applies with respect to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.
- 10A.10.2 G Without SUP 10A.10.1R the description of the *customer function* would extend to this function wherever it was performed. The effect of SUP 10A.10.1R is that the description is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.
- 10A.10.3 G The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to *general insurance business*.

### The basic rule about the customer function

- 10A.10.4 R The *customer function* is one which comes within the definition of a *customer-dealing function*.
- 10A.10.5 G Section 59(7A) of the *Act* (Approval for particular arrangements) says that the customer-dealing function, in relation to the carrying on of a *regulated activity* by a *firm* (“A”), means a function that will involve the *person* performing it in dealing with:
- (1) customers of A; or
  - (2) property of customers of A;
- in a manner substantially connected with the carrying on of the activity.

- 10A.10.6 G The *FCA* interprets the phrase “dealing with” 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*.

Customer function (CF 30)

- 10A.10.7 R The *customer function* is the function of:
- (1) *advising on investments* other than a *non-investment insurance contract* (but not where this is advising on investments in the course of carrying on the activity of giving *basic advice* on a *stakeholder product*) and performing other functions related to this such as *dealing* and *arranging*;
  - (2) giving advice to *clients* solely in connection with *corporate finance business* and performing other functions related to this;
  - (3) giving advice or performing related activities in connection with *pension transfers* or opt-outs for *retail clients*;
  - (4) giving advice to a *person* to become, or continue or cease to be, a member of a particular *Lloyd’s syndicate*;
  - (5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with or for, or in connection with customers where the *dealing* or *arranging deals* is governed by *COBS 11 (Dealing and managing)*;
  - (6) acting in the capacity of an *investment manager* and carrying on functions connected to this;
  - (7) in relation to *bidding in emissions auctions*, acting as a ‘bidder’s representative’ within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*.
- 10A.10.8 R The *customer function* does not extend to an individual who is performing the functions in *SUP 10A.10.7R(1) to (2)* or *SUP 10A.10.7R(5) to (7)* and who is based overseas and who, in a 12 *month* period, spends no more than 30 days in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

- 10A.10.9 G The *FCA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC* 2.1.9R(2) provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC* 2.1.9R(2) are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see *TC* 2.1.9R(2)).
- 10A.10.10 G The *customer function* in *SUP* 10A.10.7R(5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's* instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a *firm* or distributing advertisements.
- 10A.10.11 G An individual may *advise on investments* prior to being assessed as competent in accordance with the *rules* in the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) and, where relevant, the Training and Competence sourcebook (*TC*). The *firm* should record when that *person* subsequently becomes competent.

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

### Introduction

- 10A.11.1 G *SUP* 10A.11 deals with how the *FCA's* *approved persons* regime applies to *PRA-authorised persons*. *SUP* 10A.11 therefore only applies if the *firm* in question is a *PRA-authorised person*.
- 10A.11.2 G Both the *FCA* and the *PRA* may specify a function as a *controlled function* in relation to a *PRA-authorised person*. However only the *FCA* has power to specify a *customer-dealing function* as a *controlled function*.
- 10A.11.3 G Therefore if a *person's* job for a *firm* involves:
- (1) an *FCA-controlled function*, the *firm* should apply to the *FCA* for approval;
  - (2) a *PRA-controlled function*, the *firm* should apply to the *PRA* for approval;
  - (3) both an *FCA-controlled function* and a *PRA-controlled function*, the *firm* should apply to both the *FCA* and the *PRA* for approval (the purpose of *SUP* 10A.11 is to cut down the need for this sort of dual approval).



- 10A.11.4 G The *PRA* cannot give its approval for the performance of a *PRA-controlled function* without the consent of the *FCA*.
- 10A.11.5 G The *firm* does not need to apply to the *FCA* for that consent. The *PRA* must as soon as practicable notify the *FCA* of the receipt or withdrawal of an application to the *PRA*.
- 10A.11.6 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.
- 10A.11.7 G The *FCA* and *PRA* have coordinated their *approved persons* regime to reduce the amount of overlap. These arrangements relate to *significant-influence functions* only.
- 10A.11.8 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 *significant-influence function* as an *FCA-controlled function* in a way that it considers will minimise the likelihood that approvals fall to be given by both the *FCA* and the *PRA* in respect of the performance by a *person* of *significant-influence functions* in relation to the same *PRA-authorised person*.
- 10A.11.9 G One way that the *FCA* and *PRA* have cooperated to minimise overlap is that they do not specify the same function as both an *FCA-controlled function* and a *PRA-controlled function*. Some of the *FCA-controlled functions* that apply to an *FCA-authorised person* do not apply to a *PRA-authorised person* and instead have been specified by the *PRA* as *PRA-controlled functions*. For example, the function of acting as a *chief executive* has been specified by the *PRA* but not the *FCA* for *PRA-authorised persons*. That is why the list of *FCA-controlled functions* for *PRA-authorised persons* in the *table of FCA-controlled functions* is shorter than the one for *FCA-authorised persons*.

#### Guidance on how SUP 10A.11 works

- 10A.11.10 G However, this does not deal with the fact that a *person's* role may come within more than one *controlled function*. For example without SUP 10A.11 a *director* who is also the chief risk officer would be performing the *director function* and the *PRA-systems and controls function*. The job of a *chief executive* would otherwise normally fall into the *director function* and the *PRA-chief executive function*.

- 10A.11.11 G The *rules* in SUP 10A.11 address that overlap. SUP 10A.11 does not eliminate that overlap. It will not be uncommon for a *person* performing a *significant-influence function* to have both FCA and PRA approval for performing that role. Instead the purpose of SUP 10A.11 is to minimise the times when a *person* will need to apply for approval to the FCA to perform a *significant-influence function* when he is at the same time applying for approval to the PRA in relation to the same *firm*.
- 10A.11.12 G SUP 10A.11 minimises this kind of overlap by cutting back the definition of some of the *FCA-significant influence functions* for a *person* who is the subject of an application for PRA approval. Generally, however, a function that is taken out of the *FCA-significant influence functions* in this way is instead included in the *PRA-controlled function* for which the *person* has approval. Chapter SUP 10B.9 of the Supervision manual part of the PRA's *Handbook* deals with this.
- 10A.11.13 G SUP 10A.11.14G gives some examples of how SUP 10A.11 works.
- 10A.11.14 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 being appointed chief risk officer and a <i>director</i> .	No. He is not treated as performing the <i>director function</i> .	Yes	Chief risk officer is part of the <i>PRA-systems and controls function</i> ). His functions as a <i>director</i> will be included in the <i>PRA-systems and controls function</i> . To avoid the need for FCA approval, A's appointment as <i>director</i> should not take effect before PRA approval for the chief risk officer role.
(2) Same as example (1) except that A will take up his role as a <i>director</i> slightly later because the approval of the <i>firm's</i> shareholders	No	Yes	The same answer applies.

or <i>governing body</i> is needed.			
(3) Same as example (1) but the application to the <i>PRA</i> does not mention that it is also intended that A is to be a <i>director</i>	Yes	Yes	<i>SUP 10A.11</i> does not apply if the application for <i>PRA</i> -approval does not say that A will also be performing what would otherwise be an <i>FCA-significant influence function</i> .
(4) A is to be appointed as <i>chief executive</i> and a <i>director</i>	No. He is not treated as performing the <i>director function</i> .	Yes	Being a <i>chief executive</i> is a <i>PRA-controlled function</i> . His functions as a <i>director</i> will be included in the <i>PRA-chief executive function</i> .
(5) A is appointed as chief risk officer. Later he is appointed as a <i>director</i> while carrying on as chief risk officer.	Yes, when he takes up the <i>director</i> role	Yes, when he takes up the chief risk officer role	
(6) A is appointed as a <i>director</i> . He later takes on the chief risk officer function.	Yes, when he is appointed as <i>director</i> .	Yes, when he takes up the chief risk officer role	When A is appointed as chief risk officer he is still treated as carrying on the <i>director function</i> . He retains his status as an <i>FCA-approved person</i> .
(7) A is appointed as chief risk officer. A then stops performing that role and for a while does not perform any <i>controlled function</i> . Later he is appointed as a <i>director</i> with the same <i>firm</i> .	Yes, when he is appointed as <i>director</i> .	Yes, when he takes up the chief risk officer role	<i>SUP 10A.11</i> does not apply because there is no current <i>PRA</i> -approval when the application is made for A to perform the <i>director function</i> .
(8) A is appointed as a <i>non-executive director</i> and chair of the remuneration	No	Yes	Being a <i>non-executive director</i> who is chair of the remuneration

committee.			<p>committee is a <i>PRA-controlled function</i>. His other functions as a <i>non-executive director</i> will be included in the <i>PRA-controlled function</i>.</p> <p><i>SUP 10A.11</i> only removes the requirement for <i>FCA</i> approval if the application to the <i>PRA</i> states that the <i>candidate's</i> role would have come within an <i>FCA-controlled function</i>. However the application in this example does not need to state this explicitly as it will be clear that a role falling within the <i>non-executive director function (PRA)</i> overlaps the <i>PRA firm non-executive director function (FCA)</i>.</p>
<p>(9) A is appointed as a <i>non-executive director</i>. Some time later he becomes chair of the remuneration committee.</p>	<p>Yes, before he is appointed as a <i>non-executive director</i>.</p>	<p>Yes, before he becomes chair of the committee.</p>	<p>On his appointment as chair, A is still treated as carrying on the <i>PRA firm non-executive director function (FCA)</i>. He retains his status as an <i>FCA-approved person</i>. After appointment as chair of the remuneration committee A will be performing the <i>PRA firm non-executive director function (FCA)</i> and the <i>non-executive director function (PRA)</i>.</p>

<p>(10) An application is made for A to be approved to be the <i>chief executive</i> and to perform the <i>customer function</i>.</p>	<p>Yes, but only in relation to the <i>customer function</i>. If A is to be a <i>director</i> as well as <i>chief executive</i>, <i>FCA</i> approval is not required in relation to the <i>director</i> role (see example 4).</p>	<p>Yes</p>	<p><i>SUP</i> 10A.11 does not apply to the <i>customer function</i>.</p>
<p>(11) A is appointed as <i>director</i> and chief risk officer at the same time. Later A gives up his role as chief risk officer but remains as a <i>director</i>.</p>	<p>On his first appointment, No. But when A gives up the role as chief risk officer, <i>FCA</i> approval is needed to perform the <i>director function</i>. Form E should be used. The application should state that it is being made as a result of ceasing to perform a <i>PRA-controlled function</i> when the rule in paragraph 10B.9.8 of the Supervision manual part of the <i>PRA's Handbook</i> applies.</p> <p>Form A should be used if there have been</p>	<p>On his first appointment, Yes.</p>	<p>When A stops being a chief risk officer, he stops performing a <i>PRA-controlled function</i>. However being a <i>director</i> requires <i>FCA</i> approval. A does not have that approval because A did not need it when he was first appointed. The combined effect of <i>SUP</i> 10A.11 and Chapter 10B.9 of the Supervision manual part of the <i>PRA's Handbook</i> is that the <i>firm</i> has three months to secure approval by the <i>FCA</i> for A's performance of the <i>director function</i>. During that interim period A keeps his status as a <i>PRA-approved person</i> performing the <i>director</i> element of the <i>PRA-systems and controls function</i> which is included in that function under Chapter 10B.9 of the Supervision manual</p>

	changes in fitness of the <i>approved person</i> (SUP 10A.14.4D(3)).		part of the <i>PRA's Handbook</i> . This is because the rule in paragraph 10B.9.8 of the Supervision manual part of the <i>PRA's Handbook</i> says that during this transitional period he is still treated as performing the <i>PRA-systems and controls function</i> and SUP 10A.11 says that for as long as he is performing a <i>PRA-controlled function</i> he does not perform the <i>director function</i> .
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The main rule

- 10A.11.15 R (1) A *person* (referred to as A in this *rule*) is not performing an *FCA-controlled function* (as set out in (2)) in relation to a *PRA-authorised person* (referred to as B in this *rule*), at a particular time, if:
- (a) A has been approved by the *PRA* to perform any *PRA-governing function* or the *PRA-systems and controls function* in relation to B and that approval is still in force at the time in question;
  - (b) at the time of the *PRA* approval referred to in (a) A was not subject to an approval (that was in force) by the *FCA* to perform the *FCA-controlled function* in question in relation to B;
  - (c) as part of the application for the *PRA* approval referred to in (a) B notified the *PRA* that:
    - (i) A would start to perform a function (the *FCA* function) that would have come within the *FCA-controlled function* if this *rule* did not exist; and
    - (ii) A would start to perform the *FCA* function at or around the time of the *PRA* approval in (a).
- (2) This *rule* only applies to the following *FCA-controlled functions*:
- (a) the *director function*;

- (b) the *PRA firm non-executive director function (FCA)*;
- (c) the *partner function*;
- (d) the *director of unincorporated association function*;
- (e) the *small friendly society function*; and
- (f) the *apportionment and oversight function*.

**10A.12 Procedures relating to FCA-approved persons**

Forms

10A.12.1 G The forms listed in *SUP 10A.12.2G* are referred to in *SUP 10A.12* (Procedures relating to FCA-approved persons) to *SUP 10A.17* (Further questions).

10A.12.2 G Table: FCA-approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	The relevant online form on the <i>FCA</i> and <i>PRA</i> 's ONA system or the form in <i>SUP 10A Annex 4D</i> (See Note)	Application to perform controlled functions under the approved persons regime	<i>SUP 10A.13.3D</i>
Form B	<i>SUP 10A Annex 5R</i>	Notice to withdraw an application to perform controlled functions under the approved persons regime	<i>SUP 10A.13.19R</i>
Form C	<i>SUP 10A Annex 6R</i>	Notice of ceasing to perform controlled functions	<i>SUP 10A.14.8R</i>

Form D	<i>SUP</i> 10A Annex 7R	Notification of changes in personal information or application details	<i>SUP</i> 10A.14.15R
Form E	The relevant online form on the <i>FCA</i> and <i>PRA</i> 's ONA system or the form in <i>SUP</i> 10A Annex 8D (See Note)	Internal transfer of an <i>approved person</i>	<i>SUP</i> 10A.14.4D
Note: The form in the <i>SUP</i> annex shown is to be used by <i>credit unions</i> , and by other <i>firms</i> only in the event of a failure of the information technology systems used by the <i>FCA</i> . See the relevant "Handbook requirement"			

- 10A.12.3 G A summary of the forms and their purposes is in *SUP* 10A Annex 2G.
- 10A.12.4 G Unless the context otherwise requires, in *SUP* 10A.12 (Procedures relating to *FCA*-approved persons) to *SUP* 10A.17 (Further questions) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.
- 10A.12.5 G Forms B, C, D and E can only be submitted in respect of an *FCA-approved person* by the *firm* that submitted an *FCA-approved person's* original application (that is, the relevant Form A).
- 10A.12.6 G Copies of Forms A, B, C, D and E may be obtained from the *FCA* website. *Credit unions* can obtain copies from the Individuals, Mutuels and Policy Department by email at [ ] or from the *FCA's* Firm Contact Centre. To contact the Individuals, Mutuels and Policy Department for general enquiries:
- (1) telephone 020 7066 0019; or
  - (2) fax 020 7066 0017; or
  - (3) write to:

Individuals, Mutuels and Policy Department  
The Financial Conduct Authority  
25 The North Colonnade



Canary Wharf  
LONDON E14 5HS; or

(4) e-mail [ ].

### **10A.13 Application for approval and withdrawing an application for approval**

When to apply for approval

- 10A.13.1 G In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *FCA-controlled functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless he has prior approval from the *FCA*.

Failure to apply for approval

- 10A.13.2 G If a *person* performs an *FCA-controlled 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:
- (1) a *person* (“P”) has at any time performed an *FCA-controlled function* without approval; and
  - (2) 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.

How to apply for approval

- 10A.13.3 D An application by a *firm* for the *FCA*’s approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where *SUP* 10A.14.4D requires a Form E). If the application is being made in the circumstances contemplated by example 11 in table *SUP* 10A.11.14G (Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorised persons is reduced)) the application must state this.
- 10A.13.4 G *SUP* 10A.16.1D explains how applications should be submitted.

Who should make the application?

- 10A.13.5 G (1) 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:
- (a) the *FCA-candidate*; or

- (b) (where the *FCA-candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*.
- (2) Usually this will be the *firm* that is employing the *FCA-candidate* to perform the *FCA-controlled function*. Where a *firm* has outsourced the performance of an *FCA-controlled function*, the details of the outsourcing determine where responsibility lies and whom the *FCA* anticipates will submit *FCA-approved persons* application forms. *SUP 10A.13.6G* describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *FCA-controlled function* has been outsourced, or which makes the arrangement for the *FCA-controlled 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-controlled 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*. See also *SYSC 3.2.4G* and *SYSC 8.1.1R*, and for *insurers SYSC 13.9*.

10A.13.6 G Outsourcing arrangements

Outsourcing arrangements		Submitting form
<i>Firm A to firm B</i>	The <i>FCA</i> 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 <i>FCA-controlled functions</i> are performed by <i>FCA-approved persons</i> , and that it is reasonable for A to rely on this	<i>Firm B</i> submits <i>FCA-approved persons</i> forms on behalf of <i>firm A</i>
Outsourcing by A to B (both being a member of the same <i>United Kingdom group</i> and each having its registered office in the <i>United Kingdom</i> )	See <i>SUP 10A.3.4G</i>	See <i>SUP 15.7.8G</i>

<p>(i) A to B, where B is a non-<i>authorised person</i> not part of the same <i>group</i> as A</p> <p>(ii) A to B, where A is a <i>branch</i> of an <i>overseas firm</i> in the <i>United Kingdom</i>, and B is an <i>overseas undertaking</i> of the same <i>group</i></p> <p>(iii) A to B, where A is a <i>UK authorised subsidiary</i> of an <i>overseas firm</i>, and B is an <i>overseas undertaking</i> of the same <i>group</i></p>	<p>Responsibility for (as opposed to the performance of) any activity <i>outsourced</i> to B will remain with A. See <i>SYSC 3.2.4G</i> and <i>SYSC 8</i></p>	<p>A ensures that an individual approved by the <i>FCA</i> or the <i>PRA</i> under a <i>controlled function</i> that is a <i>significant-influence function</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual</p>
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10A.13.7 G Where the notification of an *appointed representative* (*SUP 12.7.1R*) is linked to an application for approval (*SUP 10A.13* (Applications for approval and withdrawing an application for approval)), any delay in receiving the notification under *SUP 12.7.1R* may delay the *FCA*'s approval of the individuals employed by that *appointed representative* who will be performing *FCA-controlled functions* for the *firm*.

Processing an application

10A.13.8 G The *Act* sets out the time that the *FCA* has to consider an application and come to a decision.

10A.13.9 G In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act* 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.

10A.13.10 G In any other case it is the period of three months from the time it receives a properly completed application.

- 10A.13.11 G The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see *DEPP 2*). 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, if an application is incomplete when received, or the *FCA* has knowledge that, or reason to believe that, the information is incomplete, then the processing time will be longer than the published standard response times.
- 10A.13.12 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. 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. 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.
- 10A.13.13 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.
- 10A.13.14 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.
- 10A.13.15 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-controlled 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-controlled function* applied for.
- 10A.13.16 G For further *guidance* on criteria for assessing whether a *FCA-candidate* is fit and proper, see *FIT*.

#### Decisions on applications

- 10A.13.17 G Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.
- 10A.13.18 G If the *FCA* proposes to refuse an application in relation to one or more *FCA-controlled 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

- 10A.13.19 R A *firm* applying to withdraw an application for approval must notify the *FCA*, using Form B, in the form set out in *SUP* 10A Annex 5R.
- 10A.13.20 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 the *candidate* and the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.

## 10A.14 Changes to an FCA-approved person's details

### Moving within a firm

- 10A.14.1 G An *FCA-approved person'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*. Where the changes will involve the *person* performing one or more *FCA-controlled functions* different from those for which approval has already been granted, then an application must be made to the *FCA* for approval for the *person* to perform those *FCA-controlled functions*. The *firm* must take reasonable care to ensure that an individual does not begin performing an *FCA-controlled function* until the *FCA* has granted *FCA-approved person* status to that individual in respect of that *FCA-controlled function*. Similarly a *firm* must get the *FCA's* approval if a *person* is to start performing an *FCA-controlled function* in relation to that *firm* when he already has the *PRA's* approval to perform a *PRA-controlled function* in relation to that *firm*.
- 10A.14.2 G If an *FCA-approved person* or a *PRA-approved person* is ceasing to perform *FCA-controlled functions* or *PRA-controlled functions*, as well as applying for approval in respect of *FCA-controlled functions*, *SUP* 10A.14.4D generally applies. Further details can be found in *SUP* 10A Annex 2G.
- 10A.14.3 G If a *person* is to perform an *FCA-controlled function* for a *firm* for which he already performs a *PRA-controlled function* or *FCA-controlled function* as an *approved person* but he is not at the same time ceasing to perform an *FCA-controlled function* or *PRA-controlled function*, a *firm* should use Form A. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.
- 10A.14.4 D (1) A *firm* must 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-controlled functions* within the same *firm* or *group*.

- (2) A *firm* must not use Form E if the *approved person* is to perform a *significant-influence function* for the first time or has ceased to have approval from the *FCA* or *PRA* to perform one more than six months ago.
- (3) A *firm* must not use Form E if a notification has been made or should be made under *SUP 10A.14.17R* (Changes in fitness to be notified under Form D) or *SUP 10B.12.18R* (the equivalent *PRA rule*) in relation to any *controlled functions* that that *person* is ceasing to perform (as referred to in (1)) or any *controlled function* that he is continuing to perform in relation to that *firm* or a *firm* in the same *group*.

10A.14.5 G *SUP 10A.16.1D* explains how applications should be submitted.

#### Moving between firms

10A.14.6 G If it is proposed that an *FCA-approved person* will no longer be performing an *FCA-controlled function* under an *arrangement* entered into by one *firm* or one of its contractors, but will be performing the same or a different *FCA-controlled 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-controlled function* by that *person*.

10A.14.7 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 for full details.

#### Ceasing to perform an FCA-controlled function

10A.14.8 R A *firm* must submit to the *FCA* a completed Form C, in the form set out in *SUP 10A Annex 6R* no later than seven *business days* after an *FCA-approved person* ceases to perform an *FCA-controlled function*. This does not apply if the *firm* has already notified the *FCA* of the proposal to do that using Form E in accordance with this chapter or has notified the *PRA* of the proposal to do that using the *PRA's* Form E in accordance with Chapter 10 of the Supervision manual part of the *PRA's* Handbook.

10A.14.9 G *SUP 10.16.2R* explains how notifications should be submitted.

- 10A.14.10 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 in respect of an *FCA-approved person*.
  - (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 person* from its employment; or

- (b) relates to the resignation by the *FCA-approved person* while under investigation by the *firm*, the *FCA* or any other *regulatory body*; or
  - (c) otherwise reasonably suggests that it may affect the *FCA's* assessment of the *FCA-approved person's* fitness and propriety.
- 10A.14.11 G Notification under *SUP 10A.14.10R* may be made by telephone, fax or email and should be made, where possible, within one *business day* of the *firm* becoming aware of the information. If the *firm* does not submit Form C, it should inform the *FCA* in due course of the reason. This could be done using Form D, if appropriate.
- 10A.14.12 G A *firm* is responsible for notifying the *FCA* if any *FCA-approved person* has ceased to perform an *FCA-controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative*
- 10A.14.13 G A *firm* can submit Form C or Form E to the *FCA* in advance of the cessation date. When a *person* ceases the arrangement under which he performs an *FCA-controlled function*, he will automatically cease to be an *FCA-approved person* in relation to that *FCA-controlled function*. A *person* can only be an *FCA-approved person* in relation to a specific *FCA-controlled function*. Therefore, a *person* is not an *FCA-approved person* during any period between ceasing to perform one *FCA-controlled function* (when he is performing no other *FCA-controlled function*) and being approved in respect of another *FCA-controlled function*.
- 10A.14.14 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

- 10A.14.15 R If an *FCA-approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs an *FCA-controlled function* must notify the *FCA* on Form D, in the form set out in *SUP 10A Annex 7R*, of that change within seven business days of the *firm* becoming aware of the matter.
- 10A.14.16 G The duty to notify in *SUP 10A.14.15R* does not apply to changes to an *FCA-approved person's* private address.
- 10A.14.17 R If a *firm* becomes aware of information which would reasonably be material to the assessment of an *FCA-approved person's*, or a *FCA-candidate's*, fitness and propriety (see *FIT*), it must inform the *FCA* on Form D, or (if it is more practical to do so and with the prior agreement of the *FCA*) by fax or e-mail, as soon as practicable.
- 10A.14.18 G *SUP 10A.16.2R* applies to the submission of Form D.

- 10A.14.19 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.
- 10A.14.20 G The duty to notify in *SUP* 10A.14.17R 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.
- 10A.14.21 R (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP* 10A Annex 4D), any of the details relating to arrangements and *FCA-controlled functions* 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 also applies in relation to an *FCA-controlled function* for which an application was made using Form E.
- 10A.14.22 G *SUP* 10A.16.2R also applies to the submission of Form D under *SUP* 10A.14.21R.
- 10A.14.23 G An example of where a *firm* should use Form D is when an individual who is appointed by one *appointed representative* becomes employed by another *appointed representative* but continues to perform the *customer function* for the *firm*. The *firm* should notify the *FCA* by completing Section 1.07 of Form D.
- 10A.14.24 [Not used]

#### Ongoing alerts for retail adviser complaints

- 10A.14.25 R (1) A *firm* must notify the *FCA*, in the form set out in *SUP* 10 Annex 9R, where:
- (a) in any twelve month period, it has upheld three *complaints* about matters relating to the *retail investment activities* carried out by any one *retail investment adviser*; or
- (b) it has upheld a *complaint* about matters relating to the *retail investment activities* carried out by a *retail investment adviser*, where the redress paid exceeds £50,000.
- (2) (a) Notifications made under (1)(a) must be made by the end of the period of 20 *business days*, beginning on the day in which the *firm* has upheld the third complaint.
- (b) Notifications made under (1)(b) must be made by the end of the period of 20 *business days*, beginning on the day in which the *firm* has upheld the complaint.
- 10A.14.26 G For the purpose of *SUP* 10.14.25R:



- (1) when calculating the number of *complaints* in *SUP* 10.14.25R(1)(a) the *firm* should exclude complaints previously notified to the *FCA* under this *rule*;
- (2) redress, under *SUP* 10.14.25R(1)(b), should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
  - (a) amounts paid for distress and inconvenience;
  - (b) a free transfer out to another provider which transfer would normally be paid for;
  - (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and
- (3) if a *firm* reports on the amount of redress paid under *SUP* 10.14.25R(1)(b), the redress should not include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy); the refund of the overcharge would not count as redress.

[**Note:** See *DISP* 1.10.2AR for the duty to notify *complaints* under the *complaints reporting rules*]

10A.14.27 R Notifications under *SUP* 10.14.25R must be made electronically using a method of notification prescribed by the *FCA*.

## **10A.15 References and accurate information**

### References

- 10A.15.1 R (1) If a *firm* (A):
- (a) is considering appointing a *person* to perform any *FCA-controlled function*;
  - (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and

(c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.

- (2) When giving the information to A under (1), B must have regard to the purpose of the request and in particular to:
- (a) any outstanding liabilities of that *person* from commission payments;
  - (b) any relevant outstanding or upheld complaint from an *eligible complainant* against that *person*;
  - (c) section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);
  - (d) FIT 2 (Main assessment criteria); and
  - (e) if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B, the persistency of any *life policies* sold by that *person*.

10A.15.2 G The requirement in SUP 10A.15.1R(1) for *firm* (B) to give to *firm* (A) all relevant information of which it is aware concerning a *person* *firm* A is considering appointing to perform any of the *FCA-controlled functions*, also applies where *firm* A has outsourced the collection of that information to another (unregulated) third party, where *firm* B has been made aware that the unregulated third party is acting on behalf of *firm* A.

10A.15.3 G A *firm* supplying a reference in accordance with SUP 10A.15.1R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. 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, and verifying the information upon which they are based.

The need for complete and accurate information

- 10A.15.4 G The obligations to supply information to:
- (1) the *FCA* under either SUP 10A.14.8R or SUP 10A.14.10R;
  - (2) another *firm* under SUP 10A.15.1R;

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.

- 10A.15.5 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the Act.

## 10.16 How to apply for approval and give notifications

- 10A.16.1 D (1) This direction applies to an application under Form A or Form E.
- (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at [ ] using the form specified on the *FCA's* and *PRA's* ONA system.
- (3) An application by a *credit union* must be made using the form in *SUP* 10A Annex 4D or *SUP* 10A Annex 8D and must be submitted in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).
- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in *SUP* 10A Annex 4D or *SUP* 10A Annex 8D and submit it in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).
- 10A.16.2 R (1) This rule applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with *SUP* 10A.16.1D except that the annexes to *SUP* 10A in which the forms are to be found are *SUP* 10A Annex 6R or *SUP* 10A Annex 7R rather than the Annexes mentioned in *SUP* 10A.16.1D.
- 10A.16.3 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 online submission is unavailable and that the alternative methods of submission set out in *SUP* 10A.16.1D(4) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification) should be used.
- 10A.16.4 G Where *SUP* 10A.16.1D(4) or the equivalent situation under *SUP* 10A.16.2R applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.

## 10A.17 Further questions

- 10A.17.1 G A list of frequently asked questions and answers is at *SUP* 10A Annex 1.
- 10A.17.2 G If the *firm* or its advisers have further questions, they should contact the *FCA*'s Individuals, Mutuals and Policy Department (see *SUP* 10A.12.6G).

## 10A Annex 1G Frequently asked questions

	Question	Answer
	<b>Requirements of the regime</b>	
1	Does pre-approval apply to individuals taking up a new <i>FCA-controlled function</i> within the same <i>firm</i> ?	Yes. Pre-approval applies in all circumstances (see section 59 of the <i>Act</i> (Approval for particular arrangements)) except under the temporary ('12 weeks') provision. See <i>SUP</i> 10A.5.6R and question 2.
2	What are the procedures for 'emergency situations'?	Individuals may perform an <i>FCA-significant influence function</i> for up to 12 weeks in any consecutive 12 month period without requiring approval. When it becomes clear that a <i>person</i> will be performing the function on a permanent basis, then an application for approval should be made. However, there is no provision for individuals to perform the <i>customer function</i> on a continuing basis without approval. See <i>SUP</i> 10A.5.6R.
3	Can a <i>person</i> be approved for more than one <i>FCA-controlled function</i> ?	Yes. A <i>firm</i> will need to seek approval in respect of each <i>FCA-controlled function</i> a <i>person</i> is to perform.

4	Do the <i>FCA-controlled functions</i> apply to an <i>incoming EEA firm</i> that is providing <i>cross border services</i> into the <i>United Kingdom</i> ?	No. The <i>FCA-approved persons</i> regime does not apply to <i>cross border services</i> . See <i>SUP 10A.1.5R</i> .
5	May any activity be outsourced by a <i>firm</i> ?	Yes. But if that activity constitutes a <i>regulated activity</i> , the <i>person</i> to whom it is outsourced will itself need permission.
6	Can an <i>FCA-significant influence function</i> be outsourced?	It is a question of fact in each case who is performing an <i>FCA-significant influence function</i> . These functions are mostly described at a high level of responsibility, that is, for example, the <i>director</i> of a <i>company</i> or a <i>partner</i> in a <i>partnership</i> . The <i>persons</i> performing these functions cannot avoid their ultimate responsibility and therefore the need for approval. However, some of the <i>FCA-significant influence functions</i> may be performed by a <i>person</i> who is specifically brought in to do the job, for example the <i>chief executive function</i> (where it is to be performed by a <i>body corporate</i> ).
7	Do Lloyd's underwriting agents still require registration with Lloyd's?	Yes. Approval for a <i>controlled function</i> is not sufficient.
8	What should a <i>firm</i> do if it is unsure whether an individual needs approval?	The <i>firm</i> should contact the Individuals, Mutuals and Policy Department. See <i>SUP 10A.12.6G</i> .
	<b>Submitting an application</b>	
9	Who applies for approval?	The <i>firm</i> . See section 60 of the <i>Act</i> (Applications for approval).

10	What is the role of the <i>FCA-candidate</i> in the application process?	Before the <i>firm</i> submits the relevant Form A or Form E, it must verify the information contained in it. As part of this verification, the Form provides for the <i>FCA-candidate</i> to confirm the accuracy of the information given by the <i>firm</i> so far as it relates to him.
11	What checks should a <i>firm</i> make on a <i>FCA-candidate</i> before submitting an application for approval from the <i>FCA</i> ?	The <i>FCA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>FCA-candidates</i> before they submit an application to the <i>FCA</i> for approval. The <i>FCA</i> 's approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. It is for the <i>firm</i> to determine what checks are appropriate but in making its decision, a <i>firm</i> should have regard to the <i>FCA-controlled function</i> to which the application relates. <i>Firms'</i> enquiries should include checks to verify relevant qualifications and previous employment. Note also the provisions of <i>EG 6</i> .
12	Should these checks include a check of criminal records?	It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the <i>firm</i> should consider that the <i>FCA</i> does not routinely carry out these checks during the approval process. By virtue of the <i>rehabilitation exceptions orders</i> , the <i>FCA</i> and the industry also have a right to ask about the spent criminal convictions specified in those Orders, as well as any unspent criminal convictions, in order to assess the suitability of <i>FCA-candidates</i> for <i>approved person</i> status (see section 5 of the relevant Form A (Application to perform controlled functions under the approved persons regime)). Note also the provisions of <i>EG 6</i> (Publicity).
13	What is the "fit and proper" test for approval?	Section 61(1) of the <i>Act</i> (Determination of applications) provides that the <i>FCA</i> may grant an application only if it is satisfied that the <i>FCA-candidate</i> is a fit and proper <i>person</i> to perform the relevant function. In determining this question, the <i>Act</i> sets out the matters to which the <i>FCA</i> may have regard (section 61(2)) and the <i>FCA</i> has given guidance on this in <i>FIT</i> .

14	If a <i>firm</i> is unsure whether or not something may have an impact upon an individual's fitness and propriety, should it be disclosed?	Yes, always. The deliberate non-disclosure of material facts is taken very seriously by the <i>FCA</i> as it is seen as possible evidence of current dishonesty. Therefore, if in doubt, disclose.
15	What happens if adverse information comes to light after the application form has been submitted or after the individual has been <i>FCA</i> -approved?	The <i>firm</i> must inform the <i>FCA</i> at the earliest opportunity. See <i>SUP</i> 10A.14.17R.
16	Will the <i>FCA</i> consider an application in respect of a <i>FCA-candidate</i> who has not yet signed a contract with the <i>firm</i> ?	Yes, as the <i>FCA</i> will consider the arrangement under which the <i>FCA-candidate</i> will perform the function. However, the <i>FCA</i> will not consider speculative or provisional applications - such as for the <i>FCA-candidates</i> in an election to a mutual society Board. The <i>FCA</i> must be informed immediately of any material changes to the information provided on the application form which arises before the application has been determined. All changes must be communicated to the <i>FCA</i> by the <i>firm</i> making the application (see <i>SUP</i> 15.6.4R). Failure to notify the <i>FCA</i> may result in a delay in processing or rejection or both.
17	How can <i>credit unions</i> get a supply of application forms (Forms A to F)?	These can either be ordered through the Individuals, Mutuals and Policy, Department by email to [ ] or from the <i>FCA</i> 's Firm Contact Centre. There is no charge for an application form.

18	Is there a separate fee for making an application for <i>FCA-approved person</i> status?	No.
19	Must all gaps in previous employment be explained?	Yes.
	<b>FCA procedure</b>	
20	Does the <i>FCA</i> verify the information provided to it?	Yes, as far as possible, information is verified.
21	Will the <i>FCA</i> handle information confidentially?	Yes. The <i>FCA</i> is obliged to handle all information confidentially and is subject to the provisions of the Data Protection Act 1998.
22	How long will the <i>FCA</i> take to process an application for <i>FCA-approved person</i> status?	The length of time taken to process the application will vary as it is dependent upon the application under consideration. The <i>FCA</i> publishes standard response times on its website at <a href="http://www.fca.org.uk">www.fca.org.uk</a> setting out how long the application process is expected to take in practice. From time to time, the <i>FCA</i> also publishes its performance against these times. However, if, for example, information is missing from the application, or the information provided gives the <i>FCA</i> cause for concern, or the <i>FCA</i> already has in its possession relevant information which gives rise to concerns, processing time will almost always be longer. In each case, the <i>FCA</i> will notify the <i>firm</i> of any extension to the processing times.
23	Will the <i>firm</i> and individual be notified if there is a delay in processing the application form?	Yes. The <i>FCA</i> will contact the <i>firm</i> explaining the position and, where appropriate, giving the reasons for delay. It will then be the responsibility of the <i>firm</i> to keep the <i>FCA-candidate</i> and any other <i>interested party</i> informed.



24	How are non-routine cases handled?	Refer to <i>DEPP 2</i> .
25	Can the <i>FCA</i> apply conditions to an <i>FCA-approved person</i> ?	No. The application can either be granted or refused. The <i>Act</i> provides no equivalent to the limitations or <i>requirements</i> which may be included in <i>permissions</i> . If the application is refused, the <i>firm</i> may re-apply in respect of the same individual but a different <i>FCA-controlled function</i> . If it is considering doing this, the <i>firm</i> is encouraged to discuss the matter with the <i>FCA</i> . Where there are reasonable grounds for doing so, the <i>FCA</i> may require a <i>firm</i> to provide information about an <i>FCA-approved person</i> (see section 165 of the <i>Act</i> (Power to require information)).
26	Will the <i>firm</i> be issued with confirmation of approval?	Yes. The <i>firm</i> will be sent a letter setting out the effective date of approval together with the <i>FCA-controlled function</i> for which the individual has been <i>FCA-approved</i> . It will then be the <i>firm's</i> responsibility to inform the individual and any other <i>interested party</i> , for example any <i>appointed representative</i> .
	<b>Withdrawing an application</b>	
27	Can a <i>firm</i> withdraw its application?	Yes, but only with the consent of the <i>FCA-candidate</i> . See section 61(5) of the <i>Act</i> (Determination of applications).
28	What happens if the individual refuses to consent to the withdrawal of the application?	The <i>FCA</i> will consider with all <i>interested parties</i> what to do. If it proposes to refuse the application, it will give a <i>warning notice</i> to all <i>interested parties</i> . See section 62 of the <i>Act</i> (Applications for approval: procedure and right to refer to the Tribunal).
29	Can the <i>firm</i> withdraw only part of an application - say, in relation to a specific <i>FCA-controlled function</i> ?	The <i>FCA</i> will allow the <i>firm</i> to amend its application at any time before determination with the consent of all other <i>interested parties</i> . Whether the amendment will have the effect of amounting to a fresh application will be considered on a case by case basis.

	<b>Conduct of FCA-approved persons</b>	
30	How and when must the <i>firm</i> report to the <i>FCA</i> potentially adverse information about an <i>FCA-approved person's</i> fitness and propriety?	Normally, the <i>firm</i> should report such matters to the <i>FCA</i> on Form D once it is reasonably satisfied as to the information's validity. See <i>SUP</i> 10A.14.17R. See also, Principle for Businesses 11 ( <i>PRIN</i> ) and Statements of Principle 4 ( <i>APER</i> ). However, if an <i>FCA-approved person</i> is dismissed, is suspended, or resigns while under investigation by the <i>firm</i> , the <i>FCA</i> or another <i>regulatory body</i> , or there are any other matters that might affect the individual's fitness and propriety to perform an <i>FCA-controlled function</i> , the <i>firm</i> should inform the <i>FCA</i> ( <i>SUP</i> 10A.14.10R) that it will be submitting a Form C containing adverse information. Full details must then be provided within seven business days, on the Form C. See <i>SUP</i> 10A.14.8R.
31	For how long are individuals accountable to the <i>FCA</i> after ceasing to be an <i>FCA-approved person</i> ?	A <i>person</i> is guilty of misconduct if, while an <i>FCA-approved person</i> , he fails to comply with a <i>Statement of Principle</i> or is knowingly concerned in the contravention by a <i>firm</i> of a requirement in the <i>Act</i> or the <i>Handbook</i> or certain other requirements. But the <i>FCA</i> may not bring proceedings after three years from when it first knew of the misconduct.

<b>How does the customer function relate to the training and competence requirements?</b>			
<b>Activity</b>	<b>Products/sectors in TC Appendix 1</b>	<b>FCA-controlled function</b>	<b>SUP</b>
Advising only,	2-9	<i>customer function</i> (CF 30)	10A.10.4R
Undertaking an activity	10-11		
Advising and dealing	12-13		

Managing investments	14		
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**Approved person regime: summary of forms and their use for applications for approval to perform an FCA-controlled function**

Function	Form	Submission
<i>Person about to perform an FCA controlled function if he has never been approved by the FCA or PRA before</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is to perform an FCA significant-influence function and either has current approval to perform an FCA significant-influence function or a PRA controlled function or has had such an approval within the previous six months</i>	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is to perform the customer function and is either an FCA-approved person or a PRA-approved person or was one within the previous six months</i>	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate ceased to be an approved person more than six months ago</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is seeking to perform a significant-influence function for the first time or ceased to have approval from the FCA or PRA to perform one more than six months ago</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Firm applying for an outstanding application to perform an FCA controlled function to be withdrawn</i>	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<i>Person ceasing to perform an FCA controlled function</i>	C (unless it should be notified under Form E)	Submitted by the <i>firm</i> within seven <i>business days</i> of <i>approved person</i> ceasing to perform <i>controlled function(s)</i> .
<i>If an FCA-approved person's title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an approved person's fitness and propriety</i>	D	Submitted by <i>firm</i> within seven <i>business days</i> of the <i>firm</i> becoming aware of the matter.
<i>Person remaining with the same firm but changing FCA controlled functions (excluding where the person is changing from a customer function to a significant-influence function)</i>	E	Submitted by <i>firm</i> to the FCA before changes take place.
<i>Person remaining with the same firm but giving up a PRA controlled function and taking up an FCA controlled function</i>	E	Submitted by <i>firm</i> to the FCA before changes take place.

<p><i>Person remaining with the same firm in the circumstances described in Example 11 in the table in SUP 10A.11.14G (giving up a PRA controlled function triggering need for FCA approval)</i></p>	<p>E</p>	<p>Submitted by <i>firm</i> to the FCA in hard copy in advance of giving up the PRA governing function.</p>
<p><i>Person remaining with the same firm but giving up an FCA significant-influence function and taking up a PRA controlled function</i></p>	<p>E</p>	<p>Submitted by <i>firm</i> to the PRA before changes take place (see the PRA's Handbook).</p>

## Annex D

### New chapter 10B of the Supervision Manual

After SUP 10A insert the following new section. The text is not underlined.

Chapter 10B is designated to the PRA

#### 10B.1 Application

General

- 10B.1.1 R This chapter applies to every *PRA-authorised person*.
- 10B.1.2 G This chapter is also relevant to every *PRA-approved person*.
- 10B.1.3 G The *rules* in this chapter specify descriptions of *PRA-controlled functions* under section 59 of the *Act* (Approval for particular arrangements).
- 10B.1.4 G The directions in this chapter relate to the manner in which a *firm* must apply for the *PRA's* approval under section 59 of the *Act* and other procedures.

Overseas firms: UK services

- 10B.1.5 R This chapter does not apply to an *overseas firm* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.

Overseas firms: UK establishments

- 10B.1.6 R The *PRA-controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on except that the *non-executive director function (PRA)* only applies where the *person* performing that function:
- (1) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that branch; or
  - (2) is someone whose decisions or actions are regularly taken into account by the *governing body* of that branch.

Incoming EEA firms and incoming Treaty firms

- 10B.1.7 R This chapter does not apply to:
- (1) an *incoming EEA firm*; or

(2) an *incoming Treaty firm*;

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, under any of the *Single Market Directives*, the *Treaty* or the *auction regulation* to an authority in a country or territory outside the *United Kingdom*.

10B.1.8 G *SUP* 10B.1.7R reflects the provisions of section 59(8) of the *Act* and, in relation to an *incoming Treaty firm* the *Treaty*. It preserves the principle of *Home State* prudential regulation. In relation to an *incoming EEA firm* exercising an *EEA right*, or an *incoming Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. A member of the *governing body*, or the notified *UK branch manager*, of an *incoming EEA firm*, acting in that capacity, will not therefore have to be approved by the *PRA* under the *Act*.

10B.1.9 G Notwithstanding *SUP* 10B.1.8G, an *incoming EEA firm* (other than an *EEA pure reinsurer*), or *incoming Treaty firm*, will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an *EEA pure reinsurer*) will have 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*.

10B.1.10 G An *incoming EEA firm* will have to consider, 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 a *PRA-controlled function*, the *firm* will need to seek approval for that *person* to perform that *PRA-controlled function*.

Incoming EEA firms: passported activities from a branch

10B.1.11 R None of the *PRA-controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*.

Incoming EEA firms etc with top-up permission activities from a UK branch

10B.1.12 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the *PRA-required functions* apply.

Committees of the Society of Lloyd's

10B.1.13 R For the purpose of *SUP* 10B.6.1R (the non-executive director function (*PRA*)), "*non-executive director*" includes a non-executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.

## Insolvency practitioners

- 10B.1.14 R This chapter does not apply to a function performed by:
- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
  - (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
  - (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
  - (4) a *person* acting as 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.

## Appointed representatives

- 10B.1.15 G The *PRA* has no special *rule* relating to *appointed representatives*. Therefore *SUP* 10B applies to an *appointed representative* of a *firm* in the same way as it does to any other contractor of the *firm* (see *SUP* 10B.3.1R). Thus in practice *SUP* 10B's main application to *appointed representatives* of a *firm* will be to people seconded by the *appointed representative* to the *firm*.

## 10.2 Purpose

- 10B.2.1 G The immediate purpose of *SUP* 10B.3 to *SUP* 10B.9 is to specify, under section 59 of the *Act*, descriptions of the *PRA-controlled functions* which are listed in *SUP* 10B.4.3R. The underlying purpose is to establish, and mark the boundaries of, the *PRA's* "approved persons regime".
- 10B.2.2 G *SUP* 10B does not deal with the *FCA's* *approved persons* regime.
- 10B.2.3 G The *PRA* has certain powers in relation to *FCA-approved persons*. *SUP* 10B does not deal with these.

## 10.3 Basic rules for all PRA-controlled functions

### The need for an arrangement

- 10B.3.1 R A function is a *PRA-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*.

- 10B.3.2 G Sections 59(1) and (2) of the *Act* provide that approval is necessary in respect of a *PRA-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*.
- 10B.3.3 G *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* and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see *SUP* 10B.11.6G and *SUP* 10B.11.7G.
- 10B.3.4 G If, however, a *firm* is a member of a group, and the *arrangements* for the performance of a *PRA-controlled function* of the *firm* are made by, say, the *holding company*, the *person* performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the *firm* and *holding company* permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.
- 10B.3.5 G The *arrangement* must be “in relation to” the carrying on of a *regulated activity*. *Regulated activities* are defined in the *Glossary* by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.

#### Significant-influence functions

- 10B.3.6 R Each *PRA-controlled function* is one which comes within the definition of a *significant-influence function*.
- 10B.3.7 G Section 59(6) of the *Act* says that the *PRA* may specify a description of function as a *PRA-controlled function* only if, in relation to the carrying on of a *regulated activity* by a *firm*, it is satisfied that the function is a *significant-influence function*.
- 10B.3.8 G Section 59(7B) of the *Act* says that a significant-influence function, in relation to the carrying on of a *regulated activity* by a *firm*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's* affairs, so far as relating to the activity.
- 10B.3.9 G *SUP* 10B.3.6R gives effect to sections 59(6) and 59(7B) of the *Act*.

10B.3.10 G Whether a function is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The *PRA* has identified the *PRA-controlled functions* as satisfying this condition.

## 10.4 Specification of functions

- 10B.4.1 R Each of the functions described in *SUP* 10B.4.3 R (the table of PRA-controlled functions) is a *PRA-controlled function*.
- 10B.4.2 G The fact that a *person* may be approved for one purpose does not have the effect of bringing all his activities within that *PRA-controlled function*.
- 10B.4.3 R PRA-controlled functions

Type	CF	Description of <i>PRA-controlled function</i>
<i>PRA-governing functions</i>	2 PRA	<i>Non-executive director function (PRA)</i>
	3	<i>Chief executive function</i>
<i>PRA-required functions</i>	12	<i>Actuarial function</i>
	12A	<i>With-profits actuary function</i>
	12B	<i>Lloyd's actuary function</i>
<i>Systems and controls function</i>	28	<i>Systems and controls function</i>

## 10.5 Temporary vacancies

- 10B.5.1 R If:
- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be a *PRA-controlled function*;
  - (2) the appointment is to provide cover for an *approved person* 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 *PRA-controlled function* does not relate to those activities of that individual.

- 10B.5.2 G *SUP* 10B.5.1R enables cover to be given for, say, 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 a *PRA-controlled function* for more than 12 weeks, the *firm* should apply for approval.

## 10B.6 PRA-governing functions

Non-executive director function (PRA) (CF2 PRA)

- 10B.6.1 R If a *firm* is a *body corporate*, the *non-executive director function (PRA)* is the function of acting in the capacity of a *non-executive director* of that *firm* who performs one of the following functions:
- (1) the function of acting in the capacity of the chairman of the *governing body* of the *firm*; or
  - (2) the function of acting as a *non-executive director* who has been appointed by the *non-executive directors* to act as the senior independent director of that *firm*; or
  - (3) the function of acting in the capacity of the chairman of the *governing body* risk committee of the *firm* (if there is such a committee). For these purposes, the *governing body* risk committee means the committee described in *SYSC* 21.1.5G; or
  - (4) the function of acting in the capacity of the chairman of the audit committee of the *governing body* of the *firm* (if there is such a committee); or
  - (5) the function of acting in the capacity of the chairman of the remuneration committee of the *governing body* of the *firm* (if there is such a committee).
- 10B.6.2 R If a *firm* is a *body corporate*, the *non-executive director function (PRA)* is also the function of acting in the capacity of a *non-executive director* of a *parent undertaking* or *holding company* of a *firm* whose decisions or actions are regularly taken into account by the *governing body* of the *firm*. However, this does not apply if the *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- 10B.6.3 G A *firm* should notify the *PRA* if a *person* moves between any of the roles making up the *non-executive director function (PRA)* as set out in *SUP* 10B.6.1R(1) to (5) and *SUP* 10B.6.2R (see *SUP* 10B.12.6R).

Chief executive function (CF3)

- 10B.6.4 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.

- 10B.6.5 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); or, in the case of a *branch* in the *United Kingdom* of an *overseas firm*, for the conduct of all of the activities subject to the *UK regulatory system*.
- 10B.6.6 G For a *branch* in the *United Kingdom* of an *overseas firm*, the *PRA* would not normally expect the overseas *chief executive* of the *firm* as a whole to be approved for this function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *firm* responsible for *UK* operations may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function*.
- 10B.6.7 G A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.
- 10B.6.8 G Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved to perform the *chief executive function*.

Chief executive performing the systems and controls function

- 10B.6.9 R The *chief executive function* includes, where apportioned under SYSC 2.1.1R or SYSC 4.3.1R, the *systems and controls function*.
- 10B.6.10 G The effect of SUP 10B.6.9R is that a *person* who is approved to perform the *chief executive function* will not have to be specifically approved to perform the *systems and controls function*. A *person* who is approved to perform the *chief executive function* will have to be additionally approved before he can perform any of the *PRA-required functions*.

Insurance mediation

- 10B.6.11 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (MIPRU 2.2.1R). MIPRU 2.2.2 R(1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing a *governing function* (other than the *non-executive director function*).
- 10B.6.12 G Where a *person* performing a *PRA-governing function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after the relevant *PRA-controlled function* (see MIPRU 2.2.5G).

## 10B.7 PRA-required functions

Actuarial function (CF12)

- 10B.7.1 R The *actuarial function* is the function of acting in the capacity of an *actuary* appointed by a *firm* under SUP 4.3.1R to perform the duties set out in SUP 4.3.13R.

With-profits actuary function (CF12A)

- 10B.7.2 R The *with-profits actuary function* is the function of acting in the capacity of an *actuary* appointed by a *firm* under SUP 4.3.1R to perform the duties set out in SUP 4.3.16AR.

Lloyd's actuary function (CF12B)

- 10B.7.3 R The *Lloyd's actuary function* is the function of acting in the capacity of the *actuary* appointed under SUP 4.6.1R to perform the duties set out in SUP 4.6.7R.

## 10B.8 Systems and controls function

Systems and controls function (CF28)

- 10B.8.1 R The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:
- (1) its financial affairs;
  - (2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R);
  - (3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).
- 10B.8.2 R The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from MiFID under article 2(1)(i).
- 10B.8.3 G Where an *employee* performs the *systems and controls function* the PRA would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

## 10B.9 Other functions included within PRA-controlled functions

### Introduction

- 10B.9.1 G The purpose of *SUP* 10B.9 is to expand the descriptions of the *governing functions* set out in *SUP* 10B.6 and of the *systems and controls function* set out in *SUP* 10B.8 (the “original PRA controlled functions”) to cover certain *FCA-significant-influence functions*. One reason is to make sure that if the *PRA-approved person’s* role covers a wider range of *significant-influence functions* than is caught by the definition of the original PRA controlled function the *PRA* is able to assess his fitness against a greater proportion of his role.
- 10B.9.2 G Another purpose deals with section 59A of the *Act* (Specifying functions as controlled functions: supplementary). Under that section the *FCA* must exercise the power to specify any *significant-influence function* as an *FCA-controlled function* in a way that it considers will minimise the likelihood that approvals fall to be given by both the *FCA* and the *PRA* in respect of the performance by a *person* of *significant-influence functions* in relation to the carrying on of a *regulated activity* by the same *PRA-authorised person*.
- 10B.9.3 G Therefore, in certain cases the *FCA* has excluded some *persons* from certain *FCA-significant-influence functions* when an application is also being made to the *PRA* to perform certain *PRA-controlled functions*. A purpose of *SUP* 10B.9 is to make sure that when such *persons* perform functions that would otherwise have come within one of the *FCA-significant-influence functions* those functions are still within the *Act’s approved person* regime. This is done by bringing those functions into the *PRA-controlled functions*.

### Guidance on how *SUP* 10B.9 works

- 10B.9.4 G *SUP* 10B.9.5G gives some examples of how *SUP* 10B.9 works.
- 10B.9.5 G Table: Examples of how the need for dual *FCA* and *PRA* approval is reduced

Example	Whether FCA approval required	Whether PRA approval required	Comments
(1) A is being appointed chief risk officer and a <i>director</i> .	No	Yes	The <i>systems and controls function</i> is expanded to include his role as a <i>director</i> . The <i>PRA</i> will assess his fitness in the light of his role as <i>director</i> as well as chief risk officer. To avoid the need for <i>FCA</i> approval, A's appointment as <i>director</i> should not take effect before <i>PRA</i> approval for the chief risk officer role.
(2) Same as example (1) except that A will take up his role as a <i>director</i> slightly later because the approval of the <i>firm's</i> shareholders or <i>governing body</i> is needed.	No	Yes	The same answer applies.
(3) Same as example (1) but the application to the <i>PRA</i> does not mention that it is also intended that A is to be a <i>director</i>	Yes	Yes	<i>SUP 10A.11</i> of the <i>FCA's Handbook</i> requires <i>FCA</i> approval if the application for <i>PRA</i> approval does not say that A will also be performing what would otherwise be an <i>FCA-significant influence function</i> .
(4) A is appointed as chief risk officer. Later he is appointed as a <i>director</i> while carrying on as chief risk officer.	Yes, when he takes up the <i>director</i> role	Yes, when he takes up the chief risk officer role	Even though <i>FCA</i> approval is required, the <i>systems and controls function</i> is expanded to cover his role as <i>director</i> .



<p>(5) A is appointed as a <i>director</i>. He later takes on the chief risk officer function.</p>	<p>Yes, when he is appointed as <i>director</i>.</p>	<p>Yes, when he takes up the chief risk officer role</p>	<p>Even though <i>FCA</i> approval is required, the <i>systems and controls function</i> is expanded to cover his role as <i>director</i>.</p>
<p>(6) A is appointed as a <i>non-executive director</i> and chair of the remuneration committee.</p>	<p>No</p>	<p>Yes</p>	<p>The <i>non-executive director function (PRA)</i> performed by A not only covers his role as audit committee chairman but all his functions as a <i>non-executive director</i>.</p> <p><i>SUP 10A.11</i> of the <i>FCA's Handbook</i> only removes the requirement for <i>FCA</i> approval if the application to the <i>PRA</i> states that the <i>candidate's</i> role would have come within an <i>FCA-controlled function</i>. However the application in this example does not need to state this explicitly as it will be clear that a role falling within the <i>non-executive director function (PRA)</i> overlaps the <i>PRA firm non-executive director function (FCA)</i>.</p>
<p>(7) A is appointed as a <i>non-executive director</i>. Some time later he is becomes chair of the remuneration committee.</p>	<p>Yes, before he is appointed as a <i>non-executive director</i>.</p>	<p>Yes, before he becomes chair of the committee.</p>	<p>The <i>non-executive director function (PRA)</i> performed by A not only covers his role as audit committee chairman but all his functions as a <i>non-executive director</i>.</p>

<p>(8) A is appointed as a <i>non-executive director</i>. A does not hold one of the posts described in <i>SUP 10B.6.1R(1) to (5)</i> or <i>SUP 10B.6.2R</i> (chairman of the <i>firm's governing body</i> etc).</p>	<p>Yes</p>	<p>No</p>	<p>Although examples (6) and (7) show that the function of acting as a <i>non-executive director</i> can be included within a <i>PRA controlled function</i>, this is only when it is combined with one of the functions listed in the <i>table of PRA controlled activities</i>.</p>
<p>(9) A is appointed as an executive <i>director</i>. A does not hold any of the posts described in <i>SUP 10B.6 to SUP 10B.8</i>.</p>	<p>Yes</p>	<p>No</p>	<p>Although several of the examples in this table show that the function of acting as a <i>director</i> can be included within a <i>PRA controlled function</i>, this is only when it is combined with one of the functions listed in the <i>table of PRA controlled activities</i>.</p>

The main rule

10B.9.6 R (1) If:

- (a) a *person* is performing what would still be a *PRA-governing function* or the *systems and controls function* if *SUP 10B.9* did not apply (an “original PRA function”); and
- (b) he is in addition performing:
  - (i) one of the *FCA-controlled functions* listed in (2); or
  - (ii) any function that would have been included in one of those *FCA-controlled functions* except for the *FCA* rules in chapter 10A.11 of the Supervision manual part of its Handbook (an “original FCA controlled function”);

that *PRA-controlled function* includes, in addition, the functions included in that *FCA-controlled function*.

(2) Those *FCA-controlled functions* are as follows:

- (a) the *director function* (CF1);

- (b) the *PRA firm non-executive function (FCA)* (CF2 FCA);
- (c) the *partner function* (CF4);
- (d) the *director of unincorporated association function* (CF 5);
- (e) the *small friendly society function* (CF6); and
- (f) the *apportionment and oversight function* (CF8).

10B.9.7 G Chapter 10A.11 of the Supervision manual part of the *FCA's Handbook* is the part that implements section 59A of the *Act* (Specifying functions as controlled functions: supplementary).

Transitioning from the PRA approved persons regime to the FCA approved persons regime

10B.9.8 R If in relation to a *firm*:

- (1) *SUP 10B.9.6R* (including *SUP 10B.9.6R(1)(b)(ii)*) has applied to a *PRA-approved person*;
- (2) that *person* has ceased to perform the original PRA function (as defined in *SUP 10B.9.6R*); and
- (3) that *person* is still performing the original FCA function (as referred to in *SUP 10B.9.6R(1)(b)(ii)*);

*SUP 10B.9.6R* continues to apply for three months after that *PRA-approved person* would otherwise have ceased to perform the *PRA-controlled function* or, if sooner, until the *FCA* has approved the performance by that *person* of the *FCA-controlled function* in question in relation to the *firm*.

10B.9.9 G An example of the way *SUP 10B.9.8R* works is this. Say that a *person* (A) is appointed as *director* and chief risk officer at the same time. A will be performing the *systems and controls function* but will not be performing the *FCA director function*. Say that later A gives up his role as chief risk officer but remains as a *director*. If *SUP 10B.9.8R* (and the corresponding parts of the *FCA's Handbook*) did not apply the result would be that A would cease to perform a *PRA-controlled function* but would start performing the *FCA director function* before A had a chance to apply to the *FCA* for approval. The combined effect of *SUP 10B.9.8R* and Chapter 10A.11 of the Supervision manual part of the *FCA's Handbook* is that the *firm* has three months to secure approval by the *FCA* for A's performance of the *FCA director function* and during that interim period A keeps his status as a *PRA-approved person* performing the *director* element of the *systems and controls function* that was included in the *systems and controls function* by *SUP 10B.9.6R*. Further details can be found in Chapter 10A.11 of the Supervision manual part of the *FCA's Handbook*.

**10B.10 Procedures relating to PRA-approved persons**

Forms

10B.10.1 G The forms listed in *SUP* 10B.10.2G are referred to in *SUP* 10B.11 (Application for approval and withdrawing an application for approval) to *SUP* 10B.14 (How to apply for approval and give notifications).

10B.10.2 G Table PRA-approved persons forms

<b>Form</b>		<b>Purpose</b>	<b>Handbook requirement</b>
The relevant Form A	The relevant online form on the <i>FCA</i> 's and <i>PRA</i> 's ONA system or the form in <i>SUP</i> 10B Annex 4D (See Note)	Application to perform controlled functions under the approved persons regime	<i>SUP</i> 10B.11.4D
Form B	<i>SUP</i> 10B Annex 5R	Notice to withdraw an application to perform controlled functions under the approved persons regime	<i>SUP</i> 10B.11.20R
Form C	<i>SUP</i> 10B Annex 6R	Notice of ceasing to perform controlled functions	<i>SUP</i> 10B.12.10R

Form D	<i>SUP</i> 10B Annex 7R	Notification of changes in personal information or application details	<i>SUP</i> 10B.12.16R
Form E	The relevant online form on the <i>FCA</i> 's and <i>PRA</i> 's ONA system or the form in <i>SUP</i> 10B Annex 8D (See Note)	Internal transfer of an approved person	<i>SUP</i> 10B.12.4D
Note: The form in the <i>SUP</i> annex shown is to be used by <i>credit unions</i> , and by other <i>firms</i> only in the event of a failure of the information technology systems used by the <i>FCA</i> . See the relevant "Handbook requirement".			

- 10B.10.3 G A summary of the forms and their purposes is in *SUP* 10B Annex 1G.
- 10B.10.4 G Unless the context otherwise requires, in *SUP* 10B.10 (Procedures relating to *PRA-approved persons*) to *SUP* 10B.14 (How to apply for approval and give notifications) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.
- 10B.10.5 G Forms B, C, D and E can only be submitted in respect of a *PRA-approved person* by the *firm* that submitted a *PRA-approved person's* original application (that is, the relevant Form A).
- 10B.10.6 G Copies of Forms A, B, C, D and E may be obtained from the *PRA*'s website. *Credit unions* can obtain copies from [ ] by email at [ ]. To contact [ ] for general enquiries:
- (1) telephone [ ]; or
  - (2) fax [ ]; or
  - (3) write to:
- [ ]

; or

(4) e-mail [ ]

## **10B.11 Application for approval and withdrawing an application for approval**

When to apply for approval

- 10B.11.1 G In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *PRA-controlled functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless he has prior approval from the *PRA* with the consent of the *FCA*.
- 10B.11.2 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 kinds of cases there is no need for the consent of the *FCA*. There are currently no such arrangements in place.

Failure to apply for approval

- 10B.11.3 G If a *person* performs a *PRA-controlled function* without approval it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties) if the *PRA* is satisfied that:
- (1) a *person* (“P”) has at any time performed a *PRA-controlled function* without approval; and
  - (2) at that time P knew, or could reasonably be expected to have known, that P was performing a *PRA-controlled function* without approval;
- it may impose a penalty on P of such amount as it considers appropriate.

How to apply for approval

- 10B.11.4 D An application by a *firm* for the *PRA*’s approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where *SUP* 10B.12.4D requires a Form E).
- 10B.11.5 G *SUP* 10.14.1D explains how applications should be submitted.

Who should make the application?

- 10B.11.6 G (1) 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:
- (a) the *PRA-candidate*; or

- (b) (where the *PRA-candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*.
- (2) Usually this will be the *firm* that is employing the *PRA-candidate* to perform the *PRA-controlled function*. Where a *firm* has outsourced the performance of a *PRA-controlled function*, the details of the outsourcing determine where responsibility lies and whom the *PRA* anticipates will submit *PRA-approved persons* application forms. *SUP* 10B.11.7G describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *PRA-controlled function* has been outsourced, or which makes the arrangement for the *PRA-controlled 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 a *PRA-controlled 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 *PRA*. See also *SYSC* 3.2.4G and *SYSC* 8.1.1R, and for *insurers* *SYSC* 13.9.

10B.11.7 G Outsourcing arrangements

<b>Outsourcing arrangements</b>		<b>Submitting form</b>
<i>Firm A to firm B</i>	The <i>PRA</i> 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 <i>PRA-controlled functions</i> are performed by <i>PRA-approved persons</i> , and that it is reasonable for A to rely on this	<i>Firm B</i> submits <i>PRA-approved persons</i> forms on behalf of <i>firm A</i>
Outsourcing by A to B (both being a member of the same <i>United Kingdom group</i> and each having its registered office in the <i>United Kingdom</i> )	See <i>SUP</i> 10B.3.4G	See <i>SUP</i> 15.7.8G

<p>(i) A to B, where B is a <i>non-authorized person</i> not part of the same <i>group</i> as A</p> <p>(ii) A to B, where A is a <i>branch</i> of an <i>overseas firm</i> in the <i>United Kingdom</i>, and B is an <i>overseas undertaking</i> of the same <i>group</i></p> <p>(iii) A to B, where A is a <i>UK authorized subsidiary</i> of an <i>overseas firm</i>, and B is an <i>overseas undertaking</i> of the same <i>group</i></p>	<p>Responsibility for (as opposed to the performance of) any activity <i>outsourced</i> to B will remain with A. See <i>SYSC 3.2.4G</i> and <i>SYSC 8</i></p>	<p>A ensures that an individual approved under one of the <i>PRA-controlled functions</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual</p>
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Processing an application

- 10B.11.8 G The *Act* sets out the time that the *PRA* has to consider an application and come to a decision.
- 10B.11.9 G In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act* the *PRA* 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.
- 10B.11.10 G In any other case it is the period of three months from the time it receives a properly completed application.
- 10B.11.11 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the *PRA-candidate's* suitability to be approved to undertake a *PRA-controlled function* will be called into question. A *person* who provides information to the *PRA* 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.
- 10B.11.12 G The *PRA* will as soon as practicable notify the *FCA* of the receipt of an application to the *PRA*. There is no need for the *firm* to copy the application to the *FCA*.



- 10B.11.13 G Before making a decision to grant the application or give a *warning notice*, the *PRA* may ask the *firm* for more information about the *PRA-candidate*. If it does this, the period in which the *PRA* must determine a completed application:
- (1) will stop on the day the *PRA* requests the information; and
  - (2) will start running again on the day on which the *PRA* finally receives all the requested information.
- 10B.11.14 G The *FCA* may also ask the *firm* for more information about the *PRA-candidate*. If it does this, the period in which the *PRA* must determine a completed application is extended in the same way as it is if the *PRA* asks for the information.
- 10B.11.15 G The *PRA* may only grant an application (and the *FCA* may only give its consent) if it is satisfied that the *PRA-candidate* is a fit and proper *person* to perform the *PRA-controlled function* stated in the application form. Responsibility lies with the *firm* making the application to satisfy the *PRA* and the *FCA* that the *PRA-candidate* is fit and proper to perform the *PRA-controlled function* applied for.
- 10B.11.16 G For further *guidance* on criteria for assessing whether a *PRA-candidate* is fit and proper, see *FIT*.

#### Decisions on applications

- 10B.11.17 G The *PRA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice*.
- 10B.11.18 G Whenever it grants an application, the *PRA* will confirm this in writing to all *interested parties*.
- 10B.11.19 G If the *PRA* proposes to refuse an application in relation to one or more *PRA-controlled functions*, it must follow the procedures for issuing *warning* and *decision notices*.

#### Withdrawing an application for approval

- 10B.11.20 R A *firm* applying to withdraw an application for approval must notify the *PRA*, using Form B, in the form set out in *SUP* 10B Annex 5R.
- 10B.11.21 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 the *PRA-candidate* and the *person* by whom the *PRA-candidate* is or would have been employed, if this is not the *firm* making the application.
- 10B.11.22 G The *PRA* will as soon as practicable notify the *FCA* of the receipt of a notice of withdrawal. There is no need for the *firm* to copy the notice to the *FCA*.

## 10B.12 Changes to a PRA-approved person's details

### Moving within a firm

- 10B.12.1 G A *PRA-approved person'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*. Where the changes will involve the *person* performing one or more *PRA-controlled functions* different from those for which approval has already been granted, then an application must be made to the *PRA* for approval for the *person* to perform those *PRA-controlled functions*. The *firm* must take reasonable care to ensure that an individual does not begin performing a *PRA-controlled function* until the *PRA* has granted *approved person* status to that individual in respect of that *PRA-controlled function*. Similarly, a *firm* must get the *PRA's* approval if a *person* is to start performing a *PRA-controlled function* in relation to that *firm* when he already has the *FCA's* approval to perform an *FCA-controlled function* in relation to that *firm*.
- 10B.12.2 G If an *FCA-approved person* or a *PRA-approved person* is ceasing to perform *FCA-controlled functions* or *PRA-controlled functions*, as well as applying for approval in respect of *PRA-controlled functions*, *SUP 10B.12.4D* generally applies. Further details can be found in *SUP 10B Annex 1G*.
- 10B.12.3 G If a *person* is to perform a *PRA-controlled function* for a *firm* for which he already performs a *PRA-controlled function* or *FCA-controlled function* as an *approved person* but he is not at the same time ceasing to perform an *FCA-controlled function* or *PRA-controlled function*, a *firm* should use Form A rather than Form E. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.
- 10B.12.4 D (1) A *firm* must 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 *PRA-controlled functions* within the same *firm* or *group*.
- (2) A *firm* must not use Form E if the *approved person* is to perform a *significant-influence function* for the first time or has ceased to have approval from the *FCA* or *PRA* to perform one more than six months ago.
- (3) A *firm* must not use Form E if a notification has been made or should be made under *SUP 10B.12.18R* (Changes in fitness to be notified under Form D) or *SUP 10A.14.17R* (the equivalent *FCA rule*) in relation to any *controlled functions* that that *person* is ceasing to perform (as referred to in (1)) or any *controlled function* that he is continuing to perform in relation to that *firm* or a *firm* in the same *group*.
- 10B.12.5 G *SUP 10.14.1D* explains how applications should be submitted.

- 10B.12.6 R If a *person* is performing the *non-executive director function (PRA)* in relation to a *firm*, the *firm* must notify the *PRA* as soon as possible if that *person* begins to perform or ceases to perform any of the functions described in *SUP 10B.6.1R(1) to (5)* or *SUP 10B.6.2R*.
- 10B.12.7 G So for example if a *non-executive director* moves from being chair of the audit committee to chair of the risk committee or adds the role of chair of the audit committee to his existing role as chair of the risk committee he does not require approval from the *PRA*. However, the *firm* should notify the *PRA* of that change as soon as possible. If a *person* stops performing the *non-executive director function (PRA)* altogether, *SUP 10B.12.4D* or *SUP 10B.12.10R* apply instead.

#### Moving between firms

- 10B.12.8 G If it is proposed that a *PRA-approved person* will no longer be performing a *PRA-controlled function* under an *arrangement* entered into by one *firm* or one of its contractors, but will be performing the same or a different *PRA-controlled 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 *PRA-controlled function* by that *person*.
- 10B.12.9 G In certain circumstances, when the *PRA* 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 for full details.

#### Ceasing to perform a PRA-controlled function

- 10B.12.10 R A *firm* must submit to the *PRA* a completed Form C, in the form set out in *SUP 10B Annex 6R* no later than seven *business days* after a *PRA-approved person* ceases to perform a *PRA-controlled function*. This does not apply if the *firm* has already notified the *PRA* of the proposal to do that using Form E in accordance with this chapter or has notified the *FCA* of the proposal to do using the *FCA's* Form E in accordance with Chapter 10 of the Supervision manual part of the *FCA's* Handbook.
- 10B.12.11 G *SUP 10.14.2R* explains how notifications should be submitted.
- 10B.12.12 R (1) A *firm* must notify the *PRA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of a *PRA-approved person*.
- (2) Form C is qualified if the information it contains:
- (a) relates to the fact that the *firm* has dismissed, or suspended, the *PRA-approved person* from its employment; or
- (b) relates to the resignation by the *PRA-approved person* while under investigation by the *firm*, the *PRA* or any other *regulatory body*; or

- (c) otherwise reasonably suggests that it may affect the *PRA*'s assessment of the *PRA-approved person's* fitness and propriety.

- 10B.12.13 G Notification under *SUP* 10B.12.12R may be made by telephone, fax or email and should be made, where possible, within one *business day* of the *firm* becoming aware of the information. If the *firm* does not submit Form C, it should inform the *PRA* in due course of the reason. This could be done using Form D, if appropriate.
- 10B.12.14 G A *firm* is responsible for notifying the *PRA* if any *PRA-approved person* has ceased to perform a *PRA-controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative*.
- 10B.12.15 G A *firm* can submit Form C or Form E to the *PRA* in advance of the cessation date. When a *person* ceases the arrangement under which he performs a *PRA-controlled function*, he will automatically cease to be a *PRA-approved person* in relation to that *PRA-controlled function*. A *person* can only be a *PRA-approved person* in relation to a specific *PRA-controlled function*. Therefore, a *person* is not a *PRA-approved person* during any period between ceasing to perform one *PRA-controlled function* (when he is performing no other *PRA-controlled function*) and being approved in respect of another *PRA-controlled function*.

#### Changes to a *PRA-approved person's* personal details

- 10B.12.16 R If a *PRA-approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs a *PRA-controlled function* must notify the *PRA* on Form D, in the form set out in *SUP* 10B Annex 7R, of that change within seven business days of the *firm* becoming aware of the matter.
- 10B.12.17 G The duty to notify in *SUP* 10B.12.16R does not apply to changes to a *PRA-approved person's* private address.
- 10B.12.18 R If a *firm* becomes aware of information which would reasonably be material to the assessment of a *PRA-approved person's* fitness and propriety or the fitness and propriety of a *PRA-candidate* for *FCA* approval (see *FIT*), it must inform the *PRA* on Form D, or (if it is more practical to do so and with the prior agreement of the *PRA*) by fax or e-mail, as soon as practicable.
- 10B.12.19 G *SUP* 10B.14.2R applies to the submission of Form D.
- 10B.12.20 G Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the *Act*.
- 10B.12.21 G The duty to notify in *SUP* 10B.12.18R 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.

- 10B.12.22 R (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP* 10B Annex 4D), any of the details relating to arrangements and *PRA-controlled functions* are to change, the *firm* must notify the *PRA* on Form D (*SUP* 10B 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 also applies in relation to a *PRA-controlled function* for which an application was made using Form E.

### 10B.13 References and accurate information

#### References

- 10B.13.1 R (1) If a *firm* (A):
- (a) is considering appointing a *person* to perform any *PRA-controlled function*;
  - (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and
  - (c) indicates to B the purpose of the request;
- B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.
- (2) When giving the information to A under (1), B must have regard to the purpose of the request and in particular to:
- (a) any outstanding liabilities of that *person* from commission payments;
  - (b) any relevant outstanding or upheld complaint from an *eligible complainant* against that *person*;
  - (c) section 5 of the relevant Form A in *SUP* 10B Annex 4 (Application to perform controlled functions under approved persons regime);
  - (d) *FIT* 2 (Main assessment criteria); and
  - (e) if *SUP* 16.8.1G(1) (*Persistency* reports from *insurers*) applies to B, the persistency of any *life policies* sold by that *person*.

- 10B.13.2 G The requirement in *SUP* 10B.13.1R(1) for *firm* (B) to give to *firm* (A) all relevant information of which it is aware concerning a *person* *firm* A is considering appointing to perform any of the *PRA-controlled functions*, also applies where *firm* A has outsourced the collection of that information to another (unregulated) third party, where *firm* B has been made aware that the unregulated third party is acting on behalf of *firm* A.
- 10B.13.3 G A *firm* supplying a reference in accordance with *SUP* 10B.13.1R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. 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, and verifying the information upon which they are based.

The need for complete and accurate information

- 10B.13.4 G The obligations to supply information to:
- (1) the *PRA* under either *SUP* 10B.12.10R or *SUP* 10B.12.12R;
  - (2) another *firm* under *SUP* 10B.13.1R;
- 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.
- 10B.13.5 G Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the Act.

## 10.14 How to apply for approval and give notifications

- 10B.14.1 D
- (1) This direction applies to an application under Form A or Form E.
  - (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at [www.pra.gov.uk](http://www.pra.gov.uk) using the form specified on the *FCA's* and *PRA's* ONA system.
  - (3) An application by a *credit union* must be made using the form in *SUP* 10B Annex 4D or *SUP* 10B Annex 8D and must be submitted in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).

- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in *SUP* 10B Annex 4D or *SUP* 10B Annex 8D and submit it in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).
- 10B.14.2 R (1) This rule applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with *SUP* 10B.14.1D except that the annexes to *SUP* 10B in which the forms are to be found are *SUP* 10B Annex 6R or *SUP* 10B Annex 7R rather than the Annexes mentioned in *SUP* 10B.14.1D.
- 10B.14.3 G If the information technology systems used by the *PRA* 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 online submission is unavailable and that the alternative methods of submission set out in *SUP* 10B.14.1D(4) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification) should be used.
- 10B.14.4 G Where *SUP* 10B.14.1D(4) or the equivalent situation under *SUP* 10B.14.2R applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.

**SUP 10 Annex 1      Approved person regime: summary of forms and their use for applications for approval to perform a PRA-controlled function**

<b>Function</b>	<b>Form</b>	<b>Submission</b>
<i>Person about to perform a PRA controlled function if he has never been approved by the FCA or PRA before</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is to perform a PRA controlled function and either has current approval to perform an FCA significant-influence function or a PRA controlled function or has had such an approval within the previous six months</i>	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate ceased to be an approved person more than six months ago</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is seeking to perform a significant-influence function for the first time or ceased to have approval from the FCA or PRA to perform one more than six months ago.</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Firm applying for an outstanding application to perform a PRA controlled function to be withdrawn.</i>	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<i>Person ceasing to perform a PRA controlled function.</i>	C (unless it should be notified under Form E)	Submitted by the <i>firm</i> within seven <i>business days</i> of <i>approved person</i> ceasing to perform <i>controlled function(s)</i> .
<i>If a PRA-approved person's title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an approved person's fitness and propriety.</i>	D	Submitted by <i>firm</i> within seven <i>business days</i> of the <i>firm</i> becoming aware of the matter.
<i>Person remaining with the same firm but changing PRA controlled functions</i>	E	Submitted by <i>firm</i> to the PRA before changes take place



<i>Person remaining with the same firm but giving up a PRA controlled function and taking up an FCA significant-influence function</i>	E	Submitted by <i>firm</i> to the <i>PRA</i> before changes take place.
<i>Person remaining with the same firm in the circumstances described in Example 11 in the table in SUP 10B.9.8R (giving up a PRA controlled function triggering need for FCA approval)</i>	E	Submitted by <i>firm</i> to the <i>FCA</i> in hard copy in advance of giving up the <i>PRA governing function</i> .
<i>Person remaining with the same firm but giving up a PRA controlled function and taking up an FCA controlled function</i>	E	Submitted by <i>firm</i> to the <i>FCA</i> before changes take place (see the <i>FCA's Handbook</i> )



## Appendix 2

# Designation of Handbook Provisions

1. FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website<sup>1</sup> for further details about this process.
2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this CP as follows:

Handbook Provision	Designation
accountable functions [FCA]	FCA
accountable functions [PRA]	PRA
accountable significant-influence function	FCA
customer-dealing function	FCA and PRA
FCA-approved person	FCA and PRA
FCA-authorised person	FCA and PRA
FCA candidate	FCA and PRA
FCA controlled function	FCA and PRA
FCA governing functions	FCA and PRA
FCA required functions	FCA and PRA
FCA significant-influence functions	FCA and PRA
FCA apportionment and oversight function	PRA
FCA director function	PRA
FCA director of unincorporated association function	PRA
FCA partner function	PRA
FCA small friendly society function	PRA
non-executive director function (FCA)	FCA and PRA
non-executive director function (PRA)	FCA and PRA
PRA-approved person	FCA and PRA
PRA-authorised person	FCA and PRA
PRA chief executive function	FCA
PRA controlled function	FCA and PRA
PRA firm non-executive director function (FCA)	FCA and PRA

<sup>1</sup> [www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/about\\_fsa/handbook-pra-fca.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml)

Handbook Provision	Designation
PRA governing function	FCA and PRA
PRA required functions	FCA and PRA
significant-influence function	FCA and PRA
PRA systems and controls function	FCA
table of FCA controlled functions	FCA and PRA

## Glossary Provisions – amendments to existing definitions

Handbook Provision	Designation
actuarial function	PRA
apportionment and oversight function	FCA
approved person	FCA and PRA
candidate	FCA and PRA
CASS operational oversight function	FCA
chief executive function [FCA]	FCA
chief executive function [PRA]	PRA
Code of Practice for Approved Persons [FCA]	FCA
Code of Practice for Approved Persons [PRA]	PRA
compliance oversight function	FCA
controlled function	FCA and PRA
customer function	FCA
director function	FCA
director of unincorporated association function	FCA
Lloyd's actuary function	PRA
money laundering reporting function	FCA
non-executive director function	FCA and PRA
partner function	FCA
significant management function	FCA
small friendly society function	FCA
Statement of Principle [FCA]	FCA
Statement of Principle [PRA]	PRA
systems and controls function [FCA]	FCA
systems and controls function [PRA]	PRA
with-profits actuary function	PRA

## APER

Handbook Provision	Designation
APER 1.1A.1 – 1.1A.11	FCA
APER 1.1B.1 – 1.1B.11	PRA
APER 1.2.1A	FCA
APER 1.2.1B	PRA
APER 1.2.2	FCA and PRA
APER 1.2.3	FCA

Handbook Provision	Designation
APER 1.2.3A	PRA
APER 1.2.5	FCA
APER 2.1A.1 – 2.1A.3	FCA
APER 2.1B.1 – 2.1B.3	PRA
APER 3.1.1 – 3.1.3	FCA and PRA
APER 3.1.4	FCA
APER 3.1.4A	PRA
APER 3.1.5	FCA and PRA
APER 3.1.6	FCA and PRA
APER 3.1.7	FCA
APER 3.1.8	FCA
APER 3.1.8A	PRA
APER 3.1.9	FCA
APER 3.2.1	FCA and PRA
APER 3.3.1	FCA
APER 3.3.2	PRA
APER 4.1.1A	FCA
APER 4.1.1B	PRA
APER 4.1.2 – 4.1.15	FCA and PRA
APER 4.2.1A	FCA
APER 4.2.1B	PRA
APER 4.2.2	FCA and PRA
APER 4.2.2A	FCA
APER 4.2.3 – 4.2.12	FCA and PRA
APER 4.2.13	FCA
APER 4.2.14	FCA and PRA
APER 4.3.1 – 4.3.4	FCA
APER 4.4.1A	FCA
APER 4.4.1B	PRA
APER 4.4.2A	FCA
APER 4.4.2B	PRA
APER 4.4.3 – 4.4.9	FCA and PRA
APER 4.5.1A	FCA
APER 4.5.1B	PRA
APER 4.5.2	FCA and PRA
APER 4.5.2A	FCA
APER 4.5.2B	PRA
APER 4.5.3 – 4.5.7	FCA and PRA
APER 4.5.8A	FCA
APER 4.5.8B	PRA
APER 4.5.9A	FCA
APER 4.5.9B	PRA
APER 4.5.10 – 4.5.13A	FCA and PRA
APER 4.5.14A	FCA
APER 4.5.14B	PRA
APER 4.5.16	FCA
APER 4.5.17	PRA
APER 4.6.1A	FCA

## Regulatory reform: the PRA and FCA regimes for Approved Persons

Handbook Provision	Designation
APER 4.6.1B	PRA
APER 4.6.2 – 4.6.14	FCA and PRA
APER 4.7.1A	FCA
APER 4.7.1B	PRA
APER 4.7.2	FCA and PRA
APER 4.7.2A	FCA
APER 4.7.3	FCA and PRA
APER 4.7.4 – 4.7.8	FCA and PRA
APER 4.7.9	FCA
APER 4.7.10	FCA
APER 4.7.11	FCA and PRA
APER 4.7.11A	FCA
APER 4.7.12	FCA and PRA
APER 4.7.13	FCA and PRA
APER 4.7.14	FCA and PRA

**SUP**

Handbook Provision	Designation
SUP 10A (all provisions)	FCA
SUP 10B (all provisions)	PRA

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