



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Consultation Paper | \*\*\*FCA CP14/13/PRA CP14/14  
**Strengthening accountability in  
banking: a new regulatory framework  
for individuals**

July 2014



# Contents

Abbreviations used in this document	3
<b>1</b> Overview	5
<b>2</b> The Senior Managers Regime	12
<b>3</b> The Certification Regime	30
<b>4</b> Fitness and propriety	34
<b>5</b> Conduct Rules	38
<b>6</b> Applying the new regime to UK branches of foreign banks	46
<b>7</b> The regulatory lifecycle under the new regime	48
<b>8</b> Transition to the new regime	58

## Annexes

<b>1</b> PRA Cost Benefit Analysis	62
<b>2</b> FCA Cost Benefit Analysis	66
<b>3</b> PRA Compatibility Statement	70
<b>4</b> FCA Compatibility Statement	72
<b>5</b> List of questions	76
<b>6</b> FCA Draft Handbook Text	79
<b>7</b> PRA Draft Rules	80
<b>8</b> Draft Statement of the PRA's Policy On Conditions, Time Limits and Variations Of Approval	81
<b>9</b> PRA Draft Supervisory Statements	82
<b>10</b> Europe Economics Individual Accountability Cost Benefit Analysis	83

We are asking for comments on this Consultation Paper by Friday 31 October 2014.

You can send them to us in writing to:

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

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

You can download this Consultation Paper from our website: [www.fca.org.uk](http://www.fca.org.uk).

The Bank of England and the Prudential Regulation Authority (PRA) reserve the right to publish any information which it may receive as part of this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure, in accordance with access to information regimes under the Freedom of Information Act 2000 or the Data Protection Act 1998 or otherwise as required by law or in discharge of our statutory functions.

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This Consultation Paper proposes changes to the PRA Rulebook.

Please address responses, comments or enquiries by 31 October 2014 to:

[CP14/14@bankofengland.co.uk](mailto:CP14/14@bankofengland.co.uk)

## Abbreviations used in this paper

<b>The Act</b>	Financial Services (Banking Reform) Act 2013
<b>APER</b>	Statements of Principle and Code of Practice for Approved Persons (Handbook)
<b>APR</b>	Approved Persons Regime
<b>AR</b>	Appointed Representative
<b>BSRC</b>	Banking Standards Review Council
<b>CEO</b>	Chief Executive Officer
<b>CFO</b>	Chief Financial Officer
<b>CF</b>	Controlled Function
<b>CP</b>	Consultation Paper
<b>CR</b>	Certification Regime
<b>CRD</b>	Capital Requirements Directive
<b>CRR</b>	Capital Requirements Regulation
<b>DBS</b>	Disclosure and Barring Service
<b>DEPP</b>	Decision Procedure and Penalties Manual (Handbook)
<b>EBA</b>	European Banking Authority
<b>EEA</b>	European Economic Area
<b>FCA</b>	Financial Conduct Authority
<b>FIT</b>	The Fit and Proper Test for Approved Persons (Handbook)
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services and Markets Act 2000

<b>HSS</b>	Home State Supervisor
<b>LIBOR</b>	London Interbank Offered Rate
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MMR</b>	Mortgage Market Review
<b>NED</b>	Non-executive director
<b>PCBS</b>	Parliamentary Commission on Banking Standards
<b>PPI</b>	Payment Protection Insurance
<b>PRA</b>	Prudential Regulation Authority
<b>RDR</b>	Retail Distribution Review
<b>RTC</b>	Regulatory Transactions Committee (FCA)
<b>RTS</b>	Regulatory Technical Standard
<b>SID</b>	Senior Independent Director
<b>SIF</b>	Significant Influence Function
<b>SMF</b>	Senior Management Function
<b>SMR</b>	Senior Managers Regime
<b>SUP</b>	Supervision manual (Handbook)
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls (Handbook)
<b>UT</b>	Upper Tribunal

# 1. Overview

## Introduction

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- 1.1** The behaviour and culture within banks played a major role in the 2008-09 financial crisis and in conduct scandals such as Payment Protection Insurance (PPI) mis-selling and the attempted manipulation of LIBOR. However, under the statutory and regulatory framework in place at the time, individual accountability was often unclear or confused. This undermined public trust in both the banking system and in the regulatory response.
- 1.2** Both the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) (the regulators) believe that holding individuals to account is a key component of effective regulation. In this consultation, the regulators are proposing changes to the way individuals working for UK banks, building societies, credit unions and PRA-designated investment firms<sup>1</sup> (collectively referred to throughout this Consultation Paper (CP) as 'relevant firms') are assessed and held accountable for the roles they perform.<sup>2</sup> The proposals reflect the recommendations of the Parliamentary Commission on Banking Standards (PCBS) and implement changes required by amendments which the Financial Services (Banking Reform) Act 2013 (the Act) made to the Financial Services and Markets Act 2000 (FSMA). These changes are significant and include:
- A new 'Senior Managers Regime' (SMR) for individuals who are subject to regulatory approval, which will require firms to allocate a range of responsibilities to these individuals and to regularly vet their fitness and propriety. This will focus accountability on a narrower number of senior individuals in a firm than the current Approved Persons Regime (APR).
  - A 'Certification Regime' which will require relevant firms to assess the fitness and propriety of certain employees who could pose a risk of significant harm to the firm or any of its customers.
  - A new set of 'Conduct Rules'.<sup>3</sup>
- 1.3** The proposals in this consultation are intended to create a new framework to encourage individuals to take greater responsibility for their actions, and will make it easier for both firms and regulators to hold individuals to account.
- 1.4** Enhancing individual accountability through a range of measures, including by clarifying the specific responsibilities of Senior Managers and expanding the population in relevant firms subject to standards of conduct, should have a positive impact on individual behaviour and

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1 For information on the PRA's designation criteria for investment firms see *Statement of Policy: Designation of investment firms for prudential supervision by the Prudential Regulation Authority*; [www.bankofengland.co.uk/publications/Documents/other/pradesignationofinvestmentfirms.pdf](http://www.bankofengland.co.uk/publications/Documents/other/pradesignationofinvestmentfirms.pdf)

2 Other regulated firms are not affected by the changes.

3 The word 'conduct' in these rules relates to professional conduct in the ordinary, wider sense, i.e. it is not limited to conduct of business and includes activities relevant to the PRA as well as the FCA.

the general culture within firms. This should, in turn, contribute to the advancement of both regulators' objectives.

- 1.5** The PRA's and FCA's current powers and procedures for approving individuals operate largely as two parts of a whole. The effect and implications of one can only be properly understood when seen alongside the other. The new regime will operate in a similar way, although each regulator's approach will vary according to its differing statutory objectives. For that reason, the PRA and FCA have chosen to set out their respective proposals for consultation in a single document with chapters divided into FCA and PRA sections where required. This format will help readers understand the proposed changes and reduce duplication.

### Who does this consultation affect?

- 1.6** The proposals in this consultation relate to relevant firms. As well as the firms themselves, the proposals will affect a large number of individuals within those firms, including, but not limited to, all their existing approved persons. The proposals in this consultation do not extend to individuals and approved persons of Appointed Representatives of relevant firms.
- 1.7** The Senior Managers Regime will apply to individuals performing a Senior Management Function (SMF) specified by either regulator on behalf of a relevant firm whether physically based in the UK or overseas.
- 1.8** The Certification Regime will apply to employees of relevant firms who meet the criteria set by each regulator as described in Chapter 3.
- 1.9** The new Conduct Rules will apply to persons in the combined scope of the SMR and the Certification Regime. The FCA will also apply them to most employees of relevant firms (other Conduct Rules staff) based in the UK or who deal with customers in the UK. This means that the Conduct Rules will cover all employees who would be in a position to affect the FCA's objectives. It will also prevent gaming of the Certification Regime and raise overall conduct standards in the industry.
- 1.10** The proposals that the regulators are consulting on do not generally apply to UK branches of relevant firms that are headquartered overseas, other than as indicated in Chapter 3.<sup>4</sup> However, in his annual Mansion House speech of 12 June 2014, the Chancellor of the Exchequer stated his intention to extend the definition of 'relevant authorised person'<sup>5</sup> in section 71A of FSMA to include 'all banks that operate in this country, including the branches of foreign banks.'<sup>6</sup> The regulators' final proposals for branches depend on the terms of the Treasury's proposed statutory order and are yet to be finalised. However, the regulators have set out their respective preliminary approaches in outline in Chapter 6.
- 1.11** Neither regulator is generally permitted to assess the competence of persons performing a Controlled Function (CF) in an incoming branch of an EEA credit institution or PRA-designated investment firm. That is a matter reserved to the Home State Supervisor (HSS) under the European single market directives, for instance CRD<sup>7</sup> or MiFiD.<sup>8</sup> In practice this

<sup>4</sup> See the discussion of the respective geographical scope of the PRA and FCA Certification Regimes in Chapter 3.

<sup>5</sup> Equivalent to 'relevant firm' in this CP.

<sup>6</sup> Mansion House 2014: Speech by the Chancellor of the Exchequer:  
[www.gov.uk/government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer](http://www.gov.uk/government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer)

<sup>7</sup> [www.fca.org.uk/firms/markets/international-markets/eu/crd-iv](http://www.fca.org.uk/firms/markets/international-markets/eu/crd-iv)

<sup>8</sup> [www.fca.org.uk/your-fca/documents/mifid](http://www.fca.org.uk/your-fca/documents/mifid)

means that the PRA will not specify any Senior Management Functions applying to a UK branch of an EEA credit institution or PRA-designated investment firm. The FCA will consider in future consultations the extent to which it would be appropriate to continue assessing and approving individuals performing certain functions in UK branches of EEA credit institutions or PRA-designated investment firms, to the extent that those functions are not reserved to the HSS.

### Is this CP of interest to consumers?

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- 1.12** This consultation will primarily be of interest to firms. Consumers may be interested in how individual accountability is being enhanced within relevant firms, or how staff they interact with will be required to comply with the Conduct Rules.

### Context of the proposals

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- 1.13** In June 2012, Parliament established the PCBS to consider and report on:
- 'professional standards and culture of the UK banking sector, taking account of regulatory and competition investigations into the LIBOR rate-setting process, and
  - lessons to be learned about corporate governance, transparency and conflicts of interest, and their implications for regulation and for Government policy'.<sup>9</sup>
- 1.14** The PCBS concluded that public trust in banking was at an all-time low and recommended a series of measures to restore trust and improve culture. These recommendations proposed a new framework for approving and holding individuals to account which would include:
- a Senior Persons Regime<sup>10</sup> to replace the Significant Influence Function (SIF) element of the Approved Persons Regime for deposit-takers and PRA designated-investment firms with a Senior Management Function, covering a narrower range of individuals
  - a Licensing Regime (which subsequently became the Certification Regime under the Banking Reform Act) operating alongside the Senior Persons Regime and applying to other bank staff whose actions or behaviour could significantly harm the bank, its reputation or its customers, and
  - replacing the existing Statements of Principle and Code of Conduct for Approved Persons with a set of enforceable Conduct Rules which would apply to a wider range of employees than those subject to regulatory approval.
- 1.15** The Act adopted these central recommendations in the changes it made to FSMA. In addition to introducing the new regimes referred to above, the Act also gave both regulators enhanced powers when approving Senior Managers and taking enforcement action against them. These include the ability to impose conditions and time limits on approvals, a presumption that Senior

<sup>9</sup> [www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/appointment-of-commission](http://www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/appointment-of-commission)

<sup>10</sup> This was introduced by the Act into FSMA as the Senior Managers Regime.

Managers are responsible for contraventions that occur within their area of responsibility and a new criminal offence relating to decisions that cause a financial institution to fail.

- 1.16** Clearer individual responsibilities coupled with enhanced enforcement powers for the regulators should give senior management a robust set of incentives and deterrents. This which should improve corporate governance and encourage individuals to behave appropriately and accept greater responsibility for their actions.
- 1.17** While the PRA and FCA believe the new regime will deliver significant improvements, behavioural and cultural change must also come from individuals themselves as they carry out their roles. The proposed new regime should therefore be seen as operating alongside other initiatives that will influence professional standards in banking. One such industry-led initiative is set out in the Lambert Review<sup>11</sup> proposals which recommend creating a Banking Standards Review Council to act as an independent champion of behaviour and competence in banking. Through the setting and monitoring of voluntary standards of good practice, the industry may seek to attain higher standards than the minimum requirements imposed by the regulators.

## Summary of Banking Reform Act and PRA and FCA proposals

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### Senior Managers Regime

- 1.18** FSMA, as amended by the Act, enables the PRA and FCA to specify a function<sup>12</sup> as a Senior Management Function (SMF).<sup>13</sup> Individuals performing an SMF specified by the PRA will require pre-approval by the PRA with the FCA's consent. Individuals performing an SMF specified by the FCA will require pre-approval by the FCA only. When applying for regulatory pre-approval for these individuals (referred to as Senior Managers), relevant firms will be required to include a Statement of Responsibilities setting out the areas of the firm which the prospective Senior Manager will be responsible for managing. The Act also gives both regulators the power to approve Senior Managers subject to conditions or time-limits.
- 1.19** Taken together, the combined scope of both regulators' regimes captures members of a relevant firm's board. In addition, for larger and more complex firms, the FCA expectation is that executive committee members (or equivalent), i.e. the layer below the board, would also be within the scope of its regime. As well as board members, a number of other individuals will require approval as Senior Managers. These include:
- heads of key business areas meeting certain quantitative criteria
  - individuals in group or parent companies exercising significant influence on the firms' decision-making, and
  - where appropriate, individuals not otherwise approved as Senior Managers but ultimately responsible for important business, control or conduct-focused functions within the firm.

<sup>11</sup> [www.bankingstandardsreview.org.uk/assets/images/statement.jpg](http://www.bankingstandardsreview.org.uk/assets/images/statement.jpg)

<sup>12</sup> 'Function' means a job or role carried out by an individual (e.g. CEO).

<sup>13</sup> FSMA, as amended by the Act, allows regulators to specify an SMF when it meets the general conditions of the statutory definition in FSMA [www.legislation.gov.uk/ukpga/2013/33/section19/enacted](http://www.legislation.gov.uk/ukpga/2013/33/section19/enacted)

### Certification Regime

- 1.20** The Act introduced a new Certification Regime into FSMA. This regime will apply to all employees performing a role relating to a relevant firm's regulated activities which is not an SMF but could nonetheless pose, in the PRA's and/or FCA's view, a risk of significant harm to the firm or its customers. The Act requires relevant firms to take reasonable care to ensure that no employee performing a 'significant harm function' as specified by the regulators does so unless the firm has certified them as fit and proper to do so.
- 1.21** Firms are also required to reassess the fitness and propriety of employees performing such significant-harm functions at least once a year and renew their certificate accordingly. Regulators will not approve employees within the scope of the Certification Regime but will require a Senior Manager within the firm to assume responsibility for the internal assessment and certification process.
- 1.22** The PRA will specify 'significant harm functions'<sup>14</sup> that cover a smaller population of employees than those of the FCA. For firms subject to the Capital Requirements Regulation (CRR), the PRA's Certification Regime will comprise certain 'material risk takers' as defined with reference to Commission Delegated Regulation (EU) No 604/2014.<sup>15</sup> For credit unions, a simplified definition will be used.
- 1.23** The population of individuals who can pose a risk of significant harm to a firm's customers is wider than the population that can harm the firm itself. So, in addition to certain material risk takers, the FCA's Certification Regime will also capture:
- customer-facing roles that are subject to qualification requirements (e.g. financial advisors)
  - any individuals who supervise or manage another Certified Person, and
  - any other SIF roles under the current Approved Persons Regime not otherwise covered by the SMR, for example benchmark submitters.

### Conduct Rules

- 1.24** The existing Statements of Principle and Code of Practice for Approved Persons, which apply only to Approved Persons, will be replaced by a set of Conduct Rules with a far wider application. The PRA and FCA both propose that the Conduct Rules should apply to all Senior Managers and to their respective populations within the Certification Regime. In addition, the FCA proposes to apply the Conduct Rules to all other employees of relevant firms except staff carrying out purely ancillary functions (i.e. catering staff, security guards and others carrying out a role which would be fundamentally the same in a non-financial services firm). This is consistent with the regulator's approaches to the scope of the Senior Managers and Certification Regime which recognise that the number of individuals capable of causing consumer or market detriment is greater than the number capable of causing prudential damage.
- 1.25** When these various changes to the Approved Persons Regime are introduced for relevant firms the provisions that they replace will cease to have effect for these firms.

<sup>14</sup> These are referred to as "certification functions" in the PRA Certification of Employees Instrument and the supervisory statement on Certification.

<sup>15</sup> Available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.167.01.0030.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.167.01.0030.01.ENG)

### Competition

- 1.26** The regulators do not expect their proposed respective regimes to have an adverse effect on competition. The Europe Economics Individual Accountability Cost Benefit Report (Annex 10) has identified some potential for small deposit-takers to be disadvantaged relative to larger firms and this will need to be explored further during the consultation process. Overall however, the associated costs of the respective proposals and the potential for some exits from the market and a corresponding reduction of consumer choice are not expected to be significant enough to cause any adverse impacts on competition. The costs associated with the change in approach for individual accountability are not expected to affect firms entering the market differently, as they will not be subject to higher standards or different requirements compared with existing firms.

### Equality and diversity considerations

- 1.27** The regulators have considered the equality and diversity issues that may arise from their proposals in this CP. In particular, the regulators have identified the following aspects of the regime with potential equality and diversity implications:
- The proposals will allow more than one individual to perform a Senior Management Function or a function in scope of the Certification Regime at the same firm, thereby accommodating individuals working under a job-share arrangement. If this was not the case, the proposed rules could be deemed to discriminate indirectly against individuals working under a job-share arrangement, for instance, due to family obligations such as maternity or paternity.
  - The robust requirements of the SMR may make the role of non-executive director on a bank board less appealing for some prospective candidates, which may reduce the size and potentially the diversity of the pool of candidates available. However, the PRA and FCA consider that it is necessary to apply the SMR to non-executives in order to achieve their policy objectives. Candidates for such posts will be subject to the same fitness and propriety requirements as other Senior Manager roles and firms are expected to consider candidates on their merits.
  - The assessment of prospective and current Senior Managers and individuals within the Certification Regime will consider their fitness and propriety to carry out their function. For some roles, such as Chairman, this assessment may involve consideration of the individual's experience, which can only be acquired with time. This could result in a bias in favour of individuals in certain age groups. However, this does not depart from existing practice and is offset by the requirement to take into account other assessment criteria not directly related to age, such as qualifications.
  - A requirement for regulatory references to contain certain prescribed information has the potential to raise equality and diversity concerns if the information that the references must contain were to focus on protected characteristics. However, the prescribed information that regulatory references will need to cover under the regulators' proposals are focused on conduct rule breaches. Further, the proposals do not affect a firm's existing legal obligations, including to ensure references are true, accurate and fair.
- 1.28** Overall, the regulators do not consider that the proposals in this CP raise concerns with regards to equality and diversity issues. The regulators do not consider that the proposals in this consultation result in direct discrimination for any of the groups with protected characteristics

i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

- 1.29** The regulators will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, any input respondents to this consultation have on such matters is welcomed.

### Next steps

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- 1.30** The regulators are asking for feedback on the proposals set out in this CP.
- 1.31** The PRA is seeking feedback on:
- all PRA and joint PRA/FCA questions in the main body of the CP and in Annex 5
  - the draft PRA rules in Annex 7
  - the draft Statement of the PRA's Policy on Conditions, Time-Limits and Variations of Approval in Annex 8, and
  - the draft supervisory statements in Annex 9.
- 1.32** While the PRA's proposed approach to branches of non-EEA firms in Chapter 6 depends on the outcome of the Treasury's consultation and is therefore not being consulted on in this CP, interested respondents are welcome to provide feedback on it at this stage.
- 1.33** The FCA is seeking feedback on:
- all FCA and joint PRA/FCA questions in the main body of the CP and as listed in Annex 5, and
  - the FCA draft instrument at Annex 6.
- 1.34** Please note that the consultation includes questions specifically posed by only one regulator as well as joint questions from both regulators. You should note that responses to:
- PRA only questions will be considered by the PRA only
  - FCA only questions will be considered by the FCA only, and
  - responses to joint questions will be discussed by the PRA and FCA.

### What do you need to do next?

- 1.35** Please send your responses to: both regulators at the following addresses CP14/14@bankofengland.co.uk and cp14-13@fca.org.uk. The regulators will share responses with each other and publicly, unless you specifically ask for them to remain confidential.

### What will we do?

- 1.36** The PRA and FCA each plan to publish Policy Statement(s) containing our respective final rules around the end of the year. A technical CP will follow this one in due course. This will cover forms, consequential changes, and the detailed rules on the transitional arrangements outlined in Chapter 8.

## 2. The Senior Managers Regime

### Introduction

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- 2.1** This chapter sets out the PRA's and FCA's proposals for the SMR. Each regulator's approach is considered in turn, although some proposals, notably those involving a common approach, are presented in a joint section. The chapter examines the following aspects of the SMR.
- The scope of the regime, including the 'functions' (i.e. jobs, roles and responsibilities) which the PRA and FCA propose to specify as Senior Management Functions.
  - Each regulator's proposed approach to the allocation of responsibilities to Senior Managers, which is intrinsically related to the scope of the regime, including:
    - i. the content of Statements of Responsibilities (paragraph 2.64), and
    - ii. a proposal to require firms to produce and maintain a single document (a 'Responsibilities Map') setting out their overall framework for the allocation of responsibilities to individuals, and their governance and management arrangements.
  - How the regulators' proposals have been designed to work in practice as a coherent and combined SMR.
  - An overview of the new FSMA powers allowing the regulators to impose conditions, time limits and variations on the approvals of SMFs. Each regulator's proposed use of its new statutory powers is examined in detail in:
    - i. the FCA's draft rules in SUP10C and DEPP in Annex 6, and
    - ii. the draft Statement of the PRA's Policy on Conditions, Time-Limits and Variations of Approval in Annex 8.

### Overview

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- 2.2** For relevant firms, the Act replaces the concept of a Significant Influence Function in FSMA for relevant firms with that of a Senior Management Function which covers:

A function that will require the person performing it to be responsible for managing one or more aspects of the relevant firm's affairs, so far as relating to regulated activities, and those aspects involve, or might involve, a risk of serious consequences for the authorised person, or for business or other interests in the UK.

- 2.3** FSMA, as amended by the Act, states that, for the purposes of the definition of SMF, ‘managing’ can include taking decisions or participating in the taking of decisions on how a firm’s affairs should be run. This means that non-executive directors and directors in other group entities that participate in the taking of decisions about the firm can be specified as SMFs.
- 2.4** The Act introduces into FSMA several provisions designed to promote a clear allocation of responsibilities to Senior Managers and enhance their individual accountability. These include:
- A requirement for applications for approval as a Senior Manager of a relevant firm to ‘contain, or be accompanied by a statement setting out the aspects of the affairs of the authorised person concerned which it is intended that the person will be responsible for managing in performing the function’. These ‘Statements of Responsibilities’ must be resubmitted whenever there is a ‘significant change’ in the Senior Manager’s responsibilities.
  - New statutory powers for the regulators to impose conditions and time limits on approvals of Senior Managers, both at the initial approval stage and subsequently through a variation of approval.
  - If a firm contravenes a relevant requirement, the Senior Manager responsible for the area where the contravention has occurred could be held accountable if they are unable to satisfy the regulators that they have taken ‘reasonable steps’ to prevent or stop the contravention (the ‘Presumption of Responsibility’).
  - Potential criminal liability under a new offence relating to a reckless decision causing a financial institution to fail. (This applies only to Senior Managers working in banks, building societies and PRA-designated investment firms. It does not extend to Senior Managers in credit unions).
- 2.5** The Act enables the regulators to decide which functions to specify as SMFs. In doing so, the regulators have focused on delivering:
- more targeted oversight of key decision makers responsible for the firm’s main activities, and
  - a clearer allocation of responsibilities to key individuals, which minimises the potential for overlaps and underlaps in accountability.
- 2.6** The SMR’s emphasis on individual responsibilities is not, however, intended to undermine the fiduciary, legal and regulatory responsibilities of the board which will retain ultimate decision-making power and authority over all aspects of the firm’s affairs.
- 2.7** The SMFs designated by the PRA and the FCA enable each regulator to focus on those roles with the greatest potential impact to its statutory objectives. As is the case under the current Approved Persons Regime, the PRA will require the FCA’s consent before approving an individual to perform a PRA SMF. FSMA, as amended by the Act, also continues to require the FCA to 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. The proposals in this CP adopt the existing approach for complying with this requirement by taking care that the FCA does not specify functions which the PRA proposes to specify and through the arrangements described in paragraph 2.48 and 2.49.
- 2.8** While some of the evidential requirements for assessing Senior Managers will change under the new regime (see Chapter 7), the process for applying for approval as a Senior Manager

will remain similar to the current process for applying for approval as a SIF under the Approved Persons Regime. For instance, firms will remain able to submit a single application to the FCA for SMFs requiring approval by both regulators.

### Who is in scope of the PRA's Senior Managers Regime?

- 2.9 The PRA is only entitled by the Act to specify a function as requiring its approval if it is satisfied that it falls within the statutory definition of an SMF.
- 2.10 Consistent with this requirement and its general objective, the PRA has identified the functions that it considers meet the statutory definition of an SMF and which could directly affect a firm's safety and soundness.
- 2.11 The table below sets out the proposed list of PRA SMFs for relevant firms.

**Figure 1**

<b>PRA Senior Management Functions for Relevant Firms except small credit unions<sup>16</sup></b>	
<b>Executive</b>	<b>Non-executive</b>
Chief Executive function	Chairman
Chief Finance function	Chair of the Risk Committee
Chief Risk function	Chair of the Audit Committee
Head of Internal Audit	Chair of the Remuneration Committee
Head of key business area	Senior Independent Director
Group Entity Senior Manager	
<b>PRA Senior Management Function for small credit unions</b>	
Credit union Senior Manager	

- 2.12 **Mandatory PRA Senior Management Functions**  
Under the PRA's proposed rules, every firm other than a small credit union will be required to have one or more persons performing a Chief Executive, Chief Finance and Chairman SMF.
- 2.13 Where existing rules do not require a relevant firm to establish a certain board committee or independent control function and the firm has elected not to do so, the PRA does not propose to require the firm to have individuals performing the corresponding SMFs. Consequently, some firms (typically smaller and less complex ones) may not be required to have individuals performing following function: the Chief Risk; Head of Internal Audit; Chairs of the Audit; Risk and Remuneration Committees; and Senior Independent Director (SID) SMFs.
- 2.14 Where such a firm chooses to include in its governance structure a committee or control function which it is not required to have by law or regulation, it must ensure that the chair of that committee or the head of that control function has the relevant SMF approval.
- 2.15 Firms that do not have an individual carrying out the SMFs referred to above will nonetheless need to allocate certain additional responsibilities to their existing SMFs (see figure 2 on page 18).

<sup>16</sup> Small credit unions are defined as those with assets less than or equal to £25m.

**Heads of key business areas**

- 2.16** The PRA proposes to introduce a Head of key business area SMF. This would be for individuals managing a business area or division so large in relative terms to the size of the firm that it could jeopardise its safety and soundness and so substantial in absolute terms that it warrants an SMF even though the Senior Manager performing it may report to the Chief Executive or another SMF.<sup>17</sup>

**Multiple approvals**

- 2.17** Individuals intending to perform more than one SMF will require separate approvals for each, although these may be combined in a single application.
- 2.18** An individual's ability to hold multiple approvals will remain subject to existing requirements in EU Directives that prevent certain functions from being combined (for example, the Chairman and Chief Executive roles in a CRR firm) or which require specific functions to be performed independently.
- 2.19** The draft supervisory statement on the PRA's SMR in Annex 9 lists all SMFs which are subject to such restrictions or independence requirements.

**Shared Senior Management Functions**

- 2.20** The PRA expects relevant firms to put forward for each SMF the most senior individual responsible for managing or overseeing that aspect of the firm's affairs. In some cases, however, such as a job share, it may be possible for a firm to have more than one individual approved to perform the same SMF. In this situation, each of the individuals approved will be accountable for all the responsibilities conferred by that SMF, and each may be required to show that they have taken reasonable steps to prevent a breach from occurring or continuing in the management area covered by that SMF.<sup>18</sup> Whether or not all or any individual sharing an SMF can show reasonable steps will depend upon the particular circumstances including that individual's own actions and the division of tasks between those sharing the SMF.

**Small credit union Senior Managers**

- 2.21** The PRA proposes to apply the SMR in a tailored way to small credit unions (defined as those with assets lower than or equal to £25m). In particular, the PRA proposes to require at least one individual in each small credit union to be approved, typically the Chief Executive or equivalent. The relevant individual(s) will be approved as a credit union Senior Manager, which the draft PRA rules define as 'having responsibility for the conduct of, or chairing the committee of management of, a small credit union'. This narrower application to small credit unions means that, as a general matter, the PRA believes that the impact on mutual societies of its proposed rules for the SMR will not be significantly different from their impact on other relevant firms.

**Senior Managers based in a parent or group entity**

- 2.22** Under the Approved Persons Regime, an individual who is employed in the parent or other group entity of a relevant firm but who is deemed via an arrangement with the relevant firm to exercise 'significant influence' over its affairs is subject to approval.

<sup>17</sup> An individual will require approval as a Head of key business area if they manage an area with gross total assets of £10bn or more which accounts for either 20% or more of the firm's or, where the firm is part of a group, 20% the group's gross revenue. The PRA's draft rules contain further details on how these criteria should be calculated.

<sup>18</sup> For example, where a firm has joint heads of Internal Audit working part-time under a job-share arrangement, both will require approval as the Head of Internal Audit function and each will be jointly responsible for all responsibilities inherent in or allocated to that SMF.

- 2.23** This will continue under the new regime. Individuals not directly employed by a relevant firm but whose influence over it meets the relevant test must be specifically approved as a Group Entity Senior Manager. Their Statements of Responsibilities will be required to clarify the nature of their influence over the relevant firm and any areas of the firm that they are responsible for overseeing.
- 2.24** The PRA will assess whether certain employees or officers in a parent or group entity meet the Group Entity SMF test on a case-by-case basis in light of all relevant circumstances. To inform its assessment, the PRA will take into account information in the Statements of Responsibilities of their Senior Managers and the Responsibilities Map (see paragraphs 2.64 and 2.71) of firms that are part of a group; for instance, information on reporting lines from Senior Managers in the relevant firm to any individuals outside it.
- 2.25** By way of illustration, while a bank which is wholly owned by a non-financial company will have its own board and senior management, the parent company board may exercise ultimate decision-making power over certain matters capable of affecting its safety and soundness (thereby satisfying the FSMA requirement for an 'arrangement'). The Statements of Responsibilities of the firm's Chief Finance and Chief Risk functions may also show a reporting line to the group finance director, who is highly influential in decisions regarding the allocation of capital to and risk appetite of the bank. In this situation, the bank may be required to put forward the group finance director for approval as a Group Entity Senior Manager. When assessing the fitness and propriety of the group finance director, however, the PRA would only take into account his specific responsibilities in respect of the bank and give consideration to the existence of other accountable, approved SMFs in the bank.
- 2.26** There may also be situations where an individual based outside a relevant firm is performing an SMF specified by the PRA or FCA directly on behalf of the firm. In this situation, the individual will require approval by the appropriate regulator as the Senior Manager for this function. An example might be a group holding company whose board includes a group remuneration committee which takes decisions on behalf of all group entities, including a bank (whose own board does not have a remuneration committee). In this situation, the chair of the group remuneration committee would require approval as Chair of the Remuneration Committee of the relevant firm.

**Q1:** **[PRA]:** Does the proposed list of PRA Senior Management Functions capture the appropriate set of roles? If not,

- are there any other roles which the PRA should consider specifying as SMFs?
- are there any proposed SMFs which the PRA should consider excluding?

- Q2:** [PRA]: Do you agree with the PRA's proposal that firms should not be required to have individuals approved to perform specific SMFs where these relate to committees or functions which they are not required to have and have elected not to have?
- Q3:** [PRA]: Do you agree with the PRA's proposed quantitative criteria to identify the Head of key business area function?

## The PRA's approach to the allocation of responsibilities to Senior Managers

### Prescribed Responsibilities

- 2.27** The PRA's proposed rules define every SMF by reference to the fundamental responsibility inherent in that function. For example, the PRA's draft rules define the Chief Finance function as 'the function responsible for the management of the financial resources of a firm and reporting to the management body of a firm in relation to its financial affairs'.
- 2.28** In addition to the responsibilities inherent in the definition of each PRA SMF, the PRA proposes to make rules setting out a limited set of 'Prescribed Responsibilities' which all firms except small credit unions (which will be subject to their own requirements<sup>19</sup>) will be required to allocate among their Senior Managers.
- 2.29** The PRA's proposed approach to the allocation of responsibilities to Senior Managers seeks to:
- ensure that firms clarify to themselves and the regulator who is responsible for managing or overseeing key aspects of their affairs, and
  - give firms flexibility to allocate responsibilities in a way that accommodates different business models and organisational structures.
- 2.30** All responsibilities must be allocated to a Senior Manager approved by the PRA or FCA (except the FCA's Significant Responsibility SMF discussed below). Some responsibilities can only be allocated to non-executive Senior Managers.
- 2.31** In practice, the PRA expects firms will allocate most Prescribed Responsibilities to the SMF with which the responsibility is most closely associated. For instance, while firms will be able to assign responsibility for 'safeguarding the independence of the Head of Internal Audit function' to any non-executive Senior Manager, the PRA will typically expect them to assign this responsibility to the Chair of the Audit Committee or to the Chairman. A full list of PRA Prescribed Responsibilities is set out on page 18.

<sup>19</sup> See Annex 7, PRA Draft Rules, Chapter 6 of the Allocation of Responsibilities

**Figure 2**

**PRA Prescribed Responsibilities**

1. performance by the firm of its obligations under the senior management regime, including implementation and oversight
2. performance by the firm of its obligations under the Certification Rules
3. compliance with the rules relating to the firm's management responsibilities map
4. the induction, training and professional development of all persons performing senior management functions on behalf of the firm and all members of the firm's management body
5. ensuring and overseeing the integrity and independence of the internal audit function in accordance with SYSC 6.2 (Internal audit)
6. ensuring and overseeing the integrity and independence of the compliance function in accordance with SYSC 6.1 (Compliance)
7. ensuring and overseeing the integrity and independence of the risk function in accordance with SYSC 7.1.22 R (Risk control)
8. ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment
9. allocation of all prescribed responsibilities
10. leading the development of the firm's culture and standards in relation to the carrying on of its business and the behaviours of its staff
11. embedding the firm's culture and standards in relation to the carrying on of its business and the behaviours of its staff in the day-to-day management of the firm
12. the development and maintenance of the firm's business model
13. management of the allocation and maintenance of capital, funding and liquidity
14. the firm's treasury management functions
15. the production and integrity of the firm's financial information and its regulatory reporting in respect of its regulated activities
16. the firm's recovery plan and resolution pack and overseeing the internal processes regarding their governance
17. if the firm carries out proprietary trading, the firm's proprietary trading activities
18. if the firm does not have an individual performing the Chief Risk function, overseeing and demonstrating that the risk management policies and procedures which the firm has adopted in accordance with SYSC 7.1.2 R to SYSC 7.1.5 R satisfy the requirements of those rules and are consistently effective in accordance with SYSC 4.1.1R
19. if the firm outsources its internal audit function, taking reasonable steps to ensure that every person involved in the performance of the service is independent from the persons who perform external audit, including
  - (a) supervision and management of the work of outsourced internal auditors and
  - (b) management of potential conflicts of interest between the provision of external audit and internal audit services
20. if the firm does not have a person who performs the Senior Independent Director function,
  - (a) carrying out oversight of the person who performs the Chairman function; and
  - (b) oversight of the adequacy and quality of the resources available to the office of that person to enable the role to be fulfilled within the firm

### Additional responsibilities

**2.32** Firms may wish to allocate to a Senior Manager additional responsibilities not covered in the PRA's or FCA's rules. The PRA may also require a firm to allocate responsibility for a given regulatory deliverable not covered elsewhere in its rules to a specific Senior Manager.

**2.33** Additional responsibilities must not qualify or modify the responsibilities conferred by the definition of an SMF or a Prescribed Responsibility and will need to be recorded in the Senior Manager's Statement of Responsibilities and the firm's Responsibilities Map.

**Q4:** **[PRA]:** Do you agree with the PRA's proposed list of Prescribed Responsibilities?

**Q5:** **[PRA]:** Do you agree with the PRA's proposed approach to the allocation of responsibilities?

### Who is in scope of the FCA's Senior Managers Regime?

**2.34** FSMA, as amended by the Act, enables the FCA to specify a function as a Controlled Function (i.e. a function for which approval is required) if it is satisfied that the function falls within the definition of an SMF.<sup>20</sup>

**2.35** The FCA's SMR has been designed to deliver against the strategic objective of making relevant markets work well, and the operational objectives of consumer protection, market integrity and promoting competition.

**2.36** The FCA believes that in order to achieve these objectives, it is necessary that all of the functions which the PRA intend to specify – see above – should become SMFs. But as these functions will be designated by the PRA and subject to FCA consent on approval there is no need for the FCA to also designate these functions.

**2.37** However, given the breadth of its objectives the FCA also intends to specify a series of further SMFs in addition to those proposed by the PRA. These are:

- all board members, i.e. executive and non-executive directors not otherwise specified by the PRA
- certain functions currently classed as 'required functions' under the Approved Persons Regime namely Money Laundering Reporting and Compliance Oversight functions
- the Chair of the Nominations Committee<sup>21</sup>, where a relevant firm is required under existing requirements to have a Nominations Committee or chooses to do so, comparable to the PRA's approach of designating Chairs of other board committees where there are existing requirements for such committees, and

<sup>20</sup> In addition to specifying a function as an SMF, the Act has widened the power of the FCA to specify functions as non-SMF Controlled Functions under the old Approved Persons Regime. However, the FCA does not intend to exercise this power in respect of relevant firms. This will result in some roles ceasing to be Controlled Functions. Many of these roles will, however, be expected to remain in scope of the Certification Regime discussed in Chapter 3.

<sup>21</sup> The Nominations Committee is a committee of non-executives with various duties regarding the composition and functioning of the management body individually and collectively.

- individuals in a role which is not otherwise an SMF specified by either the FCA or the PRA but who have ‘overall responsibility’ for one or more key functions, or identified risks, listed by the FCA in its rules (referred to as Significant Responsibility SMFs).

### Proposed FCA SMFs in full

**Figure 3**

FCA Senior Management Functions for relevant firms	
Executive	Non-executive
Executive Director	Non-Executive Director
Significant Responsibility Senior Manager	Chair of Nominations Committee
Money Laundering Reporting	
Compliance Oversight	

- 2.38** The roles of Executive Director and Non-Executive Director, Money Laundering Reporting, and Compliance Oversight SMFs are broadly as currently defined in the FCA Handbook.<sup>22</sup>
- 2.39** Where a relevant firm is required under existing requirements to have a Nominations Committee or chooses to do so, the Chair of the Nominations Committee SMF is defined in the proposed rules as the function of ‘...acting in the capacity as the chairman of that committee’.<sup>23</sup>
- 2.40** The Significant Responsibility Senior Manager SMF will cover individuals with overall responsibility for a key function or identified risk<sup>24</sup>, who are performing a function which is not otherwise specified as an SMF requiring approval by the FCA or PRA.

#### Design of the FCA’s SMF structure

- 2.41** Paragraphs 2.41 to 2.47 describe the kinds of roles and responsibilities the FCA would expect firms to cover in constructing their senior management arrangements.
- 2.42** The PCBS report (paragraph 617) recommended that SMFs be a relatively small group of individuals at the top of the organisation, who could be summarised as ‘the Board plus the Executive Committee’ i.e. the top two layers of governance. The FCA agrees with this recommendation. However, it is also important to provide firms with the freedom to structure their senior management in a way that suits their business.
- 2.43** Together with those SMFs specified by the PRA the FCA’s proposed designation covers all members of the Board, which as company law makes clear, is the ultimate decision making body in the organisation. But the second layer may be structured in different ways – for example, not all firms will necessarily set this up as an Executive Committee. The Significant Responsibility SMF has been created to allow firms the freedom to make senior executives who are responsible for functions, but not appointed as Board directors, part of the SMF structure.

<sup>22</sup> The executive and non-executive director function definitions have been amended by removing the reference to people based outside the firm.

<sup>23</sup> Annex 6: The FCA Draft Handbook Text (Annex C)

<sup>24</sup> Annex 6: The FCA Draft Handbook Text (Annex B)

- 2.44** The proposals do not place limitations on the number or status of Significant Responsibility SMFs. But the FCA would expect these to be the individuals with overall responsibility for one or more of the key functions in the list below. It is important to be clear that this is not a matter of title. An individual may be the “Head of Product Development” but not be the most senior person responsible for the design and manufacture of products intended for retail customers, and therefore does not perform a Significant Responsibility SMF. Instead he may report to another individual, who does perform the Significant Responsibility SMF for this area, and also has responsibility for other items in the list at Figure 4.
- 2.45** The test firms will be expected to apply is, that a person should be approved to perform a Significant Responsibility SMF if the Board has delegated to them overall responsibility for a particular function and they are primarily responsible for reporting to the board in respect of that function. (It is helpful to consider what would happen if there was a serious issue within a key function. The board would expect to receive the report on what had happened, and what was being done to put it right, from the relevant Significant Responsibility SMF, and not from their deputy.)
- 2.46** It is important to stress that firms will not necessarily be expected to appoint a single individual as an SMF for each function set out below. Although there is no hard and fast restriction against individuals below the top two layers of management being appointed as SMFs – because it is the policy intention to give firms flexibility – it is expected that such appointments will be the exception rather than the rule. It is likely that many Significant Responsibility SMF holders and executive directors may have ultimate responsibility for a number of key areas, and this is why a single Significant Responsibility SMF is more appropriate than a series of precise, granular functions, such as head of sales, head of marketing etc. This gives firms the freedom to structure their business in a way that suits them, while avoiding a proliferation of SMF functions which may be several layers down from the top of the organisation.
- 2.47** Key functions cover those functions which the FCA thinks are likely to apply to most relevant firms. The table at figure 4 sets a list of key functions identified by the FCA. The FCA does not require firms to organise themselves in this way. Nor does the FCA expect these functions to apply to all relevant firms. More detailed descriptions are included in the draft instrument in Annex 6 of this CP.

**Figure 4**

<b>Key functions (excludes control functions)</b>	
1.	Establishing and operating systems and controls in relation to financial crime
2.	Safekeeping and administration of assets of clients
3.	Payment services
4.	Settlement
5.	Investment management
6.	Financial or investment advice
7.	Mortgage advice
8.	Corporate investments
9.	Wholesale sales
10.	Retail sales
11.	First line quality assurance of sales
12.	Trading for clients
13.	Investment research
14.	Origination/syndication and underwriting
15.	Retail lending decisions
16.	Wholesale lending decisions
17.	Design and manufacturing of products intended for wholesale customers
18.	Design and manufacture of products intended for retail customers
19.	Production and distribution of marketing materials and communications
20.	Customer service
21.	Customer complaints handling
22.	Collection and recovering amounts owed to a firm by its customers/Dealing with customers in arrears
23.	Middle office
24.	The firm's information technology
25.	Business continuity
26.	Human resources
27.	Incentive schemes for the firm's staff

**Multiple approvals and overlaps with PRA SMFs**

- 2.48** In line with the PRA's proposed approach, individuals seeking to perform more than one SMF specified by the FCA will require separate approval for each. The exception to this is the Significant Responsibility SMF, which is only required where the person performing a key function or functions is not already approved as an SMF by the FCA or PRA.
- 2.49** There may be cases where an individual will perform an SMF specified by the FCA and an SMF specified by the PRA. An example could be a Chief Finance Officer (CFO) who is also appointed to the Board. Acting as a CFO is a PRA SMF, and being a director is an FCA SMF. The regulators' existing rules avoid the need for getting a separate FCA-only approval to perform the FCA function by expanding the PRA function to include the FCA one. These arrangements will be carried over to the new regime.

### Credit unions

**2.50** In developing the SMR, the FCA has considered the impact on credit unions. The FCA believes the approach set out above (which will also apply to credit unions) allows for proportionality. It is important to clarify that this approach does not mean the FCA would expect a credit union or other small deposit taker to have an individual approved for each of the SMFs listed in figure 3, or that there is an expectation that such firms are carrying out all of the key functions set out in figure 4. The need for approval will be determined by the number of individuals performing these functions and the way in which a credit union allocates responsibilities. In practice, the FCA expects these proposals would generally maintain the status quo for credit unions in terms of the senior roles that would require regulatory pre-approval.

**Q6:** **[FCA]:** Does the proposed list of FCA SMFs capture the appropriate set of roles? If not

- are there any other roles which the FCA should consider specifying as SMFs?
- are there any proposed SMFs which the FCA should consider excluding?

**Q7:** **[FCA]:** Does the proposed list of Key Functions adequately cover those likely to be carried out by relevant firms? Which functions should be added or removed?

**Q8:** **[PRA/FCA]:** Do the combined FCA and PRA proposed SMFs cover the key decision-makers in relevant firms?

### The FCA's approach to the allocation of responsibilities to Senior Managers

**2.51** The FCA's proposed approach to responsibilities is, like the PRA's, designed to clarify who is responsible for managing and overseeing key aspects of a firm's affairs, while providing flexibility to allow firms to allocate the responsibilities in a way that suits their different business models and organisational structures.

**2.52** As well as setting out specific requirements that must be allocated among Senior Managers, the FCA's approach also looks at how a board has allocated overall responsibility for key functions and activities of a firm.

**2.53** The table at figure 5 summarises the FCA's proposed approach to responsibilities, which can be broken down into four parts

**Figure 5**

<b>FCA responsibility framework</b>		
<b>Reference in rules</b>	<b>Type of responsibility<sup>25</sup></b>	<b>Explanation of treatment of responsibilities</b>
Part One responsibilities	These are specific responsibilities that will apply to all relevant firms. The FCA requires these to be allocated among Senior Managers (excluding the Significant Responsibility SMF). For example, responsibility for the performance by the firm of its obligations under the Certification Rules.	The FCA's specific responsibilities align with responsibilities 1 to 8 of the PRA's list of Prescribed Responsibilities in figure 2. Consistent with the PRA's approach, the FCA expects each of these responsibilities to be allocated to one SMF but may allow them to be shared in specific circumstances such as job-share arrangement. If a firm allocates these responsibilities to more than one person the Responsibilities Map should explain why this has been done.
Part Two responsibilities	These apply to individuals with overall responsibility for identified risks or key activities of the firm (including those referred to in Part Three below).	The FCA's approach captures those with overall responsibility for the activities of a firm. It also covers the allocation of risks identified by the firm under existing regulatory requirements. Anyone having such overall responsibility will require the FCA's approval as an SMF. If the individual does not require approval under another FCA or PRA SMF, the Significant Responsibility SMF would apply.
Part Three responsibilities	These are key functions (as set out in figure 4) that the FCA thinks are likely to apply to most relevant firms. For example, safekeeping and administration of assets of clients	Although the FCA expects these functions to apply to most firms, it does not require firms to organise themselves in this way. Some firms may divide these functions between several people. For example, retail sales may be allocated to several people based on a firm's product lines. Unless a person has overall responsibility (as described in Part Two above) for one of these key functions they will not be performing an SMF. As explained in Part 2, anyone with overall responsibility will require approval. If the individual does not require approval under another FCA or PRA SMF, the Significant Responsibility SMF would apply. Where overall responsibility for these functions is divided between several people, the arrangements should be clearly described in the Responsibilities Map. The FCA would expect allocation of general management responsibilities, as well as those with overall responsibility, to be recorded in a firm's Responsibilities Map.

<sup>25</sup> Annex 7: FCA Draft Handbook Text (Annex B)

**FCA responsibility framework** *continued*

Reference in rules	Type of responsibility	Explanation of treatment of responsibilities
Part Four responsibilities	These are the PRA's Prescribed Responsibilities (as set out in figure 2). <sup>26</sup> For example, responsibility for the management of the allocation and maintenance of capital, funding and liquidity.	The FCA's proposed rules cross-reference and endorse the remaining PRA Prescribed Responsibilities (i.e. those not covered in Part One) which primarily have a prudential focus. It is important that the FCA understands a firm's arrangements in relation to these responsibilities.

- 2.54** In addition to the above, relevant firms will assign additional responsibilities to SMFs. In general, where responsibilities are allocated on a shared or collective basis, each SMF would be jointly accountable for those responsibilities.

**Q9: [FCA]:** Do you agree with the FCA's proposed approach to the allocation of responsibilities?

**How will the PRA's and FCA's Senior Managers Regime operate together in practice?**

- 2.55** The PRA's and FCA's proposed rules for SMFs, although different in some respects, are intended to operate jointly as a single cohesive regime in practice.
- 2.56** Looked at collectively, the regulators' approach to the allocation of responsibilities should ensure that major activities, responsibilities and risks are allocated by firms to individuals within, or thereby brought within, the SMR. This will facilitate and promote clearer internal governance, along with a greater ability to supervise and enforce appropriately where there are regulatory breaches.
- The combined scope of the Senior Managers Regime**
- 2.57** The combined scope of the regime will cover every individual on the board of every relevant firm thereby ensuring that key decision-makers are in scope and subject to enhanced accountability requirements.
- 2.58** In addition, a number of roles which may or may not entail membership of the board will require approval by one of the regulators. These include heads of key control functions and major divisions, and individuals employed outside the firm who exercise sufficient influence over its affairs under arrangements entered into by it to warrant inclusion in the regime.
- 2.59** The FCA will approve individuals other than those referred to above with overall responsibility for the firm's other activities.

<sup>26</sup> As set out in the table on page 18 and in Annex 7: PRA Draft Rules

**2.60** The table below shows the combined list of PRA and FCA Senior Management Functions.

**Figure 6**

<b>Combined list of Senior Management Functions</b>		
Chief Executive function	SMF1	PRA
Chief Finance function	SMF2	PRA
Executive Director	SMF3	FCA
Chief Risk function	SMF4	PRA
Head of Internal Audit	SMF5	PRA
Head of key business area	SMF6	PRA
Group Entity Senior Manager	SMF7	PRA
Credit union SMF (small credit unions only)	SMF8	PRA
Chairman	SMF9	PRA
Chair of the Risk Committee	SMF10	PRA
Chair of the Audit Committee	SMF11	PRA
Chair of the Remuneration Committee	SMF12	PRA
Chair of the Nominations Committee	SMF13	FCA
Senior Independent Director	SMF14	PRA
Non-Executive Director	SMF15	FCA
Compliance Oversight	SMF16	FCA
Money Laundering Reporting	SMF17	FCA
Significant Responsibility SMF	SMF18	FCA

**2.61** The difference in SMFs specified by the PRA and FCA aims to reflect each regulator’s objectives, which makes some divergences in scope inevitable. However, the main practical effect of these divergences will be to determine which regulator is responsible for assessing an individual as fit and proper and granting an individual’s initial approval. Both regulators will retain the ability to engage with and take individual enforcement action against any Senior Manager if warranted.

**2.62** This means the combined regime remains proportionate. The requirement to have certain SMFs is linked to wider longstanding requirements to establish certain functions or committees. In addition, the need for approval will be determined by the number of individuals performing the SMFs within a firm and the way in which responsibilities are allocated. As a result, the combined regime will ensure that small-deposit takers are not required to expand their Senior Manager population unduly.

**2.63** The introduction of the Group Entity Senior Manager and Significant Responsibility SMFs will also help accommodate firm’s often different management and governance structures.

**The regulators' common approach to Statements of Responsibilities**

- 2.64** FSMA, as amended by the Act, requires relevant firms to submit Statements of Responsibilities when applying for approval for an individual to perform an SMF and whenever there is a significant change in the Senior Manager's responsibilities.
- 2.65** To ensure the effectiveness of these documents through the regulatory lifecycle, the FCA's and PRA's draft rules and the FCA's guidance and PRA's supervisory statements on the content and format of Statements of Responsibilities have been aligned to the fullest practicable extent.
- 2.66** Both regulators also propose to require firms to include certain additional information in their applications for approval to perform an SMF, including but not limited to CVs, job descriptions, organisational charts, Responsibilities Maps (see below) and learning and development plans.<sup>27</sup>

**Q10: [PRA/FCA]:** Do you agree with the PRA's and FCA's proposals on Statements of Responsibilities?

**The regulators' common approach to the Responsibilities Map**

- 2.67** The regulators propose to issue rules and guidance requiring firms to prepare, maintain and update a 'Responsibilities Map': a single document that describes the firm's management and governance arrangements.
- 2.68** Responsibilities Maps should also set out how responsibilities have been allocated, including whether they have been allocated to more than one person.
- 2.69** A key purpose of the Responsibilities Map is to ensure that, when looked at collectively, the allocation of responsibilities to a given firm's Senior Managers (as set out in their respective Statements of Responsibilities) does not leave any gaps in accountability.
- 2.70** A clear, comprehensive Responsibilities Map may also provide evidence that a firm is satisfying its obligation to have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility (as per SYSC 4.1.1R).
- 2.71** The FCA and PRA also propose requiring annual confirmation, from the firm's board, that there are no gaps in the allocation of responsibilities within the firm.

**Q11: [PRA & FCA]:** Do you agree with the PRA's and FCA's proposal to require firms to produce a Responsibilities Map?

**The regulators' common approach to handover arrangements**

- 2.72** The regulators propose to impose a requirement on firms to take reasonable steps to ensure that newly appointed Senior Managers are made aware of all necessary materials/information and risks of regulatory concern in order to perform their responsibilities effectively. This requirement will be accompanied by FCA guidance and PRA supervisory statement on handover arrangements by both regulators, which also form part of this consultation (Annex 6 and 9).

**Q12: [PRA & FCA]:** Do you agree with the PRA's and FCA's proposed approach to handover arrangements?

<sup>27</sup> The details of these requirements will be set out in a second, technical CP in due course.

### Conditional, time-limited approvals and variations of approval

- 2.73** The PCBS recommended that ‘the regulators be able to make approval of an individual Senior Person subject to conditions, for example where it is felt that they need to acquire a certain skill to carry out the job well.’
- 2.74** Consequently, the Act amended FSMA to allow the regulators to:
- approve applications to perform an SMF subject to any conditions that they consider appropriate or for a limited period, and
  - vary existing approvals either at the firm’s initiative or their own (such variations can include imposing, varying or removing conditions and/or time-limits on the approval).
- 2.75** These new powers can be exercised only where it appears to the regulator granting the approval or making the variation, that it is desirable to do so to advance any of their objectives.
- 2.76** The introduction of the powers means that the approval decision is no longer a binary one for regulators. This flexibility should strengthen the effectiveness of both regulators’ supervision of individuals.
- 2.77** FSMA, as amended by the Act, requires each regulator to publish a Statement of its Policy in respect of these new powers. Before doing so, the regulators must consult each other, and publish a draft of their respective proposed statement ‘in the way appearing to the regulator to be best calculated to bring it to the attention of the public’. The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.
- 2.78** The PRA and the FCA have collaborated closely to agree a coordinated policy approach to time limits, conditions and variations of approval. Those divergences that do arise in the form and substance of each regulator’s draft Statement stem from their respective objectives and approach.
- 2.79** Consistent with the format of previous PRA Statements of Policy, the PRA has published and is consulting on its Statement of Policy as a separate document (see Annex 8).
- 2.80** As part of this exercise, the FCA Statement of Policy on Conditional, Time Limited approvals and variations of approval at the request of a firm is part of the instrument attached to this consultation at Annex 6, specifically in chapter SUP 10.C. The FCA policy on variations of approval on the FCA’s initiative is in draft DEPP 8.

**Q13: [PRA]:** Do you agree with the proposals set out in the PRA’s proposed Statement of Policy on the ‘Draft statement of the PRA’s policy on conditions, time-limits and variations of approval?’

**Q14: [FCA]:** Do you agree with the proposals set out in the FCA’s proposed statements of policy contained in draft chapters SUP 10C and DEPP 8?

### Operational implications

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- 2.81** The regulators recognise the importance of minimising the administrative and operational costs of the new SMR and are aware of the merits of a simple, coordinated approval process.
- 2.82** Building on the coordination and consultation process for approvals under the Approved Persons Regime (which is set out in the Memorandum of Understanding between the FCA and PRA<sup>28</sup>) the regulators will seek to harmonise the approval process for SMFs to the fullest extent practicable. As part of this process, the PRA and FCA will consult later this year (see paragraph 1.36) on the operational and consequential aspects of the new regime.

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<sup>28</sup> [www.bankofengland.co.uk/about/Documents/mous/moufcapra.pdf](http://www.bankofengland.co.uk/about/Documents/mous/moufcapra.pdf)

## 3. The Certification Regime

### Introduction

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- 3.1** The Act has introduced into FSMA the requirement for firms to certify certain employees as being fit and proper to perform certain functions. This originated from the PCBS's recommendation that a 'licensing regime' be introduced to address concerns that the existing Approved Persons Regime brought too narrow a set of individuals within the scope of regulation, and that firms took insufficient responsibility for the fitness and propriety of their staff.
- 3.2** FSMA, as amended by the Act, now allows the FCA and PRA to specify a set of 'significant-harm functions' with a view to minimising the risk that an employee at a relevant firm performs such a function without being fit and proper to do so. In summary, a function is a 'significant-harm function' if the person performing it will be involved in aspects of the firm's affairs (so far as relating to a regulated activity carried on by the firm) that might involve a risk of significant harm to the firm or any of its customers. The significant-harm functions specified by the regulators are described here and in the proposed rules as 'certification functions'.
- 3.3** Individuals performing certification functions will not be subject to regulatory approval. However, a firm must take reasonable care to ensure that no employee performs any of these functions without having been certified as fit and proper to do so, and that this certification is renewed on an annual basis. In deciding whether an employee is fit and proper to perform such a function, a firm needs to have regard to any rules the regulators have made for this purpose. This chapter sets out the PRA's and FCA's proposed approach to defining the scope of the Certification Regime i.e. how each regulator proposes to specify certification functions.

### Who is in the PRA's Certification Regime?

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- 3.4** In light of its statutory objectives as a prudential regulator, the PRA's proposed Certification Regime focuses on those functions which might involve a risk to the safety and soundness of the relevant firm.

### Banks, building societies and PRA designated investment firms (CRR firms).

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- 3.5** The PRA proposes that the scope of its Certification Regime for firms that are subject to the Capital Requirements Regulation (CRR) should be based to the extent possible on the criteria used to define 'material risk takers' in these firms for remuneration purposes.
- 3.6** The Capital Requirements Directive as supplemented by Commission Delegated Regulation (EU) No 604/2014 provides criteria for identifying 'material risk takers'; that is to say, persons

whose actions could have a material impact on the risk profile of the firm.<sup>29</sup> The PRA believes that those whose role can expose their firm to material risks are capable of causing significant harm to the firm, so the two concepts of 'material risk-taker' and 'significant harm function' are effectively synonymous for prudential purposes.

- 3.7** The PRA and FCA joint CP on Remuneration published simultaneously with this paper includes a proposed definition for staff that are 'material risk takers' and therefore subject to remuneration rules. This definition makes reference to criteria in Commission Delegated Regulation (EU) No 604/2014. CRR firms will already need to familiarise themselves with these criteria and identify their population of material risk takers in order to meet the requirements of the remuneration regime. Aligning so far as possible the population of employees that fall within the scope of the remuneration rules and the PRA's Certification Regime should therefore offer greater clarity and simplicity for firms.
- 3.8** However, it should be noted that not every individual classified as a 'material risk taker' under the remuneration rules will necessarily fall within the Certification Regime. For example, anyone who is a Senior Manager or performs any other Controlled Function for a firm will not be treated as performing a certification function for that firm.<sup>30</sup> Individuals whose functions are not related to the regulated activities of the firm and therefore do not meet the statutory test for a certification function will also fall outside the scope of the PRA's Certification Regime.<sup>31</sup>

### Credit unions

- 3.9** Credit unions are not subject to the CRR or the associated remuneration requirements. Therefore they will not have an existing obligation to identify material risk takers for remuneration purposes and the PRA considers that many of the criteria in Commission Delegated Regulation (EU) No 604/2014 would not, in practice, be relevant to credit unions. Therefore, the PRA proposes a separate, simplified definition of certification functions for credit unions. This will use the elements of the 'material risk taker' definition that the PRA believes could be relevant to a credit union. The aim is to still capture those employees deemed to have a material impact on credit unions' risk profile, but without requiring credit unions to use a much longer and more complicated set of criteria for identifying these employees.
- 3.10** The PRA believes this is a proportionate approach which will minimise the administrative burden on credit unions whilst still covering those individuals who could pose a risk of significant harm to the firm. The PRA recognises that the FCA's proposed scope of SMFs for credit unions means that many of the people who would otherwise perform the PRA certification functions proposed here may be performing FCA SMFs and will not therefore require certification. The PRA would welcome views from credit unions as to how many people they think they would need to certify under the combined proposals in this paper. More generally, the PRA considers that its proposals regarding the scope of the Certification Regime should not have a significantly different or disproportionate impact on mutual societies.

**Q15: [PRA]:** Do you agree with the PRA's proposed approach to defining certification functions?

<sup>29</sup> Commission Delegated Regulation (EU) No 604/2014 is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_167\\_R\\_0003&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_167_R_0003&from=EN)

<sup>30</sup> It is however possible that an individual may perform roles at more than one regulated firm, in which case it would be possible for that individual to perform a controlled function at one firm and a certification function at another.

<sup>31</sup> This may, for example, be the case where the individual is employed by an overseas subsidiary of the UK-regulated firm; such a person may have no involvement in the regulated affairs of the UK-authorized firm and so in that case would not be performing a certification function, but may be a material risk taker under the PRA's proposed remuneration rules as these will apply at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established outside the EEA.

### Who is in the FCA's Certification Regime?

**3.11** The FCA agrees with the PRA that the category of 'material risk takers' covers those individuals who have the potential to cause significant harm to a firm, and also propose specifying 'material risk takers' as roles that should fall within the scope of the Certification Regime (where individuals performing such roles are not performing an SMF). However, the FCA will only require employees to be certified if they perform their function from an establishment in the UK or are dealing with a client in the UK. This is because while individuals operating overseas may be able to have an impact on the safety and soundness of the UK firm, they are unlikely to have an impact on the FCA's objectives if they are not dealing with UK customers and therefore it would not be proportionate for the FCA to require them to be certified.

**3.12** In addition to 'material risk takers' (who can cause harm to the firm and to consumers) there is a wider population that will be in a position to cause harm to consumers only. These individuals will also therefore fall within the FCA's Certification Regime:

- Those individuals performing functions that would formerly have been Significant Influence Functions that would not fall within the scope of the new SMFs. These, by definition, are important individuals who can seriously impact the way the firm conducts its business.<sup>32</sup>
- Individuals in customer-facing roles which are subject to qualification requirements (for example, mortgage and retail investment advisors), as set out in FCA's Training and Competence Sourcebook.<sup>33</sup> These are roles where the FCA is concerned about the risk to consumers from staff without proper qualifications, and where the FCA would want to make sure that proper checks that these qualifications had been achieved were completed. Ensuring that firms check that such staff are fit and proper will also support the Retail Distribution Review and Mortgage Market Review.
- Anyone who supervises or manages a Certified Person, if they are not an SMF holder. These individuals will clearly have a considerable influence over how their staff carry out their roles, and as such should be subject to the same rigorous standards.

#### Credit unions

**3.13** These rules on the scope of the FCA's Certification Regime will generally apply in the same way to credit unions – it is important, for example, that someone asking for mortgage advice from a credit union is able to trust that their adviser is subject to the same rigorous tests as if they worked for a larger deposit taker. However, we would expect the number of people in credit unions who would fall within the criteria set out above to be relatively small.

**3.14** The exception is that there will be no 'material risk taker' criteria for persons within the Certification Regime for credit unions because the material risk taker concept does not apply to these firms. The FCA notes that the PRA has created a separate definition to address this issue – see paragraph 3.9 above – but does not think that the individuals who will be caught by this will necessarily have an impact on the FCA's statutory objectives. So the only individuals within credit unions who will be FCA Certified Persons will be those falling within the categories set out in paragraph 3.12 above.

**Q16: [FCA]:** Do you agree with the FCA's proposed approach to defining certification functions?

<sup>32</sup> Comprising significant management functions, those proprietary traders who would currently fall under CF29, Client Assets Sourcebook oversight functions, and benchmark submission functions.

<sup>33</sup> [www.fca.org.uk/firms/being-regulated/meeting-your-obligations/Training-and-Competence](http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/Training-and-Competence)

### How will the PRA and FCA Certification Regimes work together in practice ?

- 3.15** The set of significant-harm functions specified by the FCA is wider than the set of functions specified by the PRA, reflecting the different objectives of the two regulators. With the exception of some overseas employees (see paragraph 3.11, above), all employees falling within the PRA Certification Regime will also be within the wider FCA regime. The regulators expect that in practice a firm will be able to put in place a single process for certifying each employee who falls within either regulator's regime. In all cases, the question the firm will need to address is whether the individual is fit and proper to perform the role that brings them into the Certification Regime.
- 3.16** As the PRA and FCA are taking a similar approach to the factors that they will require firms to take into account when assessing fitness and propriety (see Chapter 4), the regulators expect that the firm will be able to make a single assessment and issue a single certificate to its employee in respect of a particular certification function. Where an employee performs multiple certification functions within their role at the firm, their fitness and propriety for each certification function needs to be assessed against the applicable standards, although their multiple certification functions may be covered by a single certificate. The regulators understand, based on comments from firms and industry groups, that many firms may wish to build the annual certification process into their existing performance management process.
- 3.17** The requirement in FSMA, as amended by the Act, for firms to take reasonable care to ensure that a person does not perform a certification function without having been certified as fit and proper applies on a continuous basis. This means that when a person moves from performing one role to a different role within the Certification Regime (including from a role which is only in the FCA's Certification Regime to one which is in the combined PRA and FCA Certification Regime) the firm must first satisfy itself that the person is fit and proper to perform that new role. The firm could not, for example, wait until the annual renewal of the person's certificate to assess whether he or she is fit and proper for that new role.
- 3.18** The regulators propose that in exceptional circumstances where a role is being performed for less than two weeks to provide cover for a certified person whose absence was reasonably unforeseen, it will not be treated as a certification function and the firm will not need to issue a certificate. This exclusion for emergency appointments does not apply to FCA certification functions if that function has a qualification requirement.<sup>34</sup>

<sup>34</sup> In the case of the PRA's Certification Regime, while a person is not treated as performing any certification function because they meet the conditions for this 'grace period' they are also not subject to the PRA's Conduct Rules for certified persons. In the case of the FCA's Certification Regime, to the extent that a person is not treated as performing any certification function because they meet the conditions for this 'grace period' they will nevertheless be subject to the FCA's Conduct Rules for certified persons as employees of the relevant firm.

## 4.

# Fitness and propriety

### Introduction

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- 4.1** This chapter sets out the regulators' proposals for how relevant firms should assess the fitness and propriety both of applicants for, and holders of, SMFs, as well as individuals falling within the Certification Regime. It covers both the standards of fitness and propriety required for these roles, and the evidence the regulators expect firms to gather when making their assessment.
- 4.2** Building on the fundamental premise that firms must take primary responsibility for the fitness and propriety of their employees, the Act has made changes to FSMA to impose an obligation on relevant firms to establish that candidates for Senior Manager or certification functions are fit and proper to perform the role for which they are applying. It also requires firms to assess the fitness and propriety of Senior Managers and persons within the Certification Regime on at least an annual basis. If a relevant firm believes an individual fails to meet the standard the firm must report this to the relevant regulator in the case of Senior Managers, or refuse to renew their certificate of fitness and propriety in the case of individuals undertaking certification functions. If a firm refuses to renew an individual's certificate, the firm must take reasonable care to ensure the individual ceases to perform the certification function in question.

### Standard of fitness and propriety

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- 4.3** This section sets out the FCA's and PRA's approach to the standards of fitness and propriety which Senior Managers and persons in the Certification Regime must meet, both at the point of taking on the role and on a continuing basis.
- The FCA's approach to rules on fitness and propriety**
- 4.4** FSMA, as amended by the Act, requires firms assessing the fitness and propriety of Senior Managers and those within the Certification Regime to have regard to any general rules the regulators have made around the qualifications, training, competence and personal characteristics required by an individual in that role.
- 4.5** The FCA does not propose making new rules relating to these sections of FSMA. A number of general rules relate to these considerations, made under the general rule making powers or to implement other legislation, and these existing rules will continue to be in force.<sup>35</sup>

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<sup>35</sup> See for example the following: in the case of very senior employees, SYSC 4.2 (Persons who effectively direct the business) and SYSC 4.3A.3 (management body); for employees of firms generally, SYSC 5.1.1 (the so-called competent employees rule); and in relation to retail activities, see TC 2.1.12 (competence for the relevant role).

### Guidance on the FCA's approach

- 4.6** These are important new duties for firms. In light of the statutory basis of these duties, and the much wider population which firms will have to assess for fitness and propriety, the FCA is aware that firms will welcome guidance on fulfilling these obligations.
- 4.7** Guidance in the FCA's FIT Handbook sets out the factors the FCA currently considers when assessing the fitness and propriety of Approved Persons. The FCA believes that this guidance in FIT is equally applicable and relevant for firms assessing the fitness and propriety of both Senior Managers and those within the Certification Regime.
- 4.8** The FCA proposes to make certain amendments and clarifications to the FIT guidance so that its application and relevance for firms' assessments is readily apparent, both for initially employing staff in SMFs or certification functions, and for their annual appraisal of the fitness and propriety of such staff.

**Q17: [FCA]:** Do you agree with the FCA's proposed approach to rules and guidance on fitness and propriety?

### The PRA's approach to rules on fitness and propriety

- 4.9** The PRA proposes to make general rules requiring that all persons within the PRA's SMR and Certification Regime have the personal characteristics, the necessary level of competence, knowledge and experience and appropriate qualifications and training to enable the sound and prudent management of the firm. This will mean that firms must have regard to these factors when assessing an individual's fitness and propriety to perform a SMF or a certification function, and that the PRA may take them into account when assessing a Senior Manager's fitness and propriety.
- 4.10** The PRA does not have as many existing rules in these areas as the FCA – for example, the PRA does not have the Training and Competence Sourcebook – and therefore the PRA considers it is necessary to make additional rules to give effect to the new FSMA requirements. These rules will be set out in the proposed Fitness and Propriety new Part of the PRA Rulebook.

### Guidance on the PRA's expectations

- 4.11** As part of the PRA's move from legacy FSA Handbook material to a new PRA Rulebook<sup>36</sup>, the PRA proposes to make rules to dis-apply the existing guidance in FIT for firms covered by this consultation and replace it with new material in the form of a supervisory statement.<sup>37</sup> The PRA's general expectations with regard to fitness and propriety, and the factors it will consider in making an assessment, are not changing significantly and therefore the underlying substance of the material will not change.
- 4.12** The supervisory statement will provide some additional guidance about the factors the PRA would expect firms to take into account when assessing fitness and propriety, and the type of evidence they should gather when making this assessment. More information on evidential requirements, including references from previous employers, is given below.

**Q18: [PRA]:** Do you agree with the PRA's proposed rules and supervisory statement on standards of fitness and propriety?

<sup>36</sup> The PRA's approach to creating the new Rulebook is described in more detail in CP2/14: *The PRA Rulebook*: [www.bankofengland.co.uk/pradocuments/publications/policy/2014/rulebookcon214.pdf](http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/rulebookcon214.pdf)

<sup>37</sup> FIT will remain in place for insurers.

### The regulators' common approach to evidence requirements

**4.13** As set out above, neither regulator proposes to make fundamental changes to the standard of fitness and propriety. However, both the PRA and FCA propose to introduce new requirements about the evidence that relevant firms should collect as part of their process of assessing whether candidates for SMFs or certification functions meet that standard.<sup>38</sup>

#### Criminal records checks for Senior Managers

**4.14** Firms are already required to declare if an Approved Person candidate has a criminal record, including any spent convictions of which the employer has a legal right to be made aware. This requirement will continue for SMF applications. Given the risks from relying solely on the individuals themselves to declare information that may harm their application, both regulators propose to require firms to run a criminal records check to ensure the information the candidate has given to the firm is accurate and complete before making such a declaration. Many firms already do this as standard practice for all key employees, and this proposal would embed and build on existing practice.

**4.15** This proposed new requirement would mean relevant firms will have to sign up to the Disclosure and Barring Service (DBS) to run the checks for them. Smaller firms may wish to use an umbrella organisation to access the DBS for them.

**4.16** Both regulators also propose that where a candidate has spent a considerable time working or living outside the UK, firms should consider undertaking an equivalent check with the appropriate regulatory body where available.

#### Regulatory references

**4.17** There is a danger to the financial system if individuals who have been shown not to be fit and proper for particular positions or have engaged in unacceptable conduct can simply move from firm to firm without relevant information about them being disclosed to future employers. Under the current Approved Persons Regime the regulators are able to refer to relevant intelligence about candidates when considering whether they should be approved to take on another Controlled Function with a new employer.

**4.18** As is currently the case with Approved Persons applications, this information will be available to the regulators when assessing applications for SMFs. However, individuals within the Certification Regime will not be subject to regulatory pre-approval. Further, existing rules do not require firms to obtain references from previous employers to find out whether an individual has engaged in unacceptable conduct in a previous position.

**4.19** The regulators therefore propose to make rules to require relevant firms seeking to appoint someone to either an SMF or a certification function to request a reference from the candidate's past employer(s) covering their previous five years employment history, in order to help them make a better informed decision. These references (where they are requested by a relevant firm from another relevant firm) will need to disclose, if applicable:

- facts that led a previous employer to conclude that the candidate breached a Conduct Rule, and
- a description of the basis and outcome of disciplinary action taken in relation to a breach by the candidate of any of the Conduct Rules.

<sup>38</sup> These tests would apply only when making an initial assessment of fitness and propriety, not for the annual reassessment.

- 4.20** For relevant firms these requirements supplement, and do not replace, the existing requirement that authorised firms provide on request from another firm all information relevant to an individuals' appointment to a Controlled Function. Authorised firms that are not relevant firms will continue to be subject to the existing requirement to provide, on request of another firm, all information relevant to an individuals' appointment to a Controlled Function.
- 4.21** Any firm that is the subject of a reference request will continue to be subject to existing legal obligations, including the need to ensure the reference is true, accurate and fair.
- 4.22** The proposed new rules will help relevant firms to make better informed decisions about whether to allow an individual to take up a key post. Once the regime has commenced, relevant firms will need to keep appropriate records for at least five years to allow them to comply with the Conduct Rules-focused disclosure requirements. The Conduct Rules do not apply retrospectively, so firms will not be required by the proposed rules to give such information relating to a date before the Conduct Rules come into force.

**Q19: [PRA]/FCA:** Do you agree with the FCA and PRA proposed requirements on:

- a)** criminal record checks, and
- b)** the provision of references?

## 5. Conduct Rules

### Introduction

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- 5.1** This chapter sets out the regulators' proposals for the scope and content of a new set of enforceable Conduct Rules. For relevant firms, these rules will replace the existing APER principles and guidance which currently apply to Approved Persons.
- 5.2** Setting expectations about standards of behaviour through rules will continue to be an important tool for both regulators in influencing the behaviour of individuals – conduct rules are not only relevant to the FCA's objectives. The rules will provide a framework against which regulators will make judgements about an individual's actions as part of their general supervision of firms. Through their impact on the actions of individuals, Conduct Rules can shape the culture, standards and policies of a firm as a whole and act to promote more positive behaviours that actively support the regulators' statutory objectives. The possibility of enforcement should also act as a deterrent against actions or omissions that could damage a firm's prudential position, harm its customers or undermine the integrity of financial markets.
- 5.3** The importance of such rules was highlighted by the PCBS. It recommended that the regulators develop a new set of Banking Standards Rules that draw on the existing principles<sup>39</sup> and apply to a wide group of individuals.<sup>40</sup> Following the PCBS report, the Act gave the regulators the powers to introduce new Conduct Rules, and to apply these rules to all employees of relevant firms (rather than just to those individuals subject to regulatory pre-approval).
- 5.4** For the rules to be fair and effective, they must have a clear application that covers all individuals within relevant firms who are in a position to have an impact on the PRA's and FCA's statutory objectives. Differences in the scope of the rules proposed by the two regulators reflect the different potential impact on their respective statutory objectives.
- 5.5** The regulators have also taken somewhat different approaches to guidance on the Conduct Rules, reflecting their different approaches to guidance generally and the proposed difference in scope of the regimes.
- 5.6** The PRA does not propose to retain all of the guidance previously given in the Code of Practice within APER, nor to provide as much detailed guidance as the FCA proposes. Instead, the PRA has produced a draft supervisory statement which, along with some new text, reproduces some of the more general guidance on the types of conduct which are likely to comply with (or breach) the Conduct Rules, but not the more detailed examples of non-compliant behaviour, some of which may be more appropriate to individuals who are only subject to the FCA's regime. This should not be taken to indicate that the PRA now disagrees with the previous guidance; it is rather a reflection of the PRA's general approach to producing policy material.

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<sup>39</sup> The Statements of Principles in APER which currently apply to Approved Persons (but not other employees of banks).

<sup>40</sup> 'Changing banking for good' PCBS, June 2013, paragraph 634.

- 5.7 The FCA proposes to support the Conduct Rules with guidance (see Annex 6). This draws on the existing Code of Practice within APER, but has been simplified where possible, and additional text has been added to cover those rules for which there is no direct parallel with APER.

### Who is in scope of the PRA's Conduct Rules?

- 5.8 The PRA proposes to apply Conduct Rules to all individuals who are approved by the PRA or FCA as Senior Managers or who fall within the PRA's Certification Regime.<sup>41</sup> The PRA believes that this is the appropriate population, as it comprises the set of individuals it has identified as being able to cause significant *prudential* harm to a firm, and thus to have an impact on the PRA's general objective of promoting the safety and soundness of the firms it regulates. The PRA believes it is appropriate to apply its rules also to persons performing FCA-specified SMFs, as the vast majority of these roles would fulfil the criteria for inclusion within the PRA's Certification Regime if they had not been certified as SMFs by the FCA.<sup>42</sup> This proposal also has the advantage of clarity, as firms will already need to identify these sets of individuals, and the individuals themselves should be well aware that they are either Senior Managers or within the Certification Regime, given the processes associated with those regimes. Firms should not therefore need to undertake an additional process to identify the relevant individuals, and there should be no risk that an individual is uncertain as to whether the PRA's Conduct Rules apply to them.
- 5.9 The PRA will apply certain of the Conduct Rules (SM1-SM4 on page 42) to Senior Managers only, that is to say, persons performing an SMF which has been specified by either regulator.

**Q20: [PRA]:** Do you agree with the proposed scope of the PRA's Conduct Rules?

### Who is in scope of the FCA's Conduct Rules?

- 5.10 The FCA's statutory objectives, particularly in terms of protecting consumers and market integrity, can potentially be affected by a much broader range of staff than those of the PRA. In light of this, the FCA proposes applying their Individual Conduct Rules<sup>43</sup> to the large majority of those working in relevant firms. Like the PRA, the FCA proposes to apply rules SM1-SM4 to Senior Managers only.
- 5.11 The FCA intends to cover all those individuals who would be in a position to impact its statutory objectives, but not those who have no realistic prospect of doing so. In doing this, the FCA has sought to give a simple definition of coverage which gives clarity on who is covered and who is not, and which represents a fair and consistent approach across the diverse types of organisations within the relevant firm population.
- 5.12 So the FCA proposes that Conduct Rules will apply to:
- all individuals approved by the FCA or PRA as Senior Managers

41 It is proposed that the Conduct Rules will apply to employees who are performing an SMF or certification function specified by the PRA, whether or not the person has been approved or the firm has actually issued a certificate, and where an employee is performing a function that would otherwise be a controlled function under the 12-week temporary grace period.

42 Under s.63E(4)(a) FSMA, a function cannot be a certification function if it is a controlled function.

43 i.e. Individual Conduct Rules 1-5 in figure 9 on page 44.

- all individuals covered by the FCA or PRA's Certification Regime<sup>44</sup>, and
- all other employees other than those ancillary staff who perform a role that is not specific to the financial services business of the firm.

**5.13** This would mean that the only employees of a relevant firm who would not be caught in scope would be those whose role would be fundamentally the same as it would be if they worked in a non-financial services firm. To be clear about who is caught, the FCA will define this by exception (i.e. everyone whose role is not listed below will be covered by the rule):

1. Receptionists
2. Switchboard operators
3. Post room staff
4. Reprographics/Print room staff
5. Property/facilities management
6. Events management
7. Security guards
8. Invoice processing
9. Audio visual technicians
10. Vending machine staff
11. Medical staff
12. Archive Records management
13. Drivers
14. Corporate Social Responsibility staff
15. Data controllers and processors under the Data Protection Act
16. Cleaners
17. Catering staff
18. Personal assistants, secretaries
19. Information Technology Support (i.e. helpdesk)
20. Human Resources Administrators/processors

<sup>44</sup> There is one exception to this. As noted in paragraph 3.11 there will be some persons based overseas who will be certified by the PRA but not by the FCA – because they may be able to have an impact on the safety and soundness of the firm, but are unlikely to be able to cause harm to UK consumers – because they will not be dealing with these consumers. These individuals will be covered by the PRA's Conduct Rules i.e. Rules 1-3 only.

**5.14** The effect of this proposal is that the rules will cover a wide population. However the FCA believes that if relevant firms are to achieve the culture change that it is seeking there needs to be a common understanding of what is acceptable and unacceptable behaviour at all levels of the firm. This proposal should achieve that. In addition, it mitigates the risk of ‘gaming’ which would apply to a more narrowly defined boundary. NB the FCA is aware that some employees carrying out some of the functions set out above (eg print room staff) may sometimes have access to confidential and market sensitive information. It could be argued that this means that these individuals should be brought within the scope of the Conduct Rules but, on balance, the FCA believes that the existing civil market abuse regime in Part 8 of FSMA and the criminal offences regarding inside information provide sufficient powers to deal with any misconduct that might arise in these areas.

**5.15** The scope of the rules will apply to credit unions in the same way. As noted in Chapter 4, above, it is important that a consumer accessing products through a credit union can trust that the individuals acting on behalf of the credit union they engage with are subject to the same controls as they would be in other organisations. In enforcing the rules, the FCA will take a proportionate approach, taking account of the position and responsibilities of the individual before deciding whether to bring enforcement action.

**Q21: [FCA]:** Is this the best possible definition of scope that fulfils the objectives set out in paragraph 5.11? Are there alternatives that would better meet these objectives?

**Q22: [FCA]:** Do you believe that rules should apply to all people in the firm who are directly involved in financial services business?

**Q23: [FCA]:** Are there any functions that you believe should be added or removed from the list at 5.13 because they are roles that are, or are not, the same as roles performed by those working in non-financial services firms?

### Rules common to both regulators

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**5.16** In order to be effective, the Conduct Rules must be:

- a comprehensive description of the fundamental standards the regulators expect from those subject to them
- clear and accessible so that those subject to the rules can understand what is expected of them, and
- fully enforceable in order to hold those who act in a way that is not compliant with them to account, and to act as an effective deterrent.

**5.17** In drawing up the new Conduct Rules, the regulators have followed the PCBS’s recommendation that they should ‘draw on the existing principles’ by using the Statements of Principle and Code of Practice for Approved Persons (APER) and Principles for Businesses as their foundation, accompanied by simplified explanatory materials<sup>45</sup>, where appropriate. This means that they

<sup>45</sup> Either FCA Guidance or PRA supervisory statements.

build on the regulators' experience of enforcing these standards and on existing approved persons' experience of complying with them.

- 5.18** The rules set out in figure 7 below are common to both regulators, reflecting the PRA's and FCA's assessment that they are relevant to each of their respective statutory objectives. The PRA does not propose to introduce any further rules beyond the shared rules set out below.
- 5.19** The rules are split into two tiers. The first tier comprises Individual Conduct Rules rules which the regulators consider relevant across all the roles in which individuals are subject to the Conduct Rules.<sup>46</sup>
- 5.20** The second tier rules only apply to Senior Managers and they reflect the management duties they have for the specific part of the firm they are responsible for, as well as their responsibility for the effective running of their firm as a whole.

**Figure 7**

**First tier – Individual Conduct Rules**

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Rule 1: You must act with integrity.

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

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

**Second tier – Senior Manager Conduct Rules**

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

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SM2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system.

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SM3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

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

- 5.21** The PCSB recommended that all Senior Persons should have an explicit duty to be open with the regulators.<sup>47</sup> Under the proposed Senior Management rule above on disclosing information to the regulators (SM4), both the FCA and PRA would expect Senior Managers to report serious wrongdoing to them. The regulators recognise that the wider issue of whistleblowing raises difficult questions. The regulators will consider these further and may say more on this issue when they publish a paper on whistleblowing later in the year.

**Q24: [PRA]/[FCA]:** Do you agree that these are the right Conduct Rules for both regulators to introduce, taking into account the objectives set out in paragraph 5.16?

<sup>46</sup> But see footnote 45 on page 40.

<sup>47</sup> *Changing banking for good*, PCBS, June 2013, paragraph 796

### Additional FCA rules

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- 5.22** The FCA proposes to introduce two additional rules to the Conduct Rules set out above:

#### **Figure 8**

#### **FCA only first tier – additional Individual Conduct Rules**

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

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

- 5.23** These directly support the FCA’s objectives on achieving an appropriate level of protection for consumers, and on supporting market integrity, respectively.

- 5.24** Both the FCA rules set out above, and the other rules referred to earlier are written at a high level of generality. This is intentional because they will cover a very large group of people doing a wide range of different jobs. In some cases staff may have sufficient general understanding to recognise breaches of the rules – for example, cases involving acting without integrity – but in other cases there will be a need for guidance – for example instances involving proper standards of market conduct. So the FCA is consulting on guidance on these rules in this CP. This guidance is based on, and takes account of the experience of, the guidance attached to APER.

**Q25: [FCA]:** Do you agree that these are the right additional FCA-specific rules?

**Q26: [FCA]:** Does the guidance attached at Annex 6 give helpful clarity on the behaviours the FCA expects under each of the rules?

### What does the regulators’ approach to the Conduct Rules mean for firms and individuals in practice?

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#### **For individuals**

- 5.25** The FCA’s wider scope of application of the Conduct Rules encompasses within it all individuals who fall within the narrower PRA scope, except those persons based overseas who perform PRA-certification functions, but not FCA-certification functions. This means that all individuals who are within the scope of the Conduct Rules (except those persons based overseas who perform PRA-certification functions, but not FCA-certification functions) will be subject to the Individual Conduct Rules, including the two additional FCA rules. Those who are certified by the PRA but not the FCA will be subject to the shared Individual Conduct Rules only.
- 5.26** The Conduct Rules applicable to Senior Managers will apply to all who perform an SMF specified by either regulator.

**5.27** The combined rules are set out below:

**Figure 9**

**First tier – Individual Conduct Rules**

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Rule 1: You must act with integrity.

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

---

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

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

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

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**Second tier – Senior Manager Conduct Rules**

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

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SM2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

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SM3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

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

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**5.28** While the different scope of application of the PRA and FCA has limited practical effect on which rules apply to individuals (see paragraph 5.25, above) it does mean that the scope of enforcement powers available to the regulators will be different.

**5.29** The FCA will be able to enforce:

- all the Conduct Rules against all Senior Managers, and
- Individual Conduct Rules 1-5 against those within its Certification Regime and all other employees of the relevant firm, save for those employees performing a role listed in 5.13.

**5.30** The PRA will be able to enforce:

- all the Conduct Rules except Individual Conduct Rules 4-5 against all Senior Managers, and
- Individual Conduct Rules 1-3 against those within its Certification Regime

**5.31** Each of the Conduct Rules applies only to a person's conduct in relation to the activities which that person performs in their capacity as an employee or Senior Manager of the firm.<sup>48</sup> They do not apply to a person's actions in their private life if those actions are unrelated to the activities they perform for the firm, although behaviour unrelated to these activities could be relevant for an assessment of fitness and propriety.

<sup>48</sup> Such actions are referred to in FSMA, as amended by the Act, as the performance of 'qualifying functions', see section 64A (4) – (5).

**5.32** Firms should train all of their staff who are subject to the rules so they are able to understand them. The regulators expect this training to take account of the particular roles that individuals carry out. So, for example, the regulators would expect all staff subject to the rules to be familiar with what the rules say and what they mean in general terms. But certain staff should also be given additional training on specific examples of issues that might arise in areas that are relevant to their work eg training for traders might have a particular focus on Individual Conduct Rule 5.

#### **For firms**

**5.33** The Act places three obligations on relevant firms with regard to the Conduct Rules:

- that firms make the individuals who are subject to the rules aware that this is the case, and train them in how the rules apply to them
- that firms notify the regulators when they are aware that or suspect that a person has breached the Conduct Rules, and
- that firms notify the regulators when they have taken formal disciplinary action<sup>49</sup> against a person for any reason specified by the regulator.

**5.34** The regulators propose to require notification of formal disciplinary action only if that action was taken in response to any action, failure to act or circumstance that amounts to a breach of the Conduct Rules. So firms will have to inform the regulators:

- if they suspect or are aware that a person has breached a rule
- if, having previously notified the regulators of a known or suspected breach, they reach a subsequent or different determination, and
- if they have issued a formal written warning to, suspended or dismissed, or reduced or recovered remuneration from an employee as a result of conduct which amounts to a Conduct Rule breach.

**5.35** Where the breach or suspected breach of the Conduct Rule is by a Senior Manager, the regulators propose that the firm be required to notify the regulator within seven business days of the firm becoming aware of the matter. For other individuals, the regulators propose the notification is made regulators on a quarterly basis, with firms compiling an aggregated list of the actual or suspected individual breaches, the identities of those to whom the notification relates and disciplinary action that they need to report for that quarter.<sup>50</sup> The new notification requirements do not change or remove firms' obligations to report concerns regarding an individuals' conduct under existing rules and principles such as FCA Principle 11 or PRA Fundamental Rule 7<sup>51</sup>, which may relate to behaviour which would constitute an actual or suspected breach of a Conduct Rule.

**5.36** To simplify submissions, the regulators propose that firms need only make submissions to the FCA, and will align their forms and notification requirements to provide for this. The FCA will then pass on the relevant information to the PRA. Changes to forms or new forms relating to these new notification requirements will be consulted on as part of the technical CP later this year.

<sup>49</sup> [www.legislation.gov.uk/ukpga/2013/33/section/31/enacted](http://www.legislation.gov.uk/ukpga/2013/33/section/31/enacted)

<sup>50</sup> Proposed reporting templates will be included in a subsequent consultation covering changes to forms

<sup>51</sup> [www.fca.org.uk/about/what/regulating/principles-for-businesses](http://www.fca.org.uk/about/what/regulating/principles-for-businesses) and <http://www.bankofengland.co.uk/pr/Documents/publications/ps/2014/ps514.pdf>

## 6.

# Applying the new regime to UK branches of foreign banks

### Introduction

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- 6.1** 'Non-UK institutions' including UK branches of overseas firms<sup>52</sup> were not included in the definition of a 'Relevant Authorised Person' in Section 71A FSMA (as amended by the Act). However, the Act gave the Treasury powers to bring non-UK institutions into scope by Order.
- 6.2** Before making such an Order, the Treasury must consult the PRA, the FCA, any organisations that appear to them to be representative of interests substantially affected by the proposals and any other persons that they consider appropriate.
- 6.3** At his 2014 Mansion House Speech, the Chancellor announced his intention to extend the regime to cover all banks that operate in this country, including the branches of foreign banks'.<sup>53</sup> The Treasury expects to consult later this year and both regulators' proposed application of the regimes to branches is subject to the outcome of that consultation.

### PRA approach for branches

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#### Senior Managers Regime

- 6.4** In its Consultation Paper *Supervising international banks: the Prudential Regulation Authority's approach to branch supervision* (CP4/14), the PRA noted that 'the overarching management and governance of a third-country branch is the primary responsibility of the Home State Supervisor (HSS).' The PRA will, however, 'be responsible for ensuring that branches have individuals responsible for the oversight of the branch and ensuring compliance with UK regulatory standards. Any senior individuals will require approval by the PRA.'
- 6.5** Consistent with this approach and contingent on the Treasury's final Order, the PRA proposes to require at least one individual per incoming non-EEA branch to be approved as an Overseas Branch Senior Executive Manager. The PRA propose that this Senior Management Function is defined as 'the function of having responsibility alone or jointly with others, for the conduct of all activities of the UK branch of an overseas firm which are subject to the UK regulatory system.' The individual(s) approved will typically be performing activities akin to those of a CEO in relation to the branch. In some situations, the PRA may require a branch to put more than one individual forward for approval, for instance where the individual originally put forward by the firm is not the most senior individual exercising influence in relation to the branch.

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<sup>52</sup> The Act defines a UK as 'an institution which is incorporated in, or formed under the law of any part of, the United Kingdom'

<sup>53</sup> Annual Mansion House speech by Chancellor of the Exchequer, RT Hon George Osborne MP [www.gov.uk/government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer](http://www.gov.uk/government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer)

**Certification Regime.**

- 6.6** The PRA's Certification Regime will not apply to incoming EEA branches, as the question of the fitness and propriety of staff in those branches, insofar as it relates to prudential matters, is reserved to the Home State Supervisor.
- 6.7** Subject to the Treasury's final Order, the PRA's Certification Regime will, however, be extended to incoming branches of non-EEA deposit takers and PRA regulated investment firms. While Commission Delegated Regulation (EU) No 604/2014 does not apply to incoming non-EEA branches, the PRA proposes to apply the criteria in Commission Delegated Regulation (EU) No 604/2014 to persons acting in relation to such branches.
- 6.8** The PRA proposes that, as at present, the new Remuneration rules will also apply to incoming non-EEA branches, and that they will use the criteria in Commission Delegated Regulation (EU) No 604/2014 to identify their 'material risk takers'. Therefore, UK branches of non-EEA banks and PRA-designated investment firms will already be familiar with these criteria. However, there are some differences between the likely scope of the new Remuneration rules and the Certification Regime in relation to such branches. For example, the Certification Regime excludes an employee of a firm who is approved to perform an SMF or other controlled function for that firm or whose functions are not related to the carrying on of a regulated activity by that firm.

**FCA approach**

- 6.9** Before the FCA can consult on how to apply the regime to branches of foreign banks, the detail of the Treasury order and subsequent consultation mentioned in 6.3 must be confirmed. The position in relation to conduct issues to branches of foreign banks has the potential to be more complicated and to capture a wider group of individuals than the prudential position, and the FCA has more powers over EEA firms than the PRA, as conduct matters are not reserved to the Home State Supervisor. Bearing this in mind, and the requirement that the implementation of the regime in relation to branches should be appropriate and proportionate, the FCA will only consult once it has considered the Order and its implications in detail and conducted a full cost/benefit analysis.
- 6.10** In relation to individuals falling within the SMR the FCA will consider whether it is possible to adapt what is currently in the FCA Handbook<sup>54</sup> on Significant-Influence Functions to Senior Managers. The current SIFs cover FCA governing functions, required functions, systems and controls functions and significant management functions.
- 6.11** In relation to individuals falling within the Certification Regime and the other Conduct Rules staff categories, the FCA will consider whether it is possible to apply a regime that is equivalent in effect to that which it applies to UK banks, insofar as it is consistent with Single Market Directives for EEA branches. Such an application may conceivably only be applied by reference to the branch, not the bank as a whole. However this would have to be subject to home state responsibilities and also take into account the role of the home state for non-EEA branches.

<sup>54</sup> See SUP 10A.5 in the Supervision Manual in the FCA's Handbook

# 7.

## The regulatory lifecycle under the new regime

### Introduction

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- 7.1** The legislative reforms to FSMA, made by the Act, together with the proposed rules and guidance set out in this CP, will lead to changes to the regulators' supervision of individuals and standards in relevant firms.
- 7.2** The new regimes will have practical repercussions on every aspect of the regulatory life cycle from authorisation (for Senior Managers) to enforcement (for all employees subject to the Conduct Rules) and, in particular, ongoing supervision.
- 7.3** Both the PRA and the FCA are currently considering the potential impact of the new regimes on supervision, including the potential need to modify their respective supervisory approaches and practices in light of the new rules, expectations and regulatory powers. In order to assist stakeholders in understanding the implications of the regulators' proposals, this chapter outlines each regulator's current intended approach to supervising the new regimes. These approaches are, however, likely to evolve and mature once the regimes are implemented and the description below should not therefore be treated as replacing existing statements of supervisory approach.

### PRA's approach to the regulatory lifecycle

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#### Authorisations

- 7.4** An important part of the PRA's supervision of firms' management and governance is evaluating whether individuals who the PRA views as critical to the advancement of its objectives have the appropriate competence, expertise and probity to carry out their roles.
- 7.5** Assessing these qualities at the point of application offers the earliest opportunity to stop individuals falling below the required standards from performing a role that could pose a risk to the firm or the PRA's objectives. Consequently, the approval process for Senior Managers will continue to play a key role for the PRA in mitigating risks to firms from poor management.
- 7.6** The process for approving individuals has already undergone a number of enhancements since the financial crisis. The introduction of the enhanced Significance Influence Function regime led to the introduction of interviews for individuals applying for SIF roles. Subsequent enhancements by the PRA include strengthening the composition of the panels that hold these interviews.
- 7.7** Individuals seeking approval to perform an SMF specified by the PRA will be subject to a process similar to that outlined by the FCA in paragraphs 7.44-7.50 but, consistent with the PRA's general approach, includes more direct involvement from supervision who are expected

to lead on complex cases with support from the PRA's Authorisations function. In summary, this process will involve an assessment of the candidate's:

- probity, reputation and financial soundness
- competence and capability to carry out the role, taking into account their qualifications, training, competencies and personal characteristics, and
- understanding of the regulatory landscape and the nature of the relationship they will have with the regulators.<sup>55</sup>

**7.8** The nature and intensity of the assessment is ultimately a matter for supervisory discretion having regard to the particular circumstances of each application. More generally, this evaluation, including the decision to interview the candidate, will take into account the nature of the role, the potential impact of the firm on the PRA's objectives and the risks inherent in its business model.

**7.9** Interviews will include an assessment of the applicant's technical and non-technical expertise and their understanding of risks to the viability of the firm and of risks posed by the firm to the wider financial system.

**7.10** Consistent with the expectation outlined in the PRA's Approach Document to Banking Supervision 'the board should have a mix and balance of skills so that collectively it can understand the breadth of the business.' The PRA may take into account a board's collective mix of skills and expertise when considering individual applications.

**7.11** Given the focus of the PRA's SMR on those individuals it deems most capable of having a direct impact on its objectives, the PRA intends to interview a higher percentage of overall candidates than under the current Approved Persons regime.

**7.12** While the mechanics of the approval process are expected to remain essentially the same, the PRA does expect a number of the requirements on individuals and/or firms to change under the new SMR. These are set out below.

#### ***Due diligence requirements***

**7.13** The PRA currently expects firms to undertake their own due diligence on whether candidates seeking to perform a Controlled Function have the requisite competence and capability to carry out that function effectively.

**7.14** The Act's amendments to FSMA have turned this expectation into a legal requirement on firms to satisfy themselves, before applying for approval on a candidate's behalf, that the candidate is fit and proper to perform the function to which the application relates. In doing so, firms will be required to have regard to the PRA's proposed rules and supervisory statement on fitness and propriety (Annex 9).

**7.15** The PRA will assess whether the firm has conducted an appropriately rigorous recruitment process and will take into account the due diligence done by the firm on the candidate.

<sup>55</sup> Section 61 FSMA as amended by the Act states that, in assessing the fitness and propriety of a candidate for approval, the PRA may have regard to (among other things) qualifications, training and competence. The Act introduces 'personal characteristics' as a fourth category which regulators may and firms must take into account when assessing the fitness and propriety of Senior Managers. The PRA's rules and Supervisory Statement will include examples of what constitutes personal characteristics.

***The PRA's expectations of fitness and propriety***

- 7.16** The PRA's expectations of fitness and propriety now place a greater emphasis on competencies directly relevant to the job and personal characteristics. As noted in Chapter 4, the PRA proposes to adopt rules requiring all persons within its Senior Managers and Certification Regimes to have appropriate qualifications, training, competence and personal characteristics to perform their particular functions. Firms will also be required to obtain documentary evidence including criminal checks (for Senior Managers) and employer references to support assessments of fitness and propriety.
- 7.17** In the case of Senior Managers, the PRA's proposed list of SMFs will be more granular and role-specific than the current list of PRA designated Controlled Functions requiring approval by the PRA under the Approved Persons regime. Greater granularity should in turn facilitate a more tailored assessment of candidates' knowledge and competencies for the particular role in question.
- 7.18** The Act introduces new powers for the PRA to impose conditions and/or time limits on the approvals of Senior Managers where desirable to advance its objectives. The PRA's draft Statement Policy on Conditions, Time Limits and Variations of Approval in Annex 8 provides guidance on how the PRA envisages using these powers.

**Supervision**

- 7.19** Whether or not those managing a firm are fit and proper and equipped with a mix and balance of skills collectively to understand and manage its business prudently is critical to determining whether a firm meets a number of the Threshold Conditions, including those relating to 'prudent conduct' and 'suitability'. Accordingly, the PRA reviews the fitness and propriety of members of the management body of PRA-authorised firms on an ongoing basis including as part of its supervisory assessment of whether a firm is meeting the PRA's Threshold Conditions.
- 7.20** In addition to its assessment of individuals, the PRA expects firms to have clear accountability for delegation of individual and collective responsibilities, including checks and balances to prevent dominance by an individual. Senior individuals should remain accountable for the actions of those to whom they delegate responsibilities, including where firms use third parties in respect of outsourced functions.
- 7.21** The new Senior Managers and Certification Regimes are consistent with that expectation and should help in supervising firms.
- 7.22** The PRA's SMR will not cover all members of the board and executive committee. In particular, the PRA will not approve non-executive directors who do not chair the board, the Audit, Risk or Remuneration Committees or are the Senior Independent Director (Generic NEDs). Instead the Generic NEDs will be approved as SMFs by the FCA.
- 7.23** Despite this narrower scope, the PRA will continue to engage with individuals outside its SMR, including Generic NEDs, as part of its ongoing supervisory oversight of firms and in its periodic reviews of board effectiveness. All NEDs should therefore continue to 'stand ready to have an open exchange of views with the PRA on the performance of senior management' as noted in the PRA Approach Document.
- 7.24** The PRA expects to look first to the chairs of the board or relevant sub-committees to address governance concerns regarding the effectiveness of individuals on these management bodies, consistent with the responsibilities allocated to these office holders under their Senior Management Functions. The PRA will, however, also retain the legal authority under the

provisions of the Act to take formal supervisory and enforcement action against Generic NEDs and other FCA Senior Managers where this is warranted.

### **Statements of Responsibilities and Responsibilities Maps**

**7.25** The PRA expects Statements of Responsibilities and Responsibilities Maps to become an important tool for supervising Senior Managers and assessing the overall corporate governance of firms. Due to the statutory requirement to update and resubmit Statements of Responsibilities whenever there is a 'significant change' in the relevant Senior Manager's responsibilities, the PRA expects the content in these documents to remain dynamic.

**7.26** Supervisors are likely to refer to Statements of Responsibilities and Responsibilities Maps in a number of scenarios, including:

- during the initial assessment for PRA approval, where they will be used to highlight the areas which the candidate will be responsible for managing and assess his/her ability to do so
- in daily supervision, where the PRA expects to use them to:
  - i. identify the relevant Senior Manager to whom specific regulatory queries should be directed
  - ii. understand changes to the allocation of responsibilities to individuals in response to changes to the firm's business model or as a result of changes in the external environment
  - iii. clarify which individuals are ultimately responsible for actions which supervisors expect the firm to take, and
  - iv. in enforcement cases as evidence of individual responsibility for the area where the breach occurred.

### **Ongoing internal assessment of individuals' fitness and propriety by firms**

**7.27** In addition to the requirement to assess the fitness and propriety of prospective Senior Managers, the Act introduces new ongoing legal requirements on firms to assess the fitness and propriety of Senior Managers and individuals subject to the Certification Regime at least annually.

**7.28** The requirement to assess the fitness and propriety of Senior Managers also encompasses an obligation to notify the PRA of any grounds on which the approval of a Senior Manager could be withdrawn. The Prescribed Responsibilities in the PRA's draft rules build on these statutory obligations by requiring firms to allocate responsibility to a Senior Manager or Managers for the firm's performance of its obligations under the SMR and Certification Regimes.

**7.29** These new requirements codify a longstanding regulatory expectation that firms should be primarily responsible for assessing the fitness and propriety of their key decision-makers and employees capable of causing significant harm to them or their customers. The PRA is unlikely to intervene in a firm's internal assessment of individuals subject to the Certification Regime. Where a firm identifies possible grounds for withdrawing the approval of a Senior Manager, the PRA will investigate these and take appropriate action.

**7.30** The PRA may also test the robustness of a firm's policies and procedures for reviewing the fitness and propriety of relevant individuals as part of its supervision of management and governance. Where necessary, this may result in the PRA requiring a firm to make changes to its framework.

**7.31** In this context, the PRA notes the Banking Standards Review Council's intention to support this process, 'by acting as a clearing house for good practice when it comes to ensuring that Certified Persons have the qualifications needed to be deemed fit and proper.'

#### **Enforcement**

**7.32** As stated in the PRA Approach Document, 'while the PRA's preference is to use its statutory powers to secure ex ante, remedial action, it also has a set of disciplinary powers which it will use ex post if necessary.'<sup>56</sup> The PRA's powers include, among other sanctions, the ability to:

- impose penalties
- censure an individual publicly
- withdraw (and/or vary) a Senior Manager's approvals, and
- prohibit individuals from holding SMFs in future.

**7.33** In addition, the Act has conferred on the PRA the following new enforcement powers.

#### ***Presumption of responsibility***

**7.34** Under the new regime, FSMA will require Senior Managers to satisfy the regulators that they took 'reasonable steps' to prevent stop or remedy regulatory breaches by the firm which took place in their areas of responsibility, or face individual sanctions.

**7.35** This new statutory requirement will place an evidential burden on those Senior Managers who, by virtue of their rank and seniority, should have the knowledge and authority to prevent or tackle regulatory failure.

**7.36** This requirement does not establish a strict liability regime for Senior Managers. What constitutes 'reasonable steps' will be determined by the PRA on a case-by-case basis. The PRA recognises that reasonable steps may include the delegation of certain tasks for which that Senior Manager remains responsible, if that delegation was appropriate and undertaken effectively in the circumstances.

**7.37** When determining what action, if any, to take against a Senior Manager in relation to a breach in an area for which they are responsible, the PRA will take into account factors including but not limited to:

- the nature and scale of the breach
- any specific responsibilities of other SMFs in relation to the area where the breach took place, and
- the impact of the breach on the PRA's statutory objectives.

#### ***Conduct Rules and notification requirements***

**7.38** Under the new regime, the PRA will be able to take enforcement action against all employees covered by the PRA Conduct Rules. This will now include not only PRA and FCA approved Senior Managers<sup>57</sup> but also employees subject to the PRA's Certification Regime.

**7.39** In addition, firms will be required to notify the PRA of:

<sup>56</sup> The Prudential Regulation Authority's approach to Banking Supervision, available at: [www.bankofengland.co.uk/publications/Documents/praapproach/bankingappr1406.pdf](http://www.bankofengland.co.uk/publications/Documents/praapproach/bankingappr1406.pdf)

<sup>57</sup> Within the meaning in section 64A(3) FSMA as amended by the Act.

- any potential grounds on which a PRA Senior Manager's approval could be withdrawn (and to consider this at least annually), and
- any actual or suspected breaches of the Conduct Rules and/or formal disciplinary action against any employee covered by them.

**7.40** These requirements should enable the PRA to be made aware promptly of situations which warrant it taking enforcement or supervisory action against firms and/or individuals.

**7.41** Moreover, overlap between individuals subject to the PRA Certification Regime and individuals subject to the proposed new remuneration rules should bring consistency and mutual reinforcement between firms' internal disciplinary process, the PRA's evolving requirements on the use of malus and clawback of variable remuneration and its powers to take enforcement action against individuals.

#### ***Criminal offence in the event of failure of the firm***

**7.42** As noted in paragraph 2.4 above, the Act provides that Senior Managers (other than of credit unions) may be prosecuted by the PRA or FCA where they take decisions in certain circumstances that cause the institution to fail.

**7.43** When deciding whether to bring criminal proceedings, or to refer the matter to another prosecuting authority, the PRA will apply the basic principles set out in the Code for Crown Prosecutors.<sup>58</sup>

### **FCA's approach to the regulatory lifecycle under the regime**

#### **Authorisations**

**7.44** The FCA's regulatory philosophy places considerable emphasis on good governance and, consequently, on the responsibilities of directors and Senior Managers of firms. A robust gateway for both the new SMR and the Approved Persons Regime that will continue for firms outside the relevant firm population will be a key tool in ensuring that firms have high quality individuals in key roles to promote the right culture, governance and conduct to achieve fair outcomes for consumers and ensure market integrity.

**7.45** The FCA will assess all applications relating to a Senior Management Function. It will be the firm's responsibility to ensure that individuals are fit and proper and the FCA will then make a determination as to whether it agrees. As is the case under the Approved Persons Regime, each candidate will need to be adjudged fit and proper by the FCA in order to undertake the role.<sup>59</sup> The process for assessing candidates will build on the existing combination of desk-based research and in-depth interviews, but will include certain changes as a result of the approach the FCA is taking to exercising the powers granted to the regulators under FSMA, as amended by the Act. These are set out below.

**7.46** As a key part of the enhanced process, the FCA will be scrutinising the Statement of Responsibilities and the due diligence that firms will be required to submit with their application to support their determination that the individual is fit and proper for the particular function.

<sup>58</sup> [www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

<sup>59</sup> As is currently the case, when assessing a candidate's fitness and propriety the FCA will determine whether or not the candidate is already (or was previously) an approved person (or SMF holder) and check for any existing negative indicators or concerns. The FCA also carry out other 'intelligence' checks, such as credit checks. If necessary, we the FCA make enquiries with other regulators or law enforcement authorities (for example, where a candidate is, or was, based overseas).

Firms will also be required to obtain documentary evidence including criminal checks (for Senior Managers) and employer references to support the assessment of fitness and propriety.

- 7.47** The proposed list of SMFs is more granular and role-specific than the current list of Controlled Functions. This increased granularity will enable the FCA to better assess candidates against the particular requirements of the role. This will mean in the future, for instance, that individuals already approved in a non-executive role taking up the position of Chair of the Nomination Committee will need a separate (and possibly further) approval from the FCA.
- 7.48** The requirement for firms to have in place Statements of Responsibilities and an overall Responsibilities Map will mean the firm, the individual and the regulators all have a clear focus on the actual responsibilities for each and every Senior Manager within the firm. This should result in improved governance of firms and clarity on who is accountable for addressing shortcomings; at the authorisation stage, in particular, it will mean that all parties will be better able to judge the appropriateness of the individual to the role.
- 7.49** There may be instances where the FCA will decide to approve an individual even though the interview highlighted areas of development for the candidate concerned or where there is a need to appoint an individual for cover purposes beyond an interim period. In these instances the FCA may grant a 'conditional or time limited' approval in line with the powers granted to it under the Act. The FCA thinks it will use these powers in instances including, but not limited to: where an individual has demonstrated they have the skills and aptitude for conducting a function but may require particular training and coaching support to be able to discharge the role; or where the FCA is content to approve the individual to take on a senior function as part of a transitional plan in the management of the firm rather than the long-term incumbent of the role. More detail of the FCA policy on conditional and time limited approvals is in the draft Handbook text SUP 10C.11 attached to this consultation (Annex 6).
- 7.50** In circumstances where the FCA decides to refuse an application, it will use the same process as now, including the issuing of a 'minded to refuse' letter, the referral to the Regulatory Transactions Committee (RTC) and the right of appeal to the Regulatory Decisions Committee (RDC) and ultimately the Upper Tribunal (UT).

### **Supervision**

- 7.51** The FCA's supervision approach is already very different from that of its predecessor, the FSA. It has been designed to be forward-looking and pre-emptive. It focuses on the big issues and the causes of problems; it is a judgement-based approach, with the emphasis on achieving the right outcomes.
- 7.52** It has published ten principles of supervision which underpin this approach. One of these is an emphasis on individual accountability. The FCA has embedded this, for example, through use of attestation by senior individuals and the focus on the application of malus for conduct failings. The new regime, however, calls for the FCA to go further than its existing approach and gives it important new capabilities to do so.
- 7.53** As part of the FCA's supervision of firms subject to the new regime, it will increase its focus on individuals, in particular how those in SMFs oversee the business activities for which they are responsible from a conduct perspective.
- 7.54** The FCA will also give greater consideration to the fitness and propriety of individuals after the authorisations gateway.

**Senior Management Regime**

- 7.55** The FCA will seek to understand whether the SMR is being effectively used by firms and take action where it considers it is necessary to do so. Statements of Responsibilities will be assessed as part of the Authorisations process and subsequently, the overall Statement of Responsibilities framework will be kept under review by Supervision.
- 7.56** As part of its regular interactions with senior management, the FCA will assess the effectiveness with which they discharge their responsibilities and accountabilities. Where the FCA has concerns, it may consider using its powers to vary an individual's approval.

**Certification Regime**

- 7.57** The FCA will also assess the effectiveness of the Certification Regime in firms and whether it is being operated as expected. For example, we may look at whether banks are doing enough to ensure that Certified Persons are fit and proper and are taking appropriate action, including withdrawal of certification if appropriate, where individuals are not meeting our standards.

**Conduct Rules**

- 7.58** The FCA will assess the effectiveness of the approach taken by the firms to implementing and embedding the Conduct Rules, including whether effective action is taken where individuals may fall below the standards expected.
- 7.59** The FCA will challenge banks' senior management as to how they identify and follow up underlying issues revealed by trends in disciplinary reporting.

**Supervisory approach**

- 7.60** As part of the forward-looking supervisory approach, the FCA will assess how firms have given clarity and focus to the roles and responsibilities of individuals and how firms approach people issues, including recruitment, remuneration, training and competence and performance management.
- 7.61** The FCA will continue to focus on remuneration and performance management, including the use of malus under the Remuneration Code, and how remuneration and performance management schemes are constructed. The FCA will be looking to firms to give sufficient weight to conduct risks in designing incentives, starting with the principles set by the Board and Remuneration Committee.
- 7.62** Where there is a crystallised risk, specific focus will be given to identifying accountable individuals and assessing whether senior management took reasonable steps to prevent the failing and/or fell below the standards expected. Where it is believed that it is appropriate to do so, the FCA will open an enforcement investigation into individuals. Where failings relate to the implementation and use of the Certification Regime and the Conduct Rules, the FCA will seek appropriate action from the firm and its Senior Managers.
- 7.63** The FCA's thematic reviews will include a focus on the role of senior management and findings in this regard will be included where appropriate in thematic reports.

**Enforcement**

- 7.64** The FCA has emphasised the importance of holding senior individuals to account, in order to support its policy of credible deterrence and to bring about a change in culture at the firms it regulates. Significant enforcement action has been taken against senior individuals in recent years, while recognising that the complexities of large organisations mean that it is often evidentially difficult to bring action against senior individuals.

- 7.65** The FCA will use the tools provided by the Act to build on this existing focus on the accountability of senior individuals, and to reinforce its ability to take meaningful action against those who are responsible for wrongdoing.
- 7.66** The aim is to raise standards of behaviour in firms, and especially amongst Senior Managers, by making clear there are real and meaningful consequences for poor practice. This will support its operational objectives.
- 7.67** The FCA will continue its current practice of considering action against individuals throughout all enforcement investigations. The approach taken will be judgement-based, will vary according to the scope of an individual's responsibilities, and will be proportionate to the risks posed to consumers and the integrity of the financial markets.

#### **Presumption of responsibility**

- 7.68** Parliament implemented the PCBS recommendation on Senior Manager presumption of responsibility. (see paragraph 2.4)
- 7.69** This change protects those who have properly discharged their duties while assisting the regulators to take action against Senior Managers who have not done so. The FCA believes that this, in combination with other aspects of the SMR, will enhance governance within deposit-taking institutions and reinforce the importance of meeting regulatory obligations.
- 7.70** The FCA's decisions whether to take action based on the presumption of responsibility will be made on the basis of our published criteria in the Decision and Procedure and Penalties Manual (DEPP). We will look at all the circumstances of the case, including the seriousness of the breach, the relevant individual's position, responsibilities and seniority, and the need to use enforcement powers effectively and proportionately.
- 7.71** As with the current approach, sometimes it will be appropriate to take action against a Senior Manager, sometimes against a firm, and sometimes against both. These decisions are made on a case-by-case basis, applying the criteria set out in the DEPP.
- 7.72** In bringing enforcement action against Senior Managers – whether under the presumption of responsibility or otherwise – the FCA will use the individual's Statement of Responsibilities and the firm's Responsibilities Map to help inform it of the scope of the Senior Manager's duties.

#### **Conduct Rules**

- 7.73** The Act enables the regulators to take disciplinary action for breach of Conduct Rules to a much broader range of bank employees than under the approved persons regime. This will allow the FCA to pursue wrongdoing in banks wherever it is found, without the technical restrictions that can prevent action at present. The FCA intends to use this power proportionately, and to take account of the position and responsibilities of the individual before deciding whether to bring enforcement action.

#### **Criminal offence**

- 7.74** The Act provides that Senior Managers of banks and building societies may be prosecuted by the PRA or FCA in some cases for taking a decision that causes the institution to fail.<sup>60</sup> It is expected that such prosecutions will be rare, not least because changes made to the regulatory structure since the financial crisis are designed to make the failure of banks and building societies less likely than in the past. Decisions on whether to prosecute, and which

<sup>60</sup> For the offence to have been committed, the senior Manager must, at the time the decision was taken, have been aware of a risk that its implementation would cause the institution to fail. In addition, their conduct in relation to the decision must fall significantly below what could reasonably be expected of someone in their position.

regulator should prosecute, will be made on a case-by-case basis. When deciding whether to bring criminal proceedings, or to refer the matter to another prosecuting authority, the FCA will apply the basic principles set out in the Code for Crown Prosecutors.<sup>61</sup>

7.75 The changes to the FCA’s regulatory lifecycle are summarised in figure 10, below.

Figure 10

	Authorisations	Supervision	Enforcement
<b>Focus</b>	Senior management function applicants	How SMF’s oversee their business activities from a conduct perspective	All employees subject to Conduct Rules
<b>New features of the regime</b>	<ul style="list-style-type: none"> <li>Increased due diligence requirements on firms by way of criminal records checks and regulatory references</li> </ul>	<ul style="list-style-type: none"> <li>Identification of accountable individuals following a crystallised event, and referral to enforcement if necessary</li> </ul>	<ul style="list-style-type: none"> <li>Senior management presumption of responsibility and the ability to fine individuals and/ or suspend their approvals, or grant conditional or time limited approvals unless they have taken adequate steps to avoid a regulatory breach</li> </ul>
	<ul style="list-style-type: none"> <li>Review of firms’ Responsibilities Maps to assess overall firm governance</li> </ul>	<ul style="list-style-type: none"> <li>Assessment of the effectiveness with which SMF holders discharge their responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>Review of Statement of Responsibilities to inform of the scope of an SMFs duties where required</li> </ul>
	<ul style="list-style-type: none"> <li>Scrutiny of individual Statements of Responsibilities to better judge the fitness of the individual to the role</li> </ul>	<ul style="list-style-type: none"> <li>Assessment of the effectiveness of the operation of the Certification Regime</li> </ul>	<ul style="list-style-type: none"> <li>Ability to take disciplinary action against a much broader range of individuals</li> </ul>
	<ul style="list-style-type: none"> <li>The ability to grant conditional or time limited approvals to applicants</li> </ul>	<ul style="list-style-type: none"> <li>Assessment of the effectiveness of the implementation and embedding of Conduct Rules, including the adequacy of disciplinary action as a result of breaches</li> </ul>	<ul style="list-style-type: none"> <li>Ability of the FCA/PRA to start criminal prosecutions of an SMF where they take a decision that causes an institution to fail</li> </ul>
		<ul style="list-style-type: none"> <li>Review of trends in disciplinary reporting</li> </ul>	
		<ul style="list-style-type: none"> <li>Continuous review of Statement of Responsibilities framework</li> </ul>	
		<ul style="list-style-type: none"> <li>Thematic reviews focussing on the role of senior management</li> </ul>	

61 This requires consideration as to whether there is sufficient evidence to justify a prosecution, and whether a prosecution is required in the public interest.

## 8. Transition to the new regime

### Introduction

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- 8.1** The Treasury has made a (commencement order to bring certain of the provisions in Part 4 of the Act (which make amendments to Part V of FSMA) into force for the purpose of allowing the regulators to make the rules which are proposed in this CP.<sup>62</sup> The regulators have the power, therefore, to make these rules, but the new regime cannot fully take effect until a further commencement order is made to bring the relevant provisions into force for all purposes. The regulators will be discussing the timing of the full coming into force of the new regime with the Treasury, taking into account responses to this consultation on the time needed for the industry to implement the proposed changes. The Treasury may also need to make provision (by statutory instrument) for transitional arrangements, to bring the various parts of the new regime into operation in an orderly manner.
- 8.2** This section sets out possible transitional arrangements, and seeks views on the practicality of the proposed timescale for introducing the new regime. It is expected that most transitional arrangements would be common to both regulators.
- 8.3** Following this consultation and the consultation later this year on transitional arrangements, the regulators are planning to publish their final Policy Statement(s), near final rules and relevant guidance and supervisory statement around the end of this year. The rules will then come into operation at a later date in line with a timetable determined by the Treasury commencement order and the regulators' rules, and will be set out in the regulators' respective Policy Statement(s). The regulators' view is that a reasonable period from publishing their final Policy Statement(s) and adopting rules to implement the new regime could be six months, but the regulators welcome stakeholder views.

### Senior Managers Regime

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- 8.4** The new SMFs will come into effect for new applicants from the date that Treasury commences the regime and in accordance with the regulators' rules. However, these proposals will also affect the very considerable number of individuals already carrying out the proposed SMFs within their existing SIF approvals. Subject to Treasury legislation, the regulators intend to 'grandfather' all SIF roles to their SMF equivalents upon commencement, where applicable. 'Grandfathering' would mean that an individual who has been authorised under the current Approved Persons Regime, for example as a Chief Executive (CF3), and who is not changing their role would not need to go through the authorisations process in order to continue as approved for the equivalent SMF. For this to happen, firms will need to notify the regulators of a person's existing SIF approvals and the equivalent SMF function.
- 8.5** The following table identifies how it is proposed that current relevant Controlled Functions might map across to Senior Manager Functions. If an individual is intending to perform a new

<sup>62</sup> The Financial Services (Banking Reform) Act 2013 (Commencement No. 5) Order 2014 (S.I. 2014/1819).

function that does not map to their current Controlled Function, they will be required to get approval from the relevant regulator(s).

Individuals may only apply to be grandfathered to the new SMF where their existing approval permits the function they are performing prior to grandfathering. For example, an individual serving as a Chief Risk Officer and as a Board Director could assume SMF4 (Chief Risk Function). If the Board Director did not perform the Chief Risk Officer role prior to grandfathering, then a new application would be required if he wished to perform the SM4 role.

**Figure 11**

Current controlled function	PRA Senior Management Functions	FCA Senior Management Functions
Director (CF1)	Chief Finance function (SMF2) Chief Risk function (SMF4) Head of Internal Audit (SMF5) Head of Key Business Area (SMF6) Group Entity Senior Manager (SMF7)	Executive Director (SMF3)
NED (CF2)	Group Entity Senior Manager (SMF7) Credit Union Senior Manager (SMF 8) Chairman (SMF9) Chair of the Risk Committee (SMF10) Chair of the Audit Committee (SMF11) Chair of the Remuneration Committee (SMF12) SID (SMF14)	Chair of the Nominations Committee (SMF13) Non-executive Director Function (SMF 15)
Chief Executive (CF3)	Chief Executive (SMF1) Credit Union Senior Manager (SMF 8)	
Compliance oversight (CF10)		Compliance Oversight (SMF16)
Money Laundering reporting (CF11)		Money Laundering Reporting (SMF17)
Systems and controls (CF28)	Chief Finance function (SMF2) Chief Risk function (SMF4) Head of Internal Audit (SMF5)	
Significant management (CF29)	Head of Key Business Area (SMF6) Group Entity Senior Manager (SMF7)	Significant Responsibility SMF (SMF18)

- 8.6** The above table is indicative only and will be subject to the more detailed transitional consultation.
- 8.7** Consistent with the PRA's and FCA's agreed approach to overlapping Senior Management Functions set out in paragraphs 2.48 and 2.49, individuals who are:

- appointed to the boards of their firms
- approved accordingly as Directors (CF1s) or Non-Executive Directors (CF2) under the Approved Persons Regime (which means that, in principle, they would grandfather to the equivalent FCA Senior Management Functions), and
- whose existing approval also includes a function that would fall within a Senior Management Function specified by the PRA, such as the Chief Finance function
- will be grandfathered into the relevant PRA Senior Management Function, which will be the only function shown in the register.

**8.8** While the regulators do not propose to use the notification exercise to assess the competence of individuals to perform these roles, firms and individuals should note that the continuing requirement to be fit and proper for any controlled function applies throughout an individual's tenure in a controlled function role. Consequently, the regulators will expect firms to confirm that they and the individual remain satisfied of their suitability to transfer to the equivalent function in the new regime.

**8.9** Further details of the method of notification and the proposed transitional period to submit notifications of which approved persons are performing one or more of the SMFs will follow in the later consultation following the Treasury's publication of its transitional regulations.

**8.10** At the point of transition to or approval for the relevant SMF, individuals will become subject to the requirements of the new regime. For this to occur, by the point of transition, firms will need to have prepared:

- an attestation of how individuals who hold SIF and Controlled Function positions will map across to their new Senior Manager Functions
- Statements of Responsibilities for each individual who will become a Senior Manager in the new regime, and
- the firm's initial Responsibilities Map (see Chapter 2).

**Q27: [PRA]/[FCA]:** Do you agree that individuals already performing the relevant controlled functions within their existing approvals should be grandfathered to the new SMF?

**Q28: PRA]/[FCA]:** How much time do you think is necessary to implement the new SMR rules, including the preparations of Statements of Responsibilities and Responsibilities Maps? Please explain what activities would be required to prepare for implementation, and the time required for each activity.

### Certification Regime

**8.11** The regulators propose that the majority of the requirements of the Certification Regime come into effect at Commencement, alongside the introduction of the Senior Management Regime. At this point, all individuals who are to be covered by the Certification Regime will need to have been identified. Subject to the Treasury making the necessary provisions, the regulators

propose that relevant firms should have a period of 12 months to issue individuals their first certificate of fitness and propriety under the new regime, in order to accommodate all firms' annual appraisal cycles.

**Q29: [PRA]/[FCA]:** How much time do you think is necessary to implement the new Certification Regime? Please explain what activities would be required to prepare for implementation, and the time required for each activity.

### Conduct Rules

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- 8.12** The regulators will require Senior Managers and those within the Certification Regime to be subject to the Conduct Rules from the initial commencement of the regimes. This will mean that firms will need to have trained these individuals in the Conduct Rules and how they relate to their role before commencement. A substantial number of those covered by the new Conduct Rules will have been subject to APER in the past. In light of this, and the fact that the new Conduct Rules build on APER, the regulators believe such a requirement will be manageable for firms to fulfil if there was a period of six months between adopting the Conduct Rules and commencing the regime.
- 8.13** For those persons covered by Conduct Rules who are outside the Senior Management and Certification Regimes, the FCA proposes implementing the FCA's Conduct Rules 12 months after initial Commencement of the regime in order to give firms time to properly train such individuals, the majority of whom may not have been subject to Conduct Rules in the past.

**Q30: [PRA]/[FCA]:** In relation to the Conduct Rules, how much time do you think is necessary for implementation? Please explain what activities would be required to prepare for implementation, and the time required for each activity.

# Annex 1

## PRA Cost Benefit Analysis

### Introduction

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1. The PRA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 138J refer). The PRA considers that the CBA set out below meets the FSMA CBA requirements.
2. Some of the cost estimates included in the analysis are drawn from the Europe Economics report in Annex 10 commissioned by the FCA. The scope of the FCA's proposed regime is wider than that proposed by the PRA and the estimated costs and benefits will therefore differ. However, to the extent that estimates provided in Annex 10 also help to inform possible costs and benefits of the PRA proposals they are included below.
3. Based on the figures from Annex 10 and allowing for the narrower scope of the PRA regime by applying a fraction of between one third and one half to the total cost estimates set out in Annex 10, the total one-off cost to in-scope firms for transition into the new regime might be around £60 million, with a corresponding estimate of less than £10 million for ongoing compliance costs. All the cost estimates provided in the PRA's cost benefit analysis are based on applying this same fixed proportion approach to the figures provided in Annex 10.
4. Throughout, the PRA has sought to make proposals that are the least burdensome way of achieving the desired objectives, taking into account the expected balance of associated costs and benefits. For example, in accordance with the PRA's competition objective and its duty to have regard to proportionality, a lighter touch approach is proposed for credit unions, bearing in mind that smaller credit unions are simpler in nature and in their governance arrangements, in general. The PRA has also considered carefully the scope of the approval regime, and the way existing approved roles would map to the new regime. The proposals have been designed with regard to practicability and efficiency, with any expected costs of the change in approach considered in the context of the expected benefits.
5. The PRA expects costs and benefits may arise primarily for the reasons set out below:

### Greater clarity about who is accountable for what in firms

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6. The introduction of Statements of Responsibilities and Responsibilities Maps for those with a Senior Management Function is expected to reduce the risk of overlaps and underlaps in firms by promoting greater clarity. Along with the revised remuneration rules and the enhanced regulatory and legal powers introduced in FSMA, this should help encourage individual accountability by facilitating the PRA's ability to hold individuals to account where a failure occurs. This will, in turn, help bring the benefits of an increased deterrent against negligent or reckless management and decision making. The extent to which these benefits are realised will depend on the effectiveness of the new criminal offence and presumption of responsibility, as well as regulators' enforcement actions.

7. Producing and maintaining a Responsibilities Map will result in some one-off administration costs for firms (included in the table of estimates below). However, these costs do not capture any secondary costs that might arise by firms reassigning responsibilities in light of the PRA's proposals and in particular the need to assign certain responsibilities to the Senior Management Function. Such costs cannot be directly quantified as they will vary according to each firm's response to this requirement and the extent of any reallocation of responsibilities a firm may choose to undertake.
8. The proposed narrower functions may lead to a better match between senior management functions and individuals' skills and experience. Additionally, the requirement to seek fresh approval when moving between these more granular functions, for example when a non-executive director (NED) becomes Chair of the Audit Committee, is designed to promote more specific competence for each responsibility.

### Pre-approving a narrower set of people

9. The PRA will be expecting to pre-approve a smaller number of individuals under the new regime, as the scope of the SMR is narrower than that of the APR. For example certain NEDs are excluded. A total of around 500 approvals<sup>1</sup> made during the year to end March 2014, around 60 were for generic NEDs, which would not be required under the new regime. Firms will not need to apply to the PRA for so many functions as now, albeit individuals will need to seek re-approval when moving between certain roles (for example certain NED roles). However, as the FCA will still require a wider group of individuals to seek approval, firms are unlikely to experience a material change to the overall regulatory scope for approvals.
10. The figures in Annex 10 give rise to the following estimated costs being broadly attributable to the PRA's proposals for SMFs, Statements of Responsibilities, presumption of senior responsibility and pre-approval processes, in terms of average cost per firm for the sample studied by Europe Economics:

**Figure 12**

£000	Large banks and investment firms	Small banks and investment firms	Large building societies	Small building societies	Credit unions
One-off (set up)	550	80	140	9	2.5
Ongoing	130	10	2	negligible	negligible

### Reducing information asymmetries between firms and prospective employees

12. The PRA's proposals include requiring relevant firms to provide references on a former employee to a new relevant firm which is proposing to hire the person. This will allow new firms to obtain better information about the person's past conduct. Currently, the previous employer may not have incentives to avoid bad references, or may even have incentives to hide the employee's misconducts, in order to get rid of the employee and avoid lawsuits. In addition, knowing that an employer will be required to disclose the underlying facts and disciplinary action taken in relation to Conduct Rules breaches could incentivise individuals to refrain from such behaviour in the first place.

<sup>1</sup> This figure excludes approvals relating to credit unions.

13. Certification may result in some additional costs to firms. The requirement to certify comes from FSMA, and the rules proposed by the PRA then define the population that needs to be certified, albeit FSMA does not allow a minimal population to be set. The scope of the PRA rules therefore has direct impact on the associated costs. The PRA has set out a proposed scope that is intended to be proportionate and efficient, linking it to a set of individuals the firms will anyway separately have to identify for remuneration purposes. This should minimise costs that would arise from having to do a separate identification exercise. There will be some one-off costs in putting a process in place, however, and then some (negligible) continuing costs in operating the regime. The need to take up and provide references will create some administrative costs for firms. The PRA expects that generally firms will already have a referencing process, but they may now have to include more information. As in the case of references for Senior Managers, disclosing adverse information may carry some legal risk for firms, but this has been taken into account in the proposals as to what firms will be required to disclose. Based on a proportion of the estimates in Annex 10 the PRA proposals for certification requirements would give rise to the following average set-up costs per firm, with negligible ongoing costs:

**Figure 13**

£000	Large banks and investment firms	Small banks and investment firms	Large building societies	Small building societies	Credit unions
One-off (set up) costs	16	13	76	0.6	0.01

### Subjecting a wider set of individuals to Conduct Rules

14. Applying Conduct Rules to individuals within the Certification Regime (rather than just to pre-approved individuals as is currently the case) could provide incentives for a much wider set of individuals to act in a way that is more likely to promote the safety and soundness of the firm and the system: with greater skill and diligence, and with integrity. How great a change is achieved in practice will depend on the extent to which these individuals believe that their firm or the regulators are likely to take disciplinary action for any breaches. The proposed requirement for the training of individuals subject to the Conduct Rules will help ensure that individuals understand what the rules require of them.
15. There will be some costs for these individuals and their firms in ensuring that the individuals who need to comply with Conduct Rules are aware of the rules and understand what they require (firms are required by FSMA to give training on the rules).
16. Based on a proportion of the figures in Annex 10 the costs attributable to the PRA proposals for Conduct Rules can be estimated as follows:

**Figure 14**

£000	Large banks and investment firms	Small banks and investment firms	Large building societies	Small building societies	Credit unions
One-off (set up)	1500	6	130	1	1
Ongoing	2	negligible	7	negligible	0.6

17. The rules are written as high-level principles and do not contain technical or legalistic requirements which would be difficult to understand. However, the high-level nature of the requirements means they may be considered open to interpretation, and firms and individuals will need to use their good judgement in deciding what the rules require of someone in a particular situation.

### **Complying with conditions / time limits on approvals**

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18. There will be some costs to firms in observing and complying with conditions attaching to approvals. These are not reasonably practicable to quantify as the nature of the conditions may vary considerably. In some cases, particularly where time limits are imposed, there may be a need for reassessment; this will result in administrative costs for firms and for the PRA. However, conditional and time limited approval could also help firms to fill some unplanned vacancies quickly, albeit temporarily.

### **Impact on attracting and retaining senior individuals**

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19. There is a question as to whether perceptions about the regulators' increased ability to enforce against Senior Managers may deter some candidates from taking up senior posts in relevant firms. To appreciate the impact of the proposed reforms on recruitment they need to be viewed alongside other changes, particularly recent and proposed reforms on Remuneration (both domestic and EU). The PRA's proposed regime is intended to be proportionate and targeted. Firms confident in the robustness of their recruitment, vetting and ongoing management processes need not experience material impact.

### **Impact on banks' activities and their contribution to the wider economy**

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20. The deterrent effect of greater sanctions could make some Senior Managers overly cautious and the wish to document evidence of reasonable steps could distract them from other important aspects of their role with potentially adverse effects on the business. However, the PRA considers these risks to be outweighed by the benefits of measures that should align Senior Managers' interests to those of the PRA in reducing the risk of firm failure (or near failure) and thereby avoiding the economic disruption that could ensue.

### **Interaction with other measures**

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21. Benefits will also arise through the interaction of the PRA's proposals in this paper with other measures. For example, a suitably-aligned remuneration policy will help to reinforce individuals' incentives for appropriate conduct.

## Annex 2

# FCA Cost Benefit Analysis

1. The FCA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 138J FSMA refer). The FCA commissioned Europe Economics (EE), a specialist economics consultancy, to assist in assessing the likely impacts related to conduct of the proposed new accountability regime (the "EE report"). FCA considers that the CBA set out below, combined with the EE report in Annex 10, meets the FSMA CBA requirements.
2. EE provided the analysis using two main sources of information:
  - 20 structured interviews with a sample of different sized firms (banks, buildings societies, investment firms and credit unions), and
  - Existing literature/research, specifically price information and comparison to prior work.

As the FCA has published the full EE report alongside this CP, this CBA simply presents the key findings.

3. The EE report covered the package of proposals set out in this CP and the related Remuneration CP [ad ref.] which have been published in parallel. The EE report assesses the incremental impact from the status quo (i.e. the existing approved persons regime), and has not attempted to separate the impacts of the FCA proposals from the impact of the relevant provisions in the Financial Services (Banking Reform) Act 2013 ('the Act'). This is because this part of the Act will only be implemented through the FCA (and PRA) policies.
4. The Act removes the regulators' power to write Statements of Principle and Code of Practice for Approved Persons (APER), and replaces this with a power to write Rules of Conduct. The FCA does not consider it to be reasonably practicable to estimate the costs and benefits of having no rules of conduct (or APER). This is because it is not possible to know what impact having no conduct rules would be on firms. In practice it is likely that relevant firms would maintain some existing procedures/costs associated with APER, in the absence of anything else, particularly given the wider proposed changes to improve individual accountability. Although we can't quantify costs and benefit estimates, in qualitative terms the costs and benefits of having conduct rules are the same as they are in the main CBA.
5. The individual accountability proposals EE considered were illustrative, and have altered in some areas since their analysis was conducted. The final proposals are as set out in the CP. Where changes have been made, FCA considers these to be minor and have no significant impact on the analysis and findings in the EE report.

### Compliance costs

6. Policy changes may result in increased compliance costs for firms. EE has looked to quantify the incremental compliance cost impacts by proposal and in aggregate as well as considering up front, one-off costs and ongoing costs. Cost questions, amongst others, were included in interviews with firms from which EE has estimated costs.
7. The estimated direct costs of the individual accountability proposals can be found mainly in section 3 of the EE report. The total compliance cost estimates for the proposed accountability regime are summarised below. The EE report notes that the extent to which the compliance costs are likely to be passed onto consumers is difficult to determine at this stage.

**Figure 15**

#### Estimated one-off cost (£millions)

	Large	Small	All firms
Banks	169.9	66.7	
Building Societies	17.14	2.11	
Credit Unions			4.77

#### Estimated on-going cost

	Large	Small	All firms
Banks	9.8	12.8	
Building Societies	2.62	0.29	
Credit Unions			1.24

8. The FCA considers the analysis undertaken to be comprehensive, and in particular notes that the cost data indicates (statistically, i.e. in terms of a share of annual income) a potentially disproportionate impact on smaller firms, primarily credit unions (section 3.5 of the report). Indeed the 'Summary and Conclusion', in section 6, states that:-
9. "The share of the wider benefits of the policies is unlikely to be equal across the affected sectors. In particular, the role of credit unions in the mis-selling scandals and systemic bank failures which characterise much of the harm referred to in the PCBS report is extremely limited; the same might be said of building societies. The costs of the policies are likely to affect credit unions disproportionately (in terms of a share of annual income) The high compliance costs, combined with the likelihood that credit union board members may be particularly unwilling to take on the additional personal accountability implied by the regime, may have an impact on the feasibility of some firms to remain in the market."

### Indirect costs and wider impacts

10. The qualitative analysis of the indirect impact of the proposals (the accountability and remuneration package combined) can be found in section 4 of the EE report. A quantitative analysis of the indirect costs has not been undertaken as part of this exercise as it is not considered to be reasonably practicable to do so given the high degree of complexity and uncertainty surrounding the nature of such impacts.

11. The EE report identifies the following potential indirect costs of behavioural change as a result of the proposals:-
  - A possible increase in operational inefficiencies brought about by, for example, delays in decision making processes and an increase in internal monitoring and control procedures.
  - Adjustments to wage structures to compensate individuals for increased accountability.
  - Impact on firms' ability to hire and retain staff, or individuals more prepared to take risks could be attracted to taking senior positions within relevant firms.
  - Relevant firms disadvantaged in comparison to non UK based firms, and firms in other UK sectors not subject to the new regime.
  - The potential impacts on innovation are unclear and could be positive or negative. Positive if, for example, it leads to a better understanding of products that cause consumer harm. Negative if, for example, it leads to excessive product homogenisation. The survey data suggests that it seems unlikely that homogenisation will go so far as to be significantly detrimental to consumer choice.
  - The disproportionate cost impact on credit unions and potential delays to innovation could disadvantage small firms compared to their larger competitors.
12. A key issue for credit unions is identified as the Senior Managers Regime, in particular assigning individual responsibilities, which may undermine the principles of credit unions whereby all members are able to be voted onto the Board (who are often volunteers), with Board members collectively taking responsibility for all decisions. A further key concern is retention, given that credit unions will not be able to compensate individuals for the increase in personal accountability.
13. The FCA is mindful of these potential impacts, The Act itself applies the Senior Managers Regime to credit unions, and APER already imposes individual obligations on those performing a significant influence function for a credit union. As set out in the CP, the FCA considers that the proposed approach is proportionate. In addition, the proposals do not prevent collective decision making.
14. We note the possible impacts identified in the EE report. It may be that some or possibly most of the concern regarding credit unions is due to a misunderstanding of the proposals or a perception that FCA will apply the regime to credit unions in a harsh way, rather than as a result of what the proposed rules say. In order to better understand the expected impact on credit unions, FCA will seek to obtain additional information and clarification from this sector during the consultation period.

### FCA Costs

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15. The proposals set out in this consultation will impact the FCA's existing authorisations, supervision and enforcement processes and systems. The one-off costs have been identified and are not likely to have an impact on resources as existing capacity is likely to be deployed. In the medium to long term we anticipate that the proposals may lead to a natural reduction in the need for some other kinds of supervisory activity. We believe that this will result in more

effective supervision over the longer term, resulting in better outcomes. We believe that the proposals in this consultation paper would use our resources in an efficient manner.

### Benefits

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16. The EE report discusses the benefits of the combined proposals in sections 5. The report identifies that firms are likely to undertake more considered decision making and additional monitoring and sign-off procedures so that both intentional and unintentional misconduct and regulatory breaches can be identified and prevented. The policies will also provide both regulators with greater scope for disciplinary and enforcement action.
17. Furthermore, the EE report provides illustrative benefits in the form of reduced harm caused by mis-selling range from £0.02 billion and £0.6 billion per year. Plus the estimated potential saving to firms as a result in the reduction in the number of individuals requiring pre-approval by the regulators is in the region of £2 million per year.

### Conclusion

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18. Whilst mindful of the potential impact on credit unions in particular, the FCA considers the potential benefits of the policies to be persuasive to merit consultation. The benefits of the proposals are difficult to quantify in monetary terms but by strengthening individual accountability mechanisms FCA considers there are likely to be beneficial changes in behaviour across all relevant sectors and a reduction in non-compliance, misconduct and excessive risk taking.
19. The FCA will also have sufficient regard to the costs to firms that may result from implementing these changes.
20. Given the substantial costs and benefits at stake, the FCA will consider any further evidence provided to us as part of this consultation.

## Annex 3

# PRA Compatibility Statement

1. The PRA has adhered to the regulatory principles in setting out the rules proposed in this consultation. In particular:

**(a) *The need to use the resources of each regulator in the most efficient and economic way;***

The PRA has used its internal and external resources in a way it believes to be considered to be both effective and commensurate with the impact and magnitude of the proposals in this CP. In particular, the PRA has relied on relevant internal data and feedback from colleagues and internal stakeholders to inform its policy proposals.

**(b) *the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;***

In developing its proposals, the PRA has taken into account the principle of proportionality, especially given the significant variations in the size, nature, scope and complexity of the activities of relevant authorised persons. Consequently, the proposed rules apply in a way that reflects the impact of different types of firms on the PRA's objectives.

Moreover, the PRA has given careful considerations to the relative costs and benefits of its proposals in light of its statutory objectives.

For more information please see the CBA sections (Annexes 1 and 2)

**(c) *the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;***

2. The PRA does not consider this to be relevant for this CP.

**(d) *the general principle that consumers should take responsibility for their decisions;***

3. The PRA does not consider this to be relevant for this CP.

**(e) *the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;***

4. The key rationale of the PRA's proposals is to clarify, develop and entrench the responsibilities of individual Senior Managers and enhance their accountability. This rationale has underpinned the development of the proposed new accountability regimes.

- (f) *the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act [FSMA];***
5. Firms in scope of the new accountability regimes carry out a relatively a limited numbers of PRA-regulated activities. The PRA has, however, given appropriate recognition to the varying nature and objectives of these activities.
- (g) *the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;***
6. The PRA has the power to publish certain information relating to investigations into firms and individuals. The Statement of the PRA's Approach to Publicity of Regulatory Action (April 2013) deals with the PRA's approach to publication of disciplinary and other enforcement actions. The proposals contained in this consultation do not provide for any changes in this regard.
- (h) *the principle that the regulators should exercise their functions as transparently as possible;***
7. The PRA has obtained industry feedback and engaged with relevant external stakeholders to the extent permitted. This public consultation is open until 31 October 2014, and the PRA welcomes feedback and comments.

# Annex 4

## FCA Compatibility Statement

### Compatibility with the FCA's general duties

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1. This Annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This Annex also sets out our view of how the proposed rules are compatible with our duty, so far as is compatible with acting in a way which advances the consumer protection or market integrity objectives, to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA).
3. For a detailed assessment of the equality and diversity implications of these proposals, see paragraph 1.27.

### The FCA's strategic objective and regulatory principles

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4. The proposals set out in this consultation are compatible with our strategic objective of ensuring that the relevant markets function well. They will clarify the lines of responsibility at the top of relevant firms and enhance the regulators' ability to hold senior and other individuals in such firms to account. This should, over time, result in improved governance within this sector of the industry.
5. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

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

6. The proposals set out in this consultation will impact the FCA's existing authorisations, supervision and enforcement processes and systems. The one-off costs have been identified and are not likely to have an impact on resources as existing capacity is likely to be deployed. In the medium to long term we anticipate that the proposals may lead to a natural reduction in the need for some other kinds of supervisory activity. We believe that this will result in more effective supervision over the longer term, resulting in better outcomes. We believe that the proposals in this consultation paper would use our resources in an efficient manner. The introduction of the Certification Regime removes a large number of individuals from the regulatory approval process; as well as placing more responsibility on relevant firms for the

fitness and propriety of their staff, this also frees up more regulatory resource to focus on the key decision makers in the SMR.

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

7. The proposals set out in this consultation paper seek to enhance individual accountability and so advance our strategic objective and operational objectives. The proposals are intended to result in beneficial changes in behaviour and reduce non-compliance, misconduct and excessive risk taking. Firms are likely to incur both direct and indirect compliance costs, but our Cost Benefit Analysis shows that these are not excessive, compared to the potential benefits to consumers. We therefore believe the proposals in this consultation paper are proportionate to the benefits.

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

8. The Parliamentary Commission on Banking Standards stated, "Banks in the UK have failed in many respects. They have failed taxpayers, who had to bail out a number of banks including some major institutions, with a cash outlay peaking at £133 billion, equivalent to more than £2,000 for every person in the UK."<sup>2</sup> The costs to the economy of the UK were significant. Our proposals have regard to the desirability of sustainable growth in the medium and long term. The proposed changes are intended to have a positive impact on the behaviour and culture of the firms in question, which will contribute the advancement of this objective. The Cost Benefit Analysis that accompanies this consultation examines possible direct and indirect costs and benefits of the proposals in this consultation.

**The general principle that consumers should take responsibility for their decisions**

9. The proposals we have made concern the internal organisation of firms and requirements applying to their staff. These are not matters over which consumers can have any influence, and they simply have to accept the institution they deal with as it is. Insofar as these requirements apply to the deposit taking sector as a whole, and to PRA regulated investment firms consumers can be confident that whatever firm they chose to deal with, the new requirements will apply to all.

**The responsibilities of senior management**

10. The main objective of the proposals contained in this consultation paper is to ensure that senior managers within relevant firms are clear about the responsibilities they hold and can therefore be more effectively held accountable for the performance of these responsibilities.

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

11. We believe our proposals do not undermine this principle. In considering the SMR, we have been mindful of the need to consider the impact on building societies and credit unions. The Banking Reform Act made clear that the main elements of the new regime (i.e. the Senior Managers Regime, the Certification Regime and the Conduct Rules) should apply to all relevant firms. The question that we had to decide was the extent to which they should apply. Broadly speaking, we decided that these should apply in the same manner to all relevant firms. This is because the risks to consumers in dealing with a badly governed building society or credit union could be just as great, from the consumer's point of view, as if they dealt with a badly governed bank. Having said this, although our proposals are designed to lead to similar outcomes for consumers, regardless of the firm they deal with, they do allow firms flexibility in how to achieve these. So the senior management regime is designed to avoid imposing a uniform governance structure that applies to all firms, although all firms will need clear lines of accountability within

<sup>2</sup> House of Lords, House of Commons, *Changing banking for good, Report of the Parliamentary Commission on Banking Standards*, 12 June 2013, p. 82, para. 1.

whatever structure they use. The Code of Conduct is also written at a reasonably high level, which allows it to be applied so as to reflect the differing levels of complexity and riskiness of different firms' businesses.

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

12. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter or any of our findings or conclusions of an investigation public except in the circumstances described in chapter 6 of the Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.
13. We have the power to require relevant persons to publish information about their compliance with our rules. In this case we will be able to see compliance with the rules either from the information that the relevant persons provide us e.g. statements of responsibilities and responsibilities maps, or we will be able to see compliance by means of making a supervisory visit to the relevant person e.g. the operation of the certification regime. We see no additional benefit to our objectives by requiring relevant persons to publish information about this.

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

14. We are an open and transparent regulator. The FCA has obtained industry feedback during the pre-consultation stage and engaged with relevant external stakeholders. The FCA will continue to actively engage with relevant stakeholders throughout the consultation process.

### **The FCA's operational objectives**

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#### **Consumer Protection and Market Integrity**

15. The objective of the proposals contained in this consultation paper is to ensure that Senior Persons within relevant firms are held accountable for the roles they perform. This is intended to create a structure that will make it more likely that individuals and roles are appropriately matched and that high standards of conduct are observed. We therefore consider that these aims and objectives support our Consumer Protection and Market Integrity objectives.

#### **Promoting Competition**

16. In preparing the proposals as set out in this consultation, we have had regard to our duty to promote effective competition in the interests of consumers under section 1B(4) FSMA. The proposals contained in this consultation paper seek to implement the Financial Services (Banking Reform) Act 2013 which sets out the firms to be affected. We have kept the competition objective in mind when framing how these proposals should be implemented, with a particular focus on whether there is a risk of weakening competitive pressure, disadvantaging smaller firms or potential new entrants. The Europe Economics Cost Benefit Report at paragraph 4.7 noted that, "Competition in the sector may also be affected by policy proposals. In particular, there may be aspects of the regulation that impose disproportionately large costs on small firms relative to large firms (or vice versa)." During the consultation period we will explore whether there would be an adverse effect, what it might be if that were to be the case, and what might be done further to mitigate it.

### Expected effect on mutual societies

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- 17.** In considering the Senior Managers Regime the FCA has been mindful of the need to consider the impact on building societies and credit unions. Insofar as our proposals introduce new requirements we believe that these should apply to building societies in much the same way as they apply to banks. So far as credit unions are concerned, the Europe Economics Cost Benefit Report stated at section 6.4, “The share of the wider benefits of the policies is unlikely to be equal across the affected sectors. In particular, the role of credit unions in the mis-selling scandals and systemic bank failures which characterise much of the harm referred to in the PCBS report is extremely limited; the same might be said of building societies. The costs of the policies are likely to affect credit unions disproportionately (in terms of a share of annual income). The high compliance costs, combined with the likelihood that credit union board members may be particularly unwilling to take on the additional personal accountability implied by the regime, may have an impact on the feasibility of some firms to remain in the market.”
- 18.** A key issue for credit unions is identified as the Senior Managers Regime, in particular assigning individual responsibilities, which may undermine the principles of credit unions whereby all members are able to be voted onto the Board (who are often volunteers), with Board members collectively taking responsibility for all decisions. A further key concern is retention, given that credit unions will not be able to compensate individuals for the increase in personal accountability.
- 19.** The Act itself applies the Senior Managers Regime to credit unions, and APER already imposes individual obligations on those performing a significant influence function for a credit union.
- 20.** We note the possible impacts identified in the EE report. It may be that some or possibly most of the concern regarding credit unions is due to a misunderstanding of the proposals or a perception that FCA will apply the regime to credit unions in a harsh way, rather than as a result of what the proposed rules say. In order to better understand the expected impact on credit unions, the FCA will seek to obtain additional information and clarification from this sector during the consultation period.

## Annex 5

# List of questions

### PRA Questions

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- Q1:** **[PRA]:** Does the proposed list of PRA Senior Management Functions capture the appropriate set of roles? If not,
- are there any other roles which the PRA should consider specifying as SMFs?
  - are there any proposed SMFs which the PRA should consider excluding?
- Q2:** **[PRA]:** Do you agree with the PRA's proposal that firms should not be required to have individuals approved to perform specific SMFs where these relate to committees or functions which they are not required to have and have elected not to have?
- Q3:** **[PRA]:** Do you agree with the PRA's proposed quantitative criteria to identify the Head of Key Business Area function?
- Q4:** **[PRA]:** Do you agree with the PRA's proposed list of Prescribed Responsibilities?
- Q5:** **[PRA]:** Do you agree with the PRA's proposed approach to the allocation of responsibilities?
- Q13:** **[PRA]:** Do you agree with the proposals set out in the PRA's proposed Statement of Policy on the 'Draft statement of the PRA's policy on conditions, time limits and variations of approval?'
- Q15:** **[PRA]:** Do you agree with the PRA's proposed approach to defining certification functions?
- Q18:** **[PRA]:** Do you agree with the PRA's proposed rules and supervisory statement on standards of fitness and propriety?
- Q20:** **[PRA]:** Do you agree with the proposed scope of the PRA's Conduct Rules?

## FCA Questions

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- Q6: [FCA]:** Does the proposed list of FCA SMFs capture the appropriate set of roles? If not
- are there any other roles which the FCA should consider specifying as SMFs?
  - are there any proposed SMFs which the FCA should consider excluding?
- Q7: [FCA]:** Does the proposed list of Key Functions adequately cover those likely to be carried out by relevant firms? Which functions should be added or removed?
- Q9: [FCA]:** Do you agree with the FCA's proposed approach to the allocation of responsibilities?
- Q14: [FCA]:** Do you agree with the proposals set out in the FCA's proposed statements of policy contained in draft chapters SUP 10C and DEPP 8?
- Q16: [FCA]:** Do you agree with the FCA's proposed approach to defining certification functions?
- Q17: [FCA]:** Do you agree with the FCA's proposed approach to rules and guidance on fitness and propriety?
- Q21: [FCA]:** Is this the best possible definition of scope that fulfils the objectives set out in paragraph 5.11? Are there alternatives that would better meet these objectives?
- Q22: [FCA]:** Do you believe that rules should apply to all people in the firm who are directly involved in financial services business?
- Q23: [FCA]:** Are there any functions that you believe should be added or removed from the list at 5.13 because they are roles that are, or are not, the same as roles performed by those working in non-financial services firms?
- Q25: [FCA]:** Do you agree that these are the right additional FCA-specific rules?
- Q26: [FCA]:** Does the guidance attached at Annex 6 give helpful clarity on the behaviours the FCA expects under each of the rules?

**PRA AND FCA Questions (Please send your response to both regulators)**

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- Q8:** [PRA/FCA]: Do the combined FCA and PRA proposed SMFs cover the key decision makers in relevant firms?
- Q10:** [PRA/FCA]: Do you agree with the PRA's and FCA's proposals on Statements of Responsibilities?
- Q11:** [PRA & FCA]: Do you agree with the PRA's and FCA's proposal to require firms to produce a Responsibilities Map?
- Q12:** [PRA & FCA]: Do you agree with the PRA's and FCA's proposed approach to handover arrangements?
- Q19:** [PRA & FCA]: Do you agree with the FCA and PRA proposed requirements on:
- a) criminal record checks?
  - b) the provision of references?
- Q24:** [PRA & FCA]: Do you agree that these are the right Conduct Rules for both regulators to introduce, taking into account the objectives set out in paragraph 5.16?
- Q27:** [PRA & FCA]: Do you agree that individuals already performing the relevant controlled functions within their existing approvals should be grandfathered to the new SMF?
- Q28:** [PRA & FCA]: How much time do you think is necessary to implement the new SMR rules, including the preparations of Statements of Responsibilities and Responsibilities Maps? Please explain what activities would be required to prepare for implementation, and the time required for each activity.
- Q29:** [PRA & FCA]: How much time do you think is necessary to implement the new Certification Regime? Please explain what activities would be required to prepare for implementation, and the time required for each activity.
- Q30:** [PRA & FCA]: In relation to the Conduct Rules, how much time do you think is necessary for implementation? Please explain what activities would be required to prepare for implementation, and the time required for each activity.

# Annex 6

## FCA Draft Handbook Text

## INDIVIDUAL ACCOUNTABILITY INSTRUMENT [YEAR]

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 60 (Applications for approval);
  - (3) section 63C (Statement of policy);
  - (4) section 63ZD (Statement of policy relating to conditional approval and variation);
  - (5) section 63E (Certification of employees by relevant authorised persons);
  - (6) section 64A (Rules of conduct);
  - (7) section 69 (Statement of policy);
  - (8) section 137A (The FCA’s general rules);
  - (9) section 137T (General supplementary powers);
  - (10) section 139A (Power of the FCA to give guidance); and
  - (11) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

### Commencement

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

### Making the Code of Conduct sourcebook (C-CON)

- D. The Financial Conduct Authority makes the rules and gives the guidance in Annex A to this instrument.

### Amendments to the Handbook

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

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

**Amendments to the material outside the Handbook**

- F. The Enforcement Guide (EG) is amended in accordance with Annex G to this instrument.

**Citation**

- G. This instrument may be cited as the Individual Accountability Instrument [Year].

By order of the Board  
*date*

## Annex A

### Making of the Code of Conduct sourcebook (C-CON)

Insert the following new sourcebook after the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) in the block of the Handbook titled 'High Level Standards'.

All the text is new and is not underlined.

#### 1 Application and purpose

##### 1.1 Application

1.1.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of *approved persons* and *persons* who are *employees* of *relevant authorised persons*.

To whom does it apply?

- 1.1.2 R (1) *C-CON* applies to:
- (a) *an SMF manager*;
  - (b) *an employee of a relevant authorised person* who:
    - (i) performs the function of an *SMF manager*;
    - (ii) is not an *approved person* to perform the function in question; and
    - (iii) is required to be an *approved person* at the time he performs that function;
  - (c) *a certification employee employed by a relevant authorised person*; and
  - (d) any other *employee* of a *relevant authorised person* except an *employee* whose role is listed under *C-CON* 1.1.2R(2) .
- (2) *C-CON* does not apply to an *employee* who only performs functions falling within the scope of the following roles:
- (a) receptionists;
  - (b) switchboard operators;
  - (c) post room staff;
  - (d) reprographics/print room staff;
  - (e) property/facilities management;
  - (f) events management;

- (g) security guards;
- (h) invoice processing;
- (i) audio visual technicians;
- (j) vending machine staff;
- (k) medical staff;
- (l) archive records management;
- (m) drivers;
- (n) corporate social responsibility staff;
- (o) data controllers or processors under the *Data Protection Act 1998*;
- (p) cleaners;
- (q) catering staff;
- (r) personal assistant, secretary;
- (s) information technology support (ie helpdesk); and
- (t) human resources administrators /processors.

1.1.3 R *Rules 1 to 5 in C-CON 2.1 apply to all conduct rules staff.*

1.1.4 R *Rules SM1 to SM4 in C-CON 2.2 apply to all SMF managers and to employees who perform the function of an SMF manager as specified in C-CON 1.1.2R(1)(b).*

1.1.5 G *The guidance in C-CON 2.3 applies to relevant authorised persons.*

To what conduct does it apply?

1.1.6 R *In the case of a person (P) who is an SMF manager, C-CON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by the relevant authorised person on whose application approval was given to P.*

1.1.7 R *In the case of a person (P) subject to C-CON who is not an SMF manager, C-CON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by P's employer.*

Where does it apply?

1.1.8 R *C-CON applies to the conduct of an SMF manager (and to the conduct of*

*employees* who perform the function of an *SMF manager* as specified in *C-CON 1.1.2R(1)(b)* wherever it is performed.

- 1.1.9 R *C-CON* only applies to the conduct of *persons* other than an *SMF manager* (or an *employee* who performs the function of an *SMF manager* as specified in *C-CON 1.1.2R(1)(b)*) if that conduct:
- (a) is performed from an establishment maintained by that *person's* employer in the *United Kingdom*; or
  - (b) involves dealing with a *client* in the *United Kingdom* from an establishment overseas.
- 1.1.10 G The *FCA* interprets the phrase 'dealing with' in *C-CON 1.1.9R* as including having contact with *customers* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the *Act* to describe in general terms the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.
- 1.1.11 G A *person* will not be subject to *C-CON* to the extent that it would be contrary to the *UK's* obligations under a *Single Market Directive* or the *auction regulation*.

#### Purpose

- 1.1.12 G The purpose of this chapter is to set out *rules* about the conduct of *SMF managers*, *certification employees* and *other conduct rules staff* and to provide *guidance* to *relevant authorised persons* in relation to the conduct *rules*.

## **2 The conduct rules**

### **2.1 Individual conduct rules**

- 2.1.1 R *Rule 1*: You must act with integrity.
- 2.1.2 R *Rule 2*: You must act with due skill, care and diligence.
- 2.1.3 R *Rule 3*: You must be open and cooperative with the *FCA*, the *PRA* and other regulators.
- 2.1.4 R *Rule 4*: You must pay due regard to the interests of *customers* and treat them fairly.
- 2.1.5 R *Rule 5*: You must observe proper standards of market conduct.

### **2.2 Senior manager conduct rules**

- 2.2.1 R SM1: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 2.2.2 R SM2: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.
- 2.2.3 R SM3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- 2.2.4 R SM4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

### 2.3 Firms: training and breaches

- 2.3.1 G Under section 64B of the *Act*, a *relevant authorised person* must:
- (1) ensure that all persons subject to the *rules* in *C-CON* are notified of the *rules* that apply in relation to them; and
  - (2) take all reasonable steps to ensure that those *persons* understand how the *rules* in *C-CON* apply to them.
- 2.3.2 G
- (1) The steps that a *relevant authorised person* must take to secure that its *SMF managers, certified employees* and *other conduct rules staff* understand how the *rules* in *C-CON* apply to them includes the provision of suitable training.
  - (2) Suitable training should always ensure that those who are subject to the *rules* in *C-CON* have an awareness and broad understanding of all of the *rules* in *C-CON*, and that they also have a deeper understanding of the practical application of the specific *rules* which are relevant to their work.
  - (3) For example:
    - (a) for individuals who trade in the markets, *rule 5* in *C-CON* 2.1.5R may apply in various circumstances arising in the individual's day-to-day activities, and additional training may be appropriate to ensure that the individual knows how that *rule* applies to those activities in those various circumstances; or
    - (b) for individuals who deal directly with customers, *rule 4* in *C-CON* 2.1.4R may apply in many and various circumstances making additional training appropriate for such individuals.

- 2.3.3 G Section 64B(5) of the *Act* requires a *relevant authorised person* to notify the *FCA* if it knows or suspects that any of its *SMF managers*, *certification employees* or *other conduct rules staff* has failed to comply with any of the *rules* in *C-CON*. Further *rules* and *guidance* on notifications to the *FCA* by a *relevant authorised person* can be found in *SUP 15.11*(Notification of C-CON breaches and disciplinary action).

### 3.1 General factors for assessing compliance

- 3.1.1 G Where descriptions of conduct are provided in this chapter which exemplify breaches of the *rules* in *C-CON*, they are not intended to be an exhaustive list of the kind of conduct that may contravene the relevant *rule*.
- 3.1.2 G In assessing compliance with or a breach of a *rule* in *C-CON*, the *FCA* will have regard to the context in which a course of conduct was undertaken, including:
- (1) the precise circumstances of the individual case;
  - (2) the characteristics of the particular function performed by the individual in question; and
  - (3) the behaviour expected in that function.
- 3.1.3 G Without prejudice to section 66A of the *Act*, a *person* will only be in breach of any of the *rules* in *C-CON* where they are personally culpable. Personal culpability arises where:
- (1) a *person's* conduct was deliberate; or
  - (2) the *person's* standard of conduct was below that which would be reasonable in all the circumstances.
- 3.1.4 G In determining whether or not the particular conduct of a *person* complies with the *rules* in *C-CON*, factors the *FCA* would expect to take into account include:
- (1) whether that conduct relates to activities that are subject to other provisions of the *Handbook*;
  - (2) whether that conduct is consistent with the requirements and standards of the *regulatory system* relevant to the *person's firm*.
- 3.1.5 G In determining whether or not the conduct of an *SMF manager* complies with *rules* SM1 to SM4 in *C-CON*, factors the *FCA* would expect to take into account include:
- (1) whether they exercised reasonable care when considering the

information available to him;

- (2) whether they reached a reasonable conclusion upon which to act;
- (3) the nature, scale and complexity of the *firm's* business;
- (4) their role and responsibility as determined by reference to the relevant [*statement of responsibility*];
- (5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to his role and responsibilities.

3.1.6 G In assessing whether an *SMF manager* may have breached a *rule* in *C-CON*, the nature, scale and complexity of the business and the role and responsibility of the individual undertaking the activity in question within the *firm* will be relevant in assessing whether that *person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be.

3.1.7 G *UK domestic firms* listed on the London Stock Exchange are subject to the *UK Corporate Governance Code*, whose internal control provisions are amplified in the publication entitled 'Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)' issued by the Financial Reporting Council. Therefore, *firms* in this category will be subject to that code as well as to the *rules* in *C-CON*. In forming an opinion whether an *SMF manager* has complied with the *rules* in *C-CON*, the *FCA* will give due credit if they followed corresponding provisions in the *UK Corporate Governance Code* and related guidance.

#### 4.1 More specific guidance regarding individual conduct rules

Rule 1: You must act with integrity

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

- (1) Misleading (or attempting to mislead) by act or omission:
  - (a) a *client*; or
  - (b) the *firm* for whom the *person* works (or its auditors); or
  - (c) the *FCA* or;
  - (d) the *PRA*.
- (2) Falsifying *documents*.
- (3) Misleading a *client* about the risks of an *investment*.

- (4) Misleading a *client* about the charges or surrender penalties of products.
- (5) Misleading a *client* about the likely performance of products by providing inappropriate projections of future returns.
- (6) Misleading a *client* by informing him that products require only a single payment when that is not the case.
- (7) Mismarking the value of *investments* or trading positions.
- (8) Procuring the unjustified alteration of prices on illiquid or *off-exchange* contracts, or both.
- (9) Misleading others within the *firm* about the credit-worthiness of a borrower.
- (10) Providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.
- (11) Providing false or inaccurate information to the *firm* (or to the *firm's* auditors).
- (12) Providing false or inaccurate information to the *FCA* or the *PRA*.
- (13) Destroying, or causing the destruction of, *documents* (including falsified documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a *client*, his *firm*, or the *FCA* or the *PRA*.
- (14) Failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.
- (15) Misleading others in the *firm* about the nature of risks being accepted.
- (16) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *person* knows that they are unable to justify its suitability for that *customer*.
- (17) Failing to inform, without reasonable cause:
  - (a) a *customer*; or
  - (b) his *firm* (or its auditors); or
  - (c) the *FCA* or;
  - (d) the *PRA*;

of the fact that their understanding of a material issue is incorrect,

despite being aware of their misunderstanding, including, but not limited to, deliberately:

- (i) failing to disclose the existence of falsified documents; and
  - (ii) failing to rectify mismarked positions immediately.
- (18) Preparing inaccurate or inappropriate records or returns, including, but not limited to:
- (a) preparing performance reports for transmission to *customers* which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);
  - (b) preparing inaccurate training records or inaccurate details of qualifications, past employment record or experience; and
  - (c) preparing inaccurate trading confirmations, contract notes or other records of *transactions* or holdings of *securities* for a *customer*, whether or not the *customer* is aware of these inaccuracies or has requested such records.
- (19) Misusing the assets or confidential information of a *client* or of their *firm* including, but not limited to, deliberately:
- (a) front running *client* orders;
  - (b) carrying out unjustified trading on *client* accounts to generate a benefit (whether direct or indirect) to the *person* (that is, churning);
  - (c) misappropriating a *client's* assets, including wrongly transferring to personal accounts cash or *securities* belonging to *clients*;
  - (d) wrongly using one *client's* funds to settle margin calls or to cover trading losses on another *client's* account or on *firm* accounts;
  - (e) using a *client's* funds for purposes other than those for which they were provided;
  - (f) retaining a *client's* funds wrongly; and
  - (g) pledging the assets of a *client* as security or margin in circumstances where the *firm* is not permitted to do so.
- (20) Designing *transactions* to disguise breaches of requirements and

standards of the *regulatory system*.

- (21) Not paying due regard to the interests of a *customer*.
- (22) Acts, omissions or business practices that could be reasonably expected to cause *customer* detriment.

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

- 4.1.2 G Due skill, care and diligence are required especially where activities might affect *customers* or affect the integrity of the financial system.

Examples of acting with due skill, etc

- 4.1.3 G The following is a non-exhaustive list of examples of conduct by any *conduct rules staff* that would be in breach of this *rule*.

- (1) Failing to inform:

- (a) a *customer*; or
- (b) his *firm* (or its auditors);

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, including the following:

- (i) failing to explain the risks of an *investment* to a *customer*;
  - (ii) failing to disclose to a *customer* details of the charges or surrender penalties of *investment* products;
  - (iii) mismarking trading positions;
  - (iv) providing inaccurate or inadequate information to a *firm* or its auditors;
  - (v) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.
- (2) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.
  - (3) Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.

- (4) Undertaking *transactions* without a reasonable understanding of the risk exposure of the *transaction* to the *firm*, including trading on the *firm's* own account without a reasonable understanding of the liability (either potential or actual) of the *transaction*.
- (5) Failing to provide adequate control over a *client's* assets, including:
  - (a) failing to segregate a *client's* assets; and
  - (b) failing to process a *client's* payments in a timely manner;
- (6) Continuing to perform a function having failed to meet the standards of knowledge and skill set out in the Training and Competence sourcebook (*TC*) for that function.

Acting with due skill, etc as a manager

- 4.1.4 G It is important for a manager to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.
- 4.1.5 G It is important for a manager to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.
- 4.1.6 G 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, a manager should require explanations from those who report to him. Where those explanations are implausible or unsatisfactory, they should take steps to test the veracity of those explanations.
- 4.1.7 G Where a manager is not an expert in a business area, they should consider whether they (or those with whom they work) have the necessary expertise to provide an adequate explanation of issues within that business area. If not, they should seek an independent opinion from elsewhere within or outside the *firm*.
- 4.1.8 G The following is a non-exhaustive list of examples of conduct by a manager that would be in breach of this *rule*.
  - (1) Failing to take reasonable steps to ensure that the business of the *firm* for which he has responsibility:
    - (a) is controlled effectively;
    - (b) complies with the relevant requirements and standards of

the *regulatory system* applicable to that area of the business; and

- (c) is conducted in such a way to ensure that any delegation of responsibilities is to an appropriate person and is overseen effectively.
- (2) Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible, including:
- (a) permitting *transactions* without a sufficient understanding of the risks involved;
  - (b) permitting expansion of the business without reasonably assessing the potential risks of that expansion;
  - (c) inadequately monitoring highly profitable *transactions* or business practices or unusual *transactions* or business practices;
  - (d) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and
  - (e) failing to obtain independent, expert opinion where appropriate.
- (3) 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).

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

- 4.1.9 G For the purpose of *rule 3* in *C-CON 2.1.3R*, regulators other than the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to *activities* to which *C-CON* applies and a power to call for information from the *firm*, or from individuals performing certain functions in connection with those *regulated activities*. This may include an exchange or an *overseas regulator*.
- 4.1.10 G There is no duty on a *person* to report information directly to the regulator concerned unless they are one of the *persons* responsible within the *firm* for reporting matters to the regulator concerned. However, if a *person* takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the *appropriate regulator* will, in respect of that information, view them as being one of those within the *firm* who has taken on responsibility for deciding whether to report

that matter to the regulator concerned.

- 4.1.11 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) Failing to report promptly in accordance with his *firm's* internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the *FCA*, the *PRA*, or both the *PRA* and the *FCA*.
  - (2) Failing without good reason to:
    - (a) inform a regulator of information of which the *approved person* was aware in response to questions from that regulator;
    - (b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and
    - (c) 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.

- 4.1.12 G For the purposes of *C-CON* 4.1.12G(2), good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court, or complying with an obligation imposed by law or by a regulator.

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

- 4.1.13 G *Rule 4* in *C-CON* 2.1.4R applies to all *conduct rules staff*, regardless of whether that *person* has direct contact or dealings with *customers* of the *firm*. *Persons* subject to the *rules* in *C-CON* should consider how their actions (or their failure to act) can affect the interests of *customers* or result in *customers* being treated unfairly.

- 4.1.14 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) Failing to inform a *customer* of material information in circumstances where they were aware, or ought to have been aware, of such information, and of the fact that they should provide it, including the following:
    - (a) failing to explain the risks of an *investment* to a *customer*;
    - (b) failing to disclose to a *customer* details of the charges or surrender penalties of *investment* products; and

- (c) providing inaccurate or inadequate information to a *customer* about a product or service.
- (2) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.
- (3) Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.
- (4) Failing to provide adequate control over a *client's* assets, including:
  - (a) failing to segregate a *client's* assets; and
  - (b) failing to process a *client's* payments in a timely manner.
- (5) Providing a *customer* with a product which is other than the one applied for by that *customer*, unless the *customer* understands the differences and understands the product they have purchased.
- (6) Failing to acknowledge or to seek to resolve mistakes in dealing with *customers*.
- (7) Failing to provide terms and conditions to which a product or service is subject in a way which is clear and easy for the *customer* to understand.

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

- 4.1.15 G A general consideration about whether or not a *person's* conduct complies with the relevant requirements and standards of the market, is whether they, or the *firm*, complies with the *Code of Market Conduct (MAR 1)* or relevant market codes and exchange rules. Compliance with the *Code of Market Conduct (MAR 1)* or relevant market codes and exchange rules will tend to show compliance with *rule 5* in *C-CON 2.1.5R*.
- 4.1.16 G Manipulating or attempting to manipulate a market, such as a foreign exchange market, exemplifies failing to observe proper standards of market conduct.

## 4.2 More specific guidance regarding senior manager conduct rules

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

- 4.2.1 G An *SMF manager's* role and responsibilities are set out in the *statement of*

*responsibilities.*

- 4.2.2 G Strategy and plans will often dictate the risk which the business is prepared to take on and high level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, an *SMF manager* should bear this in mind.
- 4.2.3 G To comply with the obligations of *rule SM1* in *C-CON 2.2.1R*, an *SMF manager* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.
- 4.2.4 G The organisation of the business and the responsibilities of those within it should be clearly defined. 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.
- 4.2.5 G Where members of staff have particular levels of authorisation, 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 they are aware.
- 4.2.6 G An *SMF manager* should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.
- 4.2.7 G If an individual's performance is unsatisfactory, then the relevant *SMF manager* should review carefully whether to allow that individual to continue in their position. In particular, if they are aware of concerns relating to the compliance with requirements and standards of the *regulatory system* (or internal controls) of the individual concerned, or of staff reporting to that individual, the *SMF manager* 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 *SMF manager* should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the *regulatory system*.
- 4.2.8 G As part of organising the business, an *SMF manager* should ensure that there is an orderly transition when another *SMF manager* under his oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set of handover-notes

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

- (1) perform their function effectively;
- (2) ensure compliance with the requirements and standards of the *regulatory system*; and
- (3) ensure that the individual with overall responsibility for that part of the business of the *firm* maintains effective control.

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

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

- (1) Failing to take reasonable steps to apportion responsibilities for all areas of the business under the *approved person's* control.
- (2) Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated, including the following:
  - (a) implementing confusing or uncertain reporting lines;
  - (b) implementing confusing or uncertain authorisation levels; and
  - (c) implementing confusing or uncertain job descriptions and responsibilities.
- (3) In the case of a manager who is responsible for dealing with the apportionment of responsibilities, failing to take reasonable care to maintain a clear and appropriate apportionment of responsibilities, including the failure:
  - (a) to review regularly the responsibilities which have been apportioned; and
  - (b) to act where that review shows that those responsibilities

have not been clearly apportioned.

- (4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing a *senior management function*, including the following:
- (a) 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;
  - (b) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role; and
  - (c) 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.

SM2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system

- 4.2.11 G An *SMF manager* must take reasonable steps both to ensure his *firm's* compliance with the relevant requirements and standards of the *regulatory system* and to ensure that all staff are aware of the need for compliance.
- 4.2.12 G An *SMF manager* need not themselves put in place the systems of control for the business. Whether they do this depends on their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the *regulatory system* and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the *regulatory system*, and the nature, scale and complexity of the business.
- 4.2.13 G Where an *SMF manager* becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the *regulatory system* falling within his area of responsibility, then they should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures may have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures
- 4.2.14 G If an issue raises questions of law or interpretation, an *SMF manager* may need to take legal advice. If appropriate legal expertise is not available in-

house, they may need to consider appointing an appropriate external adviser.

- 4.2.15 G Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *SMF manager* responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the *SMF manager* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.
- 4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) 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 *regulatory system* in respect of the activities of the *firm* in question.
  - (2) 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 *regulatory system* in respect of the activities of the *firm* in question.
  - (3) Failing to take reasonable steps adequately to inform themselves about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the *regulatory system* in respect of the activities of the *firm* in question may have arisen (taking account of the systems and procedures in place) including failing to investigate whether systems or procedures may have failed and, where appropriate, failing to obtain expert opinion on the adequacy of the systems and procedures.
  - (4) 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 *regulatory system* relating to the activities of the *firm* in question including:
    - (a) unreasonably failing to implement recommendations for improvements in systems and procedures; and
    - (b) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.

- (5) In the case of a manager who has responsibility for overseeing the establishment and maintenance of appropriate systems and controls or the apportionment of responsibilities, failing to take reasonable care, to ensure that these obligations are discharged effectively.
- (6) In the case of a *proprietary trader*, failing to maintain and comply with appropriate systems and controls in relation to that activity.
- (7) In the case of the *money laundering reporting officer*, failing to discharge the responsibilities imposed on them by the *firm* for oversight of its compliance with the *FCA's rules* on systems and controls against *money laundering*.
- (8) In the case of an *SMF manager* who is responsible for the compliance function failing to ensure that:
  - (a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;
  - (b) a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance;
  - (c) the *persons* involved in the compliance functions are not involved in the performance of services or activities they monitor;
  - (d) the method of determining the remuneration of the *persons* involved in the compliance function does not compromise their objectivity; and
  - (e) the method of determining the remuneration complies, where applicable, with the *Remuneration Code*.

SM3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively

- 4.2.17 G An *SMF manager* may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.
- 4.2.18 G An *SMF manager* should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.

- 4.2.19 G The *FCA* recognises that an *SMF manager* will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The *SMF manager* will not be in breach of *rule SM3 in C-CON 2.2.3R* unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although they cannot delegate to the *FCA* the responsibility for dealing with the problem or issue, they can speak to the *FCA* to discuss his approach.
- 4.2.20 G An *SMF manager* will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The *FCA* will look to the *SMF manager* to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.
- 4.2.21 G 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 exemplifies a failure to comply with *rule SM3 in C-CON 2.2.3R*.
- 4.2.22 G Although an *SMF manager* may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that *person's* responsibility to ensure that they receive reports on progress and questions those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, then the *SMF manager* may need to challenge the explanations he receives and possibly take action personally to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, an *SMF manager* should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities.
- 4.2.23 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) 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) including:

- (a) disregarding an issue or part of the business once it has been delegated;
  - (b) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; and
  - (c) accepting implausible or unsatisfactory explanations from delegates without testing their veracity.
- (2) 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 including:
- (a) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided; and
  - (b) failing to review the performance of an outside contractor in connection with the delegated issue or business.

4.2.24 G In determining whether or not the conduct of an *SMF manager* complies with *rule SM3* in *C-CON 2.2.3R*, the factors which the *FCA* would expect to take into account include:

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

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

4.2.25 G For the purpose of *rule SM4* in *C-CON 2.2.4R*, regulators in addition to the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to *activities* to which *C-CON* applies and a power to call for information from the relevant *person* in connection with their function or in connection with the business for which they are responsible. This may include an exchange or an *overseas regulator*.

4.2.26 G *SM4* applies to an *SMF manager* in addition to *rule 3* in *C-CON 2.1.3R*. Although, the *rules* have some overlap, they are different. *Rule 3* normally relates to responses from individuals to requests from the regulator, whereas *SM4* imposes a duty on *SMF managers* to disclose appropriately any information of which the *appropriate regulator* would reasonably expect, including making a disclosure in the absence of any request or enquiry from the *appropriate regulator*. By virtue of his position, an *SMF manager* is likely both to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the *appropriate regulator* would

reasonably expect notice.

- 4.2.27 G Where a *person* is, or is one of the *persons* performing a *senior management function* who is responsible within the *firm* for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of *rule SM4* in *C-CON 2.2.4R*.
- 4.2.28 G If an *SMF manager* were to come across a piece of information that was something in relation to which they thought the *FCA* or *PRA* could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities by virtue of his *statement of responsibilities*. If it does, then they should ensure that, if it otherwise appropriate to do so, it is disclosed to the *appropriate regulator*. If it does not fall within the scope of their responsibilities, then in the absence of any reason to the contrary, they might reasonably assume that the matter of its disclosure to the *appropriate regulator* was being dealt with by the *SMF manager* who has responsibility for dealing with information of that nature. If an *SMF manager* was not sure that the matter was being dealt with by another *SMF manager*, or if they were not sure whether this was in their area or not, then the *FCA* would expect them to make enquiries to inform themselves, rather than disregard the matter.
- 4.2.29 G In determining whether or not a *person's* conduct complies with *rule SM4* in *C-CON 2.2.4R*, the factors which the *FCA* would expect to take into account include:
- (1) the likely significance to the regulator concerned of the information which it was reasonable for the individual to assume;
  - (2) whether the information related to the individual themselves or to their *firm*; and
  - (3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

## Annex B

### Amendments to the Glossary of definitions

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

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

<i>certification employee</i>	(as described in more detail in section 63E(1) of the <i>Act</i> (Certification of employees by relevant authorised person)) an employee (as defined) of a <i>relevant authorised person</i> who has a valid certificate issued by that <i>relevant authorised person</i> .
<i>C-CON</i>	the Code of Conduct for Staff sourcebook, part of the <i>Handbook</i> in High Level Standards.
<i>chair of the nomination committee function</i>	FCA controlled function SMF13 in Part 1 of the table in <i>SUP</i> 10C.4.3R (Table of FCA controlled functions for relevant authorised persons), described more fully in <i>SUP</i> 10C.5.3R.
<i>conduct rules staff</i>	any <i>persons</i> who are subject to <i>C-CON</i> , as set out in <i>C-CON</i> 1 (Application).
<i>designated senior management function</i>	a <i>controlled function</i> that has been designated by the <i>FCA</i> or the <i>PRA</i> as a <i>senior management function</i> under section 59 of the <i>Act</i> (Approval for particular arrangements).
<i>employer</i>	(for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action), <i>SYSC</i> 5.3 (References and accurate information) and <i>C-CON</i> , and as defined in more detail in section 64A of the <i>Act</i> (Rules of conduct)), means the <i>person</i> described as the “employer” in paragraph (4) of the <i>Glossary</i> definition of <i>employee</i> .
<i>FCA-approved SMF manager</i>	an <i>SMF manager</i> whose approval to perform a <i>designated senior management function</i> is from the <i>FCA</i> .
<i>FCA designated senior management function</i>	an <i>FCA controlled function</i> that is a <i>designated senior management function</i> .
<i>FCA-specified significant-harm function</i>	a <i>specified significant-harm function</i> that has been specified under section 63E of the <i>Act</i> (Certification of employees by relevant authorised persons) by the <i>FCA</i> .
<i>management responsibilities map</i>	the document describing the management arrangements of a relevant <i>authorised person</i> required by <i>SYSC</i> 4.5.7R.

<i>other conduct rules staff</i>	<i>conduct rules staff</i> who fall into C-CON 1.1.2R(1)(b) and (d) and are, with certain exceptions, <i>conduct rules staff</i> who are not <i>approved persons</i> or <i>certification employees</i> .
<i>PRA controlled functions for RAPs instrument</i>	the part of the <i>PRA</i> 's rulebook titled "Senior Management Functions", which specifies <i>controlled functions</i> .
<i>PRA designated senior management function</i>	a <i>PRA controlled function</i> that is a <i>designated senior management function</i> .
<i>relevant authorised person</i>	has the meaning in section 71A of the <i>Act</i> (Meaning of "relevant authorised person") which, in summary, is an institution that meets the following conditions: <ul style="list-style-type: none"> <li>(1) it is incorporated in, or formed under the law of any part of, the <i>United Kingdom</i>; and</li> <li>(2) it does not have <i>permission</i> for <i>effecting contracts of insurance</i> or <i>carrying out contracts of insurance</i>; and</li> <li>(3) it meets one of the following conditions: <ul style="list-style-type: none"> <li>(a) its <i>Part 4A permission</i> includes <i>accepting deposits</i>; or</li> <li>(b) it meets all the following conditions: <ul style="list-style-type: none"> <li>(i) the institution is an <i>investment firm</i>; and</li> <li>(ii) its <i>Part 4A permission</i> covers <i>dealing in investments as principal</i>; and</li> <li>(iii) when carried on by it, that activity is a <i>PRA-regulated activity</i>.</li> </ul> </li> </ul> </li> </ul>

[Non-UK country branches to follow]

<i>relevant senior management application</i>	has the meaning in section 61(1)(b) of the <i>Act</i> (Determination of applications) which, in summary, is an application for approval to perform a <i>designated senior management function</i> in relation to the carrying on of a <i>regulated activity</i> by a <i>relevant authorised person</i> .
<i>senior management function</i>	a function defined in section 59ZA of the <i>Act</i> (Senior management functions) which means, in summary (in relation to the carrying on of a <i>regulated activity</i> by a <i>firm</i> ), a function that meets the following conditions: <ul style="list-style-type: none"> <li>(1) it will require the <i>person</i> performing it to be responsible for managing one or more aspects of the <i>firm's</i> affairs, so far as relating to the activity; and</li> <li>(2) those aspects involve, or might involve, a risk of serious</li> </ul>

consequences:

- (a) for the *firm*; or
- (b) for business or other interests in the *United Kingdom*.

*significant-harm function*

a function defined in section 63E(5) of the *Act* (Certification of employees by relevant authorised persons) which is, in summary (in relation to the carrying on of a *regulated activity* by a *relevant authorised person*), a function that meets the following conditions:

- (1) it will require the *person* performing it to be involved in one or more aspects of the *relevant authorised person's* affairs, so far as relating to the activity; and
- (2) those aspects involve, or might involve, a risk of significant harm to the *relevant authorised person* or to anyone who is using, or who is or may be contemplating using, any of the services provided by the *relevant authorised person*.

*significant responsibility function*

FCA controlled function SMF18 in Part 1 of the table in *SUP* 10C.4.3R (Table of FCA controlled functions for relevant authorised persons), described more fully in *SUP* 10C.7.1R.

*SMF manager*

(in relation to a *relevant authorised person*) a *person* who has approval under section 59 of the *Act* (Approval for particular arrangements) to perform a *designated senior management function* in relation to the carrying on by that *relevant authorised person* of a *regulated activity*.

*specified significant-harm function*

a *significant-harm function* that has been specified by the *FCA* or the *PRA* further to section 63E(2) of the *Act* (Certification of employees by relevant authorised persons).

*staff being assessed under FIT*

(in *FIT* and in relation to a *relevant authorised person*) any of the following:

- (1) an *FCA-approved SMF manager* or a *candidate* for an *FCA designated senior management function* whose fitness is being assessed by the *FCA* or the *relevant authorised person*; or
- (2) a *person* whose fitness to perform an *FCA-specified significant harm function* is being assessed by the *relevant authorised person* under section 63F of the *Act* (Issuing of certificates), whether or not that *person* is already a *certification employee* in relation to that *FCA-specified significant harm function*.

*statement of responsibilities*

a statement provided under section 60(2A) of the *Act* (Applications for approval), including a statement revised under section 62A of

the Act (Changes in responsibilities of senior managers).

Amend the following definitions as shown.

- compliance oversight function* (in the *FCA Handbook*):
- (1) (in the case of relevant authorised persons) FCA controlled function SMF16 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons), described more fully in SUP 10C.6.1R; and
  - (2) (in the case of other firms) FCA controlled function CF10 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in SUP 10A.7.8R.
- controlled function* a function, relating to the carrying on of a *regulated activity* by a *firm*, which is specified by either the *FCA* (in the *table of FCA controlled functions* or in the *table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons)*) or the *PRA* (in the *table of PRA controlled functions* or the *PRA controlled functions for RAPs instrument*), under section 59 of the *Act* (Approval for particular arrangements).
- director*
- (1) ...
    - (c) (in *SYSC, MIPRU 2* (Insurance mediation activity: responsibility, knowledge, ability and good repute), ~~and SUP 10A~~ (FCA Approved persons) and *SUP 10C* (FCA approved persons regime for relevant authorised persons) ...
- employee*
- (1) (for all purposes except those in (2), (3) and (4)):  
...
  - (2) ...
  - (3) (for the purposes of SYSC 5.2 (Certification regime) and the definition of *certification employee*) has the meaning in section 63E(9) of the Act (Certification of employees by relevant authorised persons) which, in summary, says an employee of a person (“A”) includes a reference to a person who:
    - (a) personally provides, or is under an obligation personally to provide, services to A under an arrangement made between A and the person providing the services or another person, and

(b) is subject to (or to the right of) supervision, direction or control by A as to the manner in which those services are provided.

(4) (for the purposes of SUP 15.11 (Notification of conduct rule breaches and disciplinary action), SYSC 5.3 (References and accurate information ) and C-CON) has the meaning in section 64A(6) of the Act (Rules of conduct) which, in summary, says an employee of a person (the “employer”) includes a reference to a person who:

(a) personally provides, or is under an obligation personally to provide, services to the employer under an arrangement made between the employer and the person providing the services or another person; and

(b) is subject to (or to the right of) supervision, direction or control by the employer as to the manner in which those services are provided.

However, where SUP 15.11 refers to certification employees, the definition in (3) applies.

*FCA controlled function*

a *controlled function* which is specified by the *FCA* under section 59 of the *Act* (Approval for particular arrangements) in the *table of FCA controlled functions* or in the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons).

*FCA governing function*

any of the following FCA controlled functions:

(1) (in the case of relevant authorised persons) FCA controlled functions SMF3, SMF13 and SMF15 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons); and

(2) (in the case of other firms) FCA controlled functions 1 to 6 in Part 1 of the table of FCA controlled functions.

*FCA required functions*

any of the following FCA controlled functions:

(1) (in the case of relevant authorised persons) FCA controlled functions for relevant authorised persons SMF16 and SMF17 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons); and

(2) (in the case of other firms) FCA controlled functions 8 to 11 in Part 1 or Part 2 of the table of FCA controlled functions.

*money laundering*

(in the *FCA Handbook*);

*reporting function*

- (1) (in the case of relevant authorised persons) FCA controlled function SMF17 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons), described more fully in SUP 10C.6.2R; and
- (2) (in the case of other firms) FCA controlled function CF11 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in SUP 10A.7.10R.

*non-executive director function*

- (1) (in the *FCA Handbook*);
  - (a) (in the case of relevant authorised persons) FCA controlled function SMF15 in Part 1 of the table in SUP 10C.4.3R, described more fully in SUP 10C.5.2R; and
  - (b) (in the case of other firms) FCA controlled function CF2 in Part 1 of the table of FCA controlled functions, described more fully in SUP 10A.6.12R and SUP 10A.6.13R.

...

*PRA controlled function*

a *controlled function* which is specified by the *PRA* under section 59 of the Act (Approval for particular arrangements) in the *table of PRA controlled functions* or the *PRA controlled functions for RAPs instrument*.

## Annex C

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

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

#### SYSC 1 Detailed application of SYSC Annex 1

...

<b>Part 2</b>	<b>Application of the common platform requirements (SYSC 4 to 10)</b>	
	Who?	
...		
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> in relation to activities carried on by it from an establishment in the <i>United Kingdom</i> . <u>However, SYSC 4.5 (Senior management responsibilities for relevant authorised persons), SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the rules in those sections.</u>
...		
2.18	R	The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> (other than an <i>incoming EEA firm</i> or an <i>Incoming Treaty firm</i> ) with respect to activities wherever they are carried on. <u>However, SYSC 4.5 (Senior management responsibilities for relevant authorised persons), SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the rules in those sections.</u>
...		

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 4	Application to a common platform firm other than to a UCITS	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents the Society, and

	investment firm			full-scope UK AIFMs of unauthorised AIFs
..				
<u>SYSC 4.5</u>	<u>Whole section applies to relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Whole section applies to relevant authorised persons only</u>

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 5	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
<u>SYSC 5.2</u>	<u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
<u>SYSC 5.3</u>	<u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>

...

Insert SYSC 4.5 as a new section. All the text is new and is not underlined.

## 4.5 Senior management responsibilities for relevant authorised persons

### Application

- 4.5.1 R This section applies to *relevant authorised persons*.
- 4.5.2 G There is no territorial limitation on the application of SYSC 4.5.
- 4.5.3 G SYSC 4.5 is not limited to *regulated activities* or other specific types of activities.
- 4.5.4 R [EEA service providers]
- 4.5.5 R [EEA incoming branches]
- 4.5.6 R [Third country branches]

### General rule about the management responsibilities map

- 4.5.7 R A *firm* must, at all times, have a comprehensive and up-to-date document (the *management responsibilities map*) that describes its management and governance arrangements, including:
  - (1) details of the reporting lines and the lines of responsibility; and
  - (2) reasonable details about the *persons* who are part of those arrangements and their responsibilities.(See further requirements in SYSC 4.5.11R.)
- 4.5.8 R Where responsibilities covered by a *firm's management responsibilities map* have been allocated to more than one *person*, the *firm's management responsibilities map* must show clearly how those responsibilities are shared or divided between the *persons* concerned.
- 4.5.9 R A *management responsibilities map* must be a single document.
- 4.5.10 G One purpose of the *management responsibilities map* is to help the *firm* and the *FCA* satisfy themselves that the *firm* has a clear organisational structure (as required by SYSC). It also helps the *FCA* to identify who it needs to speak to about particular issues and who is accountable if something goes wrong.

### Specific requirements of the management responsibilities map

- 4.5.11 R A *management responsibilities map* must include:
  - (1) the names of all the *firm's approved persons* (including *PRA approved persons*), *senior management* and *senior personnel* and details of the responsibilities which they hold; and
  - (2) all responsibilities described in any current *statement of responsibilities*; and

- (3) details of the management and governance arrangements relating to:
  - (a) the functions of managing and supervising the business areas and activities and the internal management functions set out in *SUP* 10C Annex 1R (The main business areas and management functions of a relevant authorised person); and
  - (b) the functions defined as prescribed responsibilities and credit union prescribed responsibilities in the part of the *PRA* rulebook titled “Allocation of responsibilities”; and
  - (c) each of the functions in the table in *SYSC* 4.5.16R (Senior management responsibilities); and
- (4) which of the functions in *SUP* 10C Annex 1R the *firm* has, and details about whether and how they are shared or divided up; and
- (5) details of the risks referred to in Part Two of the table in *SYSC* 4.5.16R; and
- (6) details of the functions allocated under *SYSC* 4.5.25R, including the identity of the *persons* to whom they are allocated; and
- (7) matters reserved to the *governing body* (including its committees); and
- (8) how the *firm’s* management and governance arrangements fit together with those of its *group*, and the extent to which the *firm’s* management and governance arrangements are provided by or shared with other members of its *group*; and
- (9) details of the reporting lines and the lines of responsibility (if any) to:
  - (a) other members of its *group* or other third parties; or
  - (b) *persons* acting as employees or officers of, or otherwise acting for, anyone in (a); or
  - (c) committees or other bodies of anyone in (a); and
- (10) reasonable details about the *persons* described or identified in the *management responsibilities map*, including:
  - (a) whether they are *employees* of the *firm* and, if not, by whom they are employed;
  - (b) whether they are *certification employees* of the *firm*;
  - (c) the responsibilities they have in relation to other *group* members; and
- (11) details of how the things in (1) to (10) fit together and fit into the

*firm's* management and governance arrangements as a whole.

- 4.5.12 R *SYSC 4.5.11R(1)* does not require the *firm* to include the names of *approved persons* under *SUP 10C.1.11R* (Appointed representatives).
- 4.5.13 G The *management responsibilities map* should be consistent with the *statements of responsibilities*. The *statements of responsibilities* and the *management responsibilities map* should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular *statement of responsibilities* fit into the overall system of management and governance of the *firm*.
- 4.5.14 G The *management responsibilities map* should include functions that are included in a *PRA controlled function* under *SUP 10C.8* (Minimising overlap with the PRA approved persons regime).
- 4.5.15 G The *management responsibilities map* should include functions that are excluded from the *significant responsibility function* under *SUP 10C.7.1R(2)* (Exclusion for *approved person* with approval to perform other *controlled functions*).
- 4.5.16 R Table: Senior management responsibilities

Senior management responsibility	Explanation
Part One	
(1) Ensuring the <i>firm's</i> performance of its obligations under the senior management regime, including implementation and oversight	<p>The senior management regime means the requirements of the <i>regulatory system</i> applying to <i>relevant authorised persons</i> insofar as they relate to <i>approved persons</i> performing <i>designated senior management functions</i>, including <i>SUP 10C</i> (FCA approved persons regime for relevant authorised persons).</p> <p>This includes:</p> <p>(1) oversight of compliance with conditions and time limits on approval; and</p> <p>(2) compliance with the requirements about the <i>statements of responsibilities</i> (but not the allocation of responsibilities recorded in them); and</p> <p>(3) ensuring that the <i>firm</i> has complied with its obligations under section 60A of the <i>Act</i> (Vetting of candidates by relevant</p>

	authorised persons).
(2) Ensuring the <i>firm's</i> performance of its obligations under the employee certification regime, including implementation and oversight	The employee certification regime means the requirements of sections 63E and 63F of the <i>Act</i> (Certification of employees) and all other requirements of the <i>regulatory system</i> about the matters dealt with in those sections, including SYSC 5.2 (Certification Regime).
(3) Compliance with the requirements of the <i>regulatory system</i> about the <i>management responsibilities map</i>	This does not include allocating responsibilities recorded in it
(4) Ensuring the induction, training and professional development of all <i>persons</i> performing <i>designated senior management functions</i> on behalf of the <i>firm</i> and all members of the <i>firm's management body</i>	
(5) Ensuring and overseeing the integrity and independence of the audit function in accordance with SYSC 6.2 (Internal Audit)	
(6) Ensuring and overseeing the integrity and independence of the compliance function in accordance with SYSC 6.1 (Compliance)	
(7) Ensuring and overseeing the integrity and independence of the risk function in accordance with SYSC 7.1.21R and SYSC 7.1.22R (Risk control)	
(8) Maintaining the independence, integrity and effectiveness of the <i>firm's</i> policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment	
Part Two	
The following functions:	
(1) The function of having overall	The risks are the risks the <i>firm</i> has

responsibility for any part of the risks referred to in the right hand column of this Part of this table.	identified under the following requirements:
(2) The function of having overall responsibility for each of the business areas and activities and management functions in <i>SUP 10C Annex 1R</i> (The main business areas and management functions of a relevant authorised person), so far as applicable to the <i>firm</i> .	(1) Rule 3.1. of the PRA’s Internal Capital Adequacy Assessment section of the CRR firms rulebook (which implements article 73 of the <i>CRD</i> );
(3) The function of having overall responsibility for any other activities, business areas or management functions of the <i>firm</i> .	(2) <i>SYSC 4.1.1R</i> (governance, including effective processes to identify, manage, monitor and report the risks it is or might be exposed); (3) <i>SYSC 7.1.2R</i> (risk management policies); (4) <i>SYSC 7.1.3R</i> (mechanisms to manage risk); (5) <i>SYSC 7.1.4R</i> (management body review of strategies and policies in relation to the risks a firm is, or might be, exposed to); and (6) <i>SYSC 7.1.17R</i> (management body has overall responsibility for risk management). (7) <i>SYSC 7.1.21R</i> (Risk function)

Guidance on senior management responsibilities and how they apply to the approved persons regime

- 4.5.17 G (1) The division of activities in the table of senior management responsibilities in *SYSC 4.5.16R* is not just important for the *management responsibilities map*. It is also important for the allocation of responsibilities among a *firm’s* senior management and for the *approved persons* regime. The table in *SYSC 4.5.18G* summarises this. The table concentrates on the four main types of function for these purposes.
- (2) The table also gives *guidance* about the activities in the table in *SYSC 4.5.16R*.

4.5.18 G Table: Guidance on the management responsibilities map and the allocation of senior management responsibilities

Functions	Purpose
<p>(1) The functions in Part One of the table of senior management responsibilities in SYSC 4.5.16R</p>	<p>(1) These functions relate to specific requirements of the <i>Act</i> and the <i>FCA</i> about a <i>firm's</i> senior management arrangements.</p> <p>(2) These functions are also included in the list of the <i>PRA's</i> prescribed responsibilities in the part of the <i>PRA</i> rulebook titled "Allocation of responsibilities".</p> <p>(3) Anyone performing one of these functions should be an <i>SMF manager</i>, but not someone who is only approved to perform the <i>significant responsibility function</i> (see SYSC 4.5.25R).</p>
<p>(2) The functions in Part Two of the table of senior management responsibilities in SYSC 4.5.16R</p>	<p>(1) Part Two of the table of senior management responsibilities in SYSC 4.5.16R covers anyone with overall responsibility for any of the activities, business areas, risks or management functions of a <i>firm</i>.</p> <p>(2) This will include anyone with overall responsibility for any of the functions described in Part Three of this table. However, as the <i>FCA</i> does not impose a single model of how <i>firms</i> should organise themselves, Part Three of this table may not catch every activity of a <i>firm</i>. Part Two of the table of senior management responsibilities in SYSC 4.5.16R also captures those with overall responsibility for these other activities.</p> <p>(3) Anyone having overall responsibility for any function of a <i>firm</i> will be performing an <i>FCA controlled function</i>, as explained in SYSC 4.5.26G.</p>
<p>(3) The business areas and activities and the internal management functions set out in SUP 10C Annex 1R</p>	<p>(1) These are key functions that the <i>FCA</i> thinks are likely to apply to most <i>firms</i>, although the <i>FCA</i> does not require <i>firms</i> to organise themselves in this way.</p> <p>(2) Most or all of these functions will normally apply to a complex <i>firm</i>. Many of them may not apply to a non-complex <i>firm</i>.</p> <p>(3) These functions are not used directly for the <i>approved persons</i> regime. The head of one of these functions will not be performing an <i>FCA controlled function</i> unless he has overall responsibility for it, as described in paragraph (4) of</p>

	<p>this part of this table.</p> <p>(4) If a business area or management function to which <i>SUP</i> 10C Annex 1R refers is applicable to the <i>firm</i>, the <i>firm</i> should allocate overall responsibility for it to someone. That <i>person</i> will be performing a <i>designated senior management function</i> and will also fall into Part Two of the table of senior management responsibilities in <i>SYSC</i> 4.5.16R. See Part Two of this table and <i>SYSC</i> 4.5.26G for more about this.</p> <p>(5) A function in <i>SUP</i> 10C Annex 1R is inapplicable to a <i>firm</i> if it relates to an activity the <i>firm</i> does not carry out. For example, if a <i>firm</i> does not deal with <i>retail customers</i>, the functions relating to <i>retail customers</i> will not be applicable to it. The <i>firm's management responsibilities map</i> should note that these functions have not been allocated because they do not apply to the <i>firm</i>.</p>
(4) <i>PRA</i> prescribed responsibilities	<p>(1) This refers to the responsibilities defined as prescribed responsibilities and credit union prescribed responsibilities in the part of the <i>PRA</i> rulebook titled “Allocation of responsibilities”.</p> <p>(2) It is important that the <i>FCA</i> understands the <i>firm's</i> arrangements for these functions but this section does not have any additional specific requirements about them.</p> <p>(3) Some of these <i>PRA</i> responsibilities are also reflected in the responsibilities described in Part One of this table. This section does have specific requirements about the functions described in Part One of this table.</p>
<p>Note 1: See <i>SYSC</i> 4.5.19G to <i>SYSC</i> 4.5.24G for what overall responsibility means.</p>	
<p>Note 2: The functions described in this table may overlap. For example, the functions described in Parts Three and Four may overlap. The different activities and functions in <i>SUP</i> 10C Annex 1R (referred to in Part Three of this table) may also overlap with each other.</p>	
<p>Note 3: Although this section does not impose a single model of how <i>firms</i> should organise themselves, other parts of the <i>Handbook</i> and <i>PRA</i> requirements may impose more detailed requirements.</p>	

#### Meaning of overall responsibility

- 4.5.19 G When *SYSC* 4.5 refers to a *person* having overall responsibility for a function it means a *person* who has:

- (1) ultimate responsibility (under the *governing body*) for managing or supervising that function; and
  - (2) primary responsibility for briefing and reporting to the *governing body* about that function and putting matters for decision about that function to the *governing body*.
- 4.5.20 G Having overall responsibility for a matter does not mean having ultimate authority over it. The ultimate decision-making body of a *firm* is its *governing body*, acting collectively.
- 4.5.21 G
- (1) A *person* with overall responsibility for a matter will either be a member of the *governing body* or will report directly to the *governing body* for that matter.
  - (2) For example, a *firm* appoints A to be head of sales. A is not on the *governing body*. A reports to an executive director (B) and B reports to the *governing body* about the sales function. In this example B, rather than A, has overall responsibility for sales.
  - (3) B's role is included in Part Two of the table of senior management responsibilities in SYSC 4.5.16R.
  - (4) A's role should be included in the *management responsibilities map*.
  - (5) The treatment of the roles of A and B under the *approved persons* regime is explained in SYSC 4.5.26G.
- 4.5.22 G
- (1) A *person* who reports to another may still have overall responsibility for a function.
  - (2) For example, a head of compliance may report direct to the *governing body* but be subject to performance appraisal by the chief executive. In this example, the head of compliance will still have overall responsibility for compliance.
  - (3) If a *person* (A):
    - (a) reports directly to the *firm's governing body* about a particular matter; but
    - (b) is not a member of the *governing body*; and
    - (c) reports to a member of the *governing body* (B) about that matter;B has overall responsibility for that matter.
  - (4) A member of the *governing body* who reports to the chief executive may still have overall responsibility for a function.

4.5.23 G When SYSC 4.5 refers to a *person* having overall responsibility for a function, it does not mean that that *person* has day-to-day management control of that function.

4.5.24 G Overall responsibility for a risk means having responsibility for the function of identifying, assessing, managing, monitoring and mitigating that risk.

Management functions for which responsibility must be allocated and link to the senior management regime

4.5.25 R (1) A *firm* must allocate each of the functions in Part One of the table in SYSC 4.5.16R (Senior management responsibilities) to one or more *SMF managers* of the *firm* other than someone who is only approved to perform the *significant responsibility function*.

(2) A *firm* must allocate each of the functions in Part Two of the table in SYSC 4.5.16R (Senior management responsibilities) to one or more *approved persons*.

(3) A *firm* must make the allocations in (1) and (2) in such a way that it is clear who has which of those responsibilities.

(4) This *rule* does not require a *firm* to allocate overall responsibility for:

(a) the functions defined as prescribed responsibilities and credit union prescribed responsibilities in the part of the *PRA* rulebook titled “Allocation of responsibilities; or

(b) a function in Part One of the senior management responsibilities table in SYSC 4.5.16R;

even if having overall responsibility for that function also falls into Part Two of that table.

4.5.26 G (1) The purpose of SYSC 4.5.25R is to help to ensure that there is at least one *approved person* who has overall responsibility for each activity of a *firm*, except for those in Part One of the table in SYSC 4.5.16R (Senior management responsibilities) and the *PRA*’s “prescribed responsibilities” and “credit union prescribed responsibilities”.

(2) Having overall responsibility for such activities requires approval as an *approved person*. This is because a *person* who has overall responsibility for one of those functions (see SYSC 4.5.19G to SYSC 4.5.24G) will either be:

(a) a member of the *firm*’s *governing body* (which involves performing either an *FCA governing function* or a *PRA controlled function*); or

(b) performing another *controlled function*, which will be the *significant responsibility function* if the *person* is not approved

for another *controlled function*.

- (3) The *significant responsibility function* applies because having such a responsibility falls into Part Two of the senior management responsibilities table in SYSC 4.5.16R. SYSC 4.5.25R requires such functions to be allocated. The *significant responsibility function* is defined to cover anyone performing a function allocated under SYSC 4.5.25R (if the manager in question is not approved to perform another *controlled function*).
- (4) The sales function can be used as an example of how SYSC 4.5.25R and SUP 10C Annex 1R (The main business areas and management functions of a relevant authorised person) work together.
- (5) Many *firms* will have a head of sales who is not a member of the *governing body* and does not report to it. If the *firm* has such an arrangement, it should appoint a member of its *governing body*, or a *person* who reports directly to it, to be responsible to the *governing body* for the sales function. This responsibility should be included in the *statement of responsibilities* of the *approved person* carrying out this oversight role.
- (6) Therefore, taking the example in SYSC 4.5.21G, SYSC 4.5.25R does not cover the role of the head of sales (A) but it does cover the role of the *person* with overall responsibility for the sales function (B).
- (7) A will not be performing a *controlled function* but B will be.
- (8) See Part Three of the table in SYSC 4.5.18G for *guidance* on SUP 10C Annex 1R.

- 4.5.27 G
- (1) There is no requirement that an *approved person* must have overall responsibility for the activities in Part One of the table in SYSC 4.5.16R (Senior management responsibilities) or for the *PRA's* “prescribed responsibilities” or “credit union prescribed responsibilities”. Instead, the policy is that these functions should be performed by *approved persons*.
  - (2) SYSC 4.5.25R says that a function in Part One of the senior management responsibilities table in SYSC 4.5.16R should be allocated to certain types of *SMF managers*. (See Part One of the table in SYSC 4.5.18G for *guidance* on these functions.)
  - (3) The *PRA* requires its “prescribed responsibilities” and “credit union prescribed responsibilities” to be allocated to certain types of *SMF managers*. The details can be found in the part of the *PRA's* rulebook titled “Allocation of Responsibilities”. (See Part Four of the table in SYSC 4.5.18G for *guidance* on these prescribed responsibilities.)

Who functions should be allocated to

- 4.5.28 G The *FCA* expects a *firm* to allocate all the functions in SYSC 4.5.25R to an individual and not to a legal *person*.
- 4.5.29 G The *FCA* would not consider it unusual if a *person* who has overall responsibility for a particular function and reports directly to the *firm's governing body* was not a member of the *governing body*. For example, in some *firms*, the head of compliance reports directly to the *governing body*.
- 4.5.30 G (1) A *person* may have overall responsibility for a matter without being a member of the *firm's governing body*, which means that (ignoring (2)) a relatively junior *person* could have overall responsibility for an activity of a *firm*.
- (2) However, the *FCA* expects that anyone who has overall responsibility for a matter will be sufficiently senior to be able to exercise his management and oversight responsibilities effectively.
- 4.5.31 G (1) This section allows a *firm* to divide overall responsibility for its activities between members of its *governing body* and exclude *persons* who are not members.
- (2) It will be common for a small non-complex *firm* to divide overall responsibility for its activities between members of its *governing body* and not to assign overall responsibility for any activity to someone who is not a member.
- (3) However, when deciding how to divide up overall responsibility for its activities, a *firm* should avoid assigning such a wide range of responsibilities to a particular *person* that the *person* is not able to carry out those responsibilities effectively.
- (4) Therefore, in a large or complex *firm*, the *FCA* will expect the overall responsibility for some functions to be assigned to *persons* in the layer of management below the *governing body*. Anyone in that layer having overall responsibility for an activity will be performing a *designated senior management function* (see SYSC 4.5.26G).

#### Dividing management functions between different people

- 4.5.32 R If a *firm* allocates responsibility for a function in Part One of the table in SYSC 4.5.16R (Senior management responsibilities) to more than one *person* jointly or divides overall responsibility for it between different *persons*, the *management responsibilities map* must record why this has been done.
- 4.5.33 G The *FCA* would expect that a function in Part One of the table in SYSC 4.5.16R (Senior management responsibilities) would normally be allocated to one *person* or to two or more *persons* jointly as part of a job share or where departing and incoming senior managers work together temporarily as part of a handover.
- 4.5.34 G (1) Some *firms* may divide functions in SUP 10C Annex 1R (The main

business areas and management functions of a relevant authorised person) between several *persons*. For example, retail sales may be divided between several people on the basis of product lines.

- (2) This section does not prevent such arrangements, but the *management responsibilities map* should describe them clearly.
- (3) This section does not require overall responsibility for a particular business area in that annex to be allocated to a single *person*.
- (4) See Part Three of the table in SYSC 4.5.18G for *guidance* on SUP 10C Annex 1R.

- 4.5.35 G (1) The *FCA* expects a *firm* to divide overall responsibility for the *firm's* activities and management functions so that responsibility for each key activity and risk to which it is potentially exposed is allocated to a single *approved person*.
- (2) The *FCA* expects that responsibilities will only be shared where they are generic to the office, such as a non-executive director.
  - (3) A responsibility may also be shared as part of a job share or where departing and incoming senior managers work together temporarily as part of a handover
  - (4) However, as explained in SYSC 4.5.34G, this does not mean that the *FCA* expects there to be one *person* with overall responsibility for a particular business area in the table in SUP 10C Annex 1R (The main business areas and management functions of a relevant authorised person). Instead, a *firm* should judge which areas should be grouped together for the purpose of allocating overall responsibility.
  - (5) The *firm* should make that judgement in the light of the way that the *firm* is organised, the business it carries out and the need not to allocate too many responsibilities to one individual (see SYSC 4.5.31G).

#### Group management arrangements and outsourcing

- 4.5.36 G A *firm* may rely on an employee of a company in the same group to perform a function in its *management responsibilities map*. If the *firm* does arrange itself in this way the *management responsibilities map* should make this clear. SYSC 4.5.37G and SYSC 4.5.38G explain how these sorts of arrangement fit into the *approved persons* regime.
- 4.5.37 G A *firm* has two choices about how the requirements in SYSC 4.5.25R (Allocation of senior management responsibilities) can be applied to the allocation of overall responsibility for the *firm's* activities in group arrangements of this kind.
- (1) The group employee is appointed by the *firm's governing body* to perform the function. This means that the *firm* will have entered into

an arrangement with that *person*. As explained in SUP 10C.3.6G, an arrangement with the *firm* is one of the factors that makes the *approved persons* regime apply.

- (2) The result is that the group official will be performing a *controlled function* and will be an *SMF manager*.
- (3) The second approach is for the *firm* to appoint someone (A) to oversee what the group employee does (so far as it concerns the *firm*) and to take overall responsibility for the function.
- (4) The result is that A will be performing a *controlled function* and will be an *SMF manager*.

4.5.38 G A *firm* may rely on an employee of a company in the same group to perform a function in Part One of the table in SYSC 4.5.16R (Senior management responsibilities). However, SYSC 4.5.25R(1) (Allocation of senior management functions) requires this to be arranged in such a way that the *person* performing the function is approved as an *approved person* of the *firm*.

4.5.39 G SYSC 4.5.36G to SYSC 4.5.38G also apply to a *firm* that outsources functions to a third party.

#### Handover certificates and other handover material

4.5.40 R A *firm* must take all reasonable steps to ensure that:

- (1) a *person* who is becoming an *SMF manager*; and
- (2) an *SMF manager* whose responsibilities are being changed; and
- (3) anyone who has management or supervisory responsibilities for the *SMF manager* in (1) or (2);

has, when the *SMF manager* starts to perform his new or revised responsibilities, all information and material that a *person* in (1) to (3) could reasonably expect to have to perform his responsibilities as a new *SMF manager* (or the responsibilities in (2) or (3)) effectively and in accordance with the requirements of the *regulatory system*.

4.5.41 R (1) A *firm* must have a policy about how it complies with SYSC 4.5.40R, including the systems and controls it uses.

(2) A *firm* must make and maintain adequate records of the steps taken to comply with SYSC 4.5.40R.

4.5.42 G The information and material in SYSC 4.5.40R that should be made available includes details about unresolved or possible breaches of the requirements of the *regulatory system* and of any unresolved concerns expressed by the *FCA*, the *PRA* or another *regulatory body*.

- 4.5.43 G The main purpose of SYSC 4.5.40R is to help the *SMF manager* with his new or revised responsibilities and to help the *SMF manager's* managers. It should be a practical and helpful document and not just a record. The material should include an assessment of what issues should be prioritised and judgment and opinion, not just facts and figures.
- 4.5.44 G Where the responsibilities in SYSC 4.5.40R are being taken over from another *person*, the *firm* should have arrangements for an orderly transition. As part of these arrangements, it should take reasonable steps to ensure that the predecessor contributes to the information and material in SYSC 4.5.40R all that it would be reasonable to expect the predecessor to know and consider relevant, including the predecessor's opinions. One way of doing this would be for the predecessor to prepare a handover certificate.
- 4.5.45 G A *firm* should consider whether to apply the procedures in SYSC 4.5.40R and SYSC 4.5.41R to other parts of its management.

#### Annual certificate of compliance

- 4.5.46 R (1) Once every 12 *months*, a *firm* must certify in writing to the *FCA* whether or not it has complied with this section and the *guidance* in this section.
- (2) If it has not complied with them, the certificate must give details of that non-compliance.
- (3) The *firm's governing body* must approve the issue of the certificate of compliance and what it says.
- (4) The certificate must be signed on behalf of the *governing body*.
- 4.5.47 G The certificate should specifically confirm that there are no gaps in the allocation of overall responsibilities in accordance with this section.
- 4.5.48 G The certificate should cover the period since the period covered by the last certificate.

#### Records

- 4.5.49 G A *firm* should consider past versions of a *firm's management responsibilities map* and *statements of responsibilities* as an important part of its records and as an important resource for the *FCA* in supervising the *firm*.
- 4.5.50 G Past versions of a *firm's management responsibilities map* and *statements of responsibilities* form part of its records under SYSC 9.1 (General rules on record-keeping).

## 5.2 Certification Regime

### Purpose and application

- 5.2.1 G Under section 63E(1) of the *Act*, a *relevant authorised person* must take reasonable care to ensure that no *employee* of the *firm* performs an *FCA specified significant-harm function* under an arrangement entered into by the *firm* in relation to the carrying on by that *firm* of a *regulated activity*, unless the *employee* has a valid certificate issued by that *firm* to perform the function to which certificate relates.
- 5.2.2 G The purpose of this section is to specify ‘*FCA specified significant-harm functions*’ and provide *guidance* in respect of those functions.
- 5.2.3 R This section applies to a *relevant authorised person*.
- 5.2.4 G This section is also relevant to *employees* of *relevant authorised persons* performing functions specified as ‘*FCA specified significant-harm functions*’.

### The certification regime under the Act

- 5.2.5 G Under section 63F of the *Act*, a *relevant authorised person* may issue a certificate to a *person* only if the *firm* is satisfied that the *person* is a fit and proper *person* to perform the *FCA specified significant-harm function* to which the certificate relates.
- 5.2.6 G Under section 63F of the *Act*, in assessing whether a *person* is a fit and proper person to perform an *FCA specified significant-harm function*, a *relevant authorised person* must have regard, in particular, to whether that person:
- (1) has obtained a qualification;
  - (2) has undergone, or is undergoing, training;
  - (3) possesses a level of competence; or
  - (4) has the personal characteristics,
- required by general rules made by the *FCA*.
- 5.2.7 G *FIT* 1.3. provides guidance to *relevant authorised persons* about the criteria that the *FCA* would expect the *firm* to consider in assessing whether a *person* is a fit and proper *person* to perform an *FCA specified significant-harm function*.
- 5.2.8 G *SYSC* 5.3 (References and accurate information) requires a *relevant authorised person* to seek a reference from a previous *employer* of a *person* seeking to perform a *specified significant harm function* as part of its assessment on whether that *person* is fit and proper.
- 5.2.9 G The meaning given to ‘*employee*’ under the *Act* and the obligation under section 63E(1) of the *Act* require a *relevant authorised person* to take reasonable care to ensure that if a contractor performs an *FCA specified significant-harm function*

for the *firm*, the contractor in question has a valid certificate issued by the *firm* to perform the function to which the certificate relates.

- 5.2.10 G (1) In deciding whether a *person* seconded from a contractor is fit and proper the *firm* may take into account information and references from the contractor.
- (2) In deciding how much reliance to put on the contractor, the *firm* should take into account:
- (a) the familiarity of the contractor with the obligations of *firms* under SYSC 5.2;
  - (b) whether the reference directly addresses the criteria in *FIT*; and
  - (c) the degree to which the *firm* believes it can rely on the contractor's judgment about this and the grounds of that belief.

- 5.2.11 G Under section 63F of the *Act*, a certificate issued by a *relevant authorised person* to a person must:
- (1) state that the *firm* is satisfied that the *person* is a fit and proper *person* to perform the function to which the certificate relates; and
  - (2) set out the aspects of the affairs of the *firm* in which the *person* will be involved in performing the function.

- 5.2.12 G Under section 63F of the *Act*, if, after having considered whether a *person* is a fit and proper *person* to perform an *FCA specified significant-harm function*, a *relevant authorised person* decides not to issue a certificate to that *person*, the *firm* must give the person a notice in writing stating:
- (1) what steps (if any) the *firm* proposes to take in relation to the *person* as a result of the decision; and
  - (2) the reasons for proposing to take those steps.

- 5.2.13 G If, after having considered whether a *person* is a fit and proper *person* to perform an *FCA specified significant-harm function*, a *relevant authorised person* decides not to issue a certificate to that *person*, it should consider whether the circumstances warrant making a notification to the *FCA* for a breach of the *rules* in *C-CON* pursuant to section 64B(5) of the *Act*.

- 5.2.14 G Under section 63F of the *Act*, a *relevant authorised person* must maintain a record of every *employee* who has a valid certificate issued by it.

#### Scope

- 5.2.15 R A function is an *FCA specified significant-harm function* only if, in relation to the carrying on of *regulated activity* by a *relevant authorised person*:
- (1) the function is not a *controlled function* in relation to the carrying on of

that *regulated activity* by that *relevant authorised person*; and

- (2) the function will require the *person* performing it to be involved in one or more aspects of the *firm's* affairs, so far as relating to that *regulated activity*.

5.2.16 R A function is an *FCA specified significant-harm function* only to the extent:

- (1) it is either performed by a *person* from an establishment maintained by a *relevant authorised person* (or by its *appointed representative*) in the *United Kingdom*; or
- (2) the *person* performing that function is dealing with a *client* in the *United Kingdom* from an establishment overseas.

5.2.17 R The *FCA* interprets the phrase "dealing with" in SYSC 5.2.16R 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*.

5.2.18 G This section does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is a fit and proper person to perform the function is reserved under any of the *Single Market Directives* or the *auction regulation* to an authority in a country or territory outside the *United Kingdom*.

5.2.19 R This section 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;
- (2) a *person* acting as a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;
- (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 Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

#### FCA specified significant-harm functions

5.2.20 R In accordance with section 63E(3) of the *Act*, the following are *FCA specified significant-harm functions*:

- (1) CASS oversight:
  - (a) in relation to a *CASS medium firm* and a *CASS large firm* (other than a *CASS large debt management firm*), the function of acting in the capacity of a person to whom is allocated the function set out in

CASS 1A.3.1AR (oversight of operational effectiveness);

- (b) in relation to a *CASS large debt management firm*, the function of acting in the capacity of a *person* to whom is allocated the function in CASS 11.3.4R (oversight of operational effectiveness).

(2) Benchmark submission and administration:

- (a) the function of acting in the capacity of a *person* to whom is allocated the function set out in *MAR 8.2.3R(1)* (benchmark manager);
- (b) the function of acting in the capacity of a *person* to whom is allocated the function set out in *MAR 8.3.5 R (1)* (benchmark administration manager).

(3) Proprietary trader:

- (a) the function of acting as a *proprietary trader* whose activity involves, or might involve, a risk of significant harm to the *firm* or any of its *customers*.

(4) Significant management:

- (a) the function of acting as a *senior manager*, with significant responsibility for a significant business unit that does one or more of the following:
  - (i) carries on *designated investment business* or other activities not falling within (ii), (iii) or (iv);
  - (ii) carries on *credit-related regulated activity*;
  - (iii) 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;
  - (iv) processes confirmations, payments, settlements, *client money* and similar matters.

(5) Functions requiring qualifications:

- (a) each function involving an activity for which there is an appropriate qualification requirement as specified in *TC APP 1.1.1R* (Activities and Products / Sectors to which TC applies).

(6) Managers of certification employees:

- (a) the function of managing or supervising a *certification employee*, whether directly or indirectly.

(7) Functions that have a material impact on risk:

(a) each function performed by an *employee* that:

(i) has a material impact on the risk profile of the *firm*; and

(ii) involves, or might involve, a risk of significant harm to the *firm* or any of its *customers*.

5.2.21 R A function has a material impact on the risk profile of the *firm* for the purposes of SYSC 5.2.20R(7)(a)(i) if that employee's professional activities are deemed to have a material impact on the *firm's* risk profile in accordance with the criteria set out in articles 3 and 4 of Regulation (EU) No 604/2014 (and where the value of remuneration awarded to that employee is calculated in accordance with article 5 of that Regulation).

5.2.22 G An *FCA specified significant-harm function* does not cease to be a *specified significant-harm function* if the *PRA* also specifies that function as a *specified significant-harm function*.

5.2.23 R The function of managing or supervising a *certification employee* does not fall within SYSC 5.2.20R(6) in relation to a *firm* if it is performed by an *approved person* in relation to that *firm*.

#### Significant management

5.2.24 G A *senior manager* carrying on the significant management function under SYSC 5.2.20R(4) 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.

5.2.25 G 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 *SMF managers* (for example, in excess of 100 individuals);

(2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;

(3) its *group* structure (if it is a member of a *group*);

(4) its management structure (for example, matrix management); and

(5) the size and significance of its international operations, if any.

5.2.26 G When considering whether a business unit is significant for the purposes of SYSC 5.2.20R(4), the *firm* should take into account all relevant factors in the

light of the *firm's* current circumstances and its plans for the future, including:

- (1) the risk profile of the unit;
- (2) its use or commitment of a *firm's* capital;
- (3) its contribution to the profit and loss account;
- (4) the number of *employees* or *SMF managers* in the unit;
- (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*.

#### Emergency appointments

5.2.27 R If a *firm* wishes to appoint an individual to perform any of the functions specified in SYSC 5.2.20R (1), (2), (3), (4), (6), or (7), and the appointment is:

- (1) to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
- (2) for less than two weeks,

then the performance by that individual of such function does not constitute an *FCA specified significant harm function*.

5.2.28 G SYSC 5.2.27R does not apply to SYSC 5.2.20R(5) (Functions requiring qualifications). Where the *rule* in SYSC 5.2.27R does not apply and there is an unforeseen absence of an *employee* performing a function for which there is a qualification requirement:

- (1) the *firm* must take reasonable care to ensure that no *employee* of that *firm* performs an *FCA specified significant-harm function* without a valid certificate; and
- (2) the certificate must be issued before the *person* starts to perform the function.

### 5.3 References and accurate information

#### Scope

5.3.1 R SYSC 5.3 applies only to *relevant authorised persons*.

5.3.2 G There is no territorial limitation on the application of SYSC 5.3 but there is a territorial limitation to the *rules* set out in *C-CON* (see *C-CON* 1.1.8R and *C-CON* 1.1.9R).

- 5.3.3 G For *firms* (other than *relevant authorised persons*), SUP 10A.15 (References and accurate information) applies instead of this section but SYSC 5.3.4 to SYSC 5.3.7 may be of interest to such *firms* as they set out the *rules* and *guidance* applicable to a *relevant authorised person* when requested to provide a reference or other information by a *firm*.

#### References

- 5.3.4 R (1) If a *firm* (A):
- (a) is considering appointing a *person* to perform any *FCA controlled function*;
  - (b) requests a *relevant authorised person* (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 10C 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*.
- 5.3.5 G The requirement in SYSC 5.3.4R(1) for a *relevant authorised person* (B) to give to *firm* (A) all relevant information it has 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 *the relevant authorised person* B has been made aware that the unregulated third party is acting on behalf of *firm* A.
- 5.3.6 G (1) A *relevant authorised person* supplying a reference in accordance with SYSC 5.3.4R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.
- (2) The reference should be accurate and based on documented fact.

- (3) The *relevant authorised person* 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

- 5.3.7 G The obligations to supply information to another *firm* under SYSC 5.3.4R 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.

Obligation on relevant authorised person to request a reference

- 5.3.8 R If a *relevant authorised person*:
- (a) is considering appointing a *person* to perform a *designated senior management function* or a *specified significant-harm function*; and
  - (b) such *person* is, or would be, a member of the *conduct rules staff* of the *relevant authorised person*,
- the *relevant authorised person* must, prior to the appointment of such *person*, use reasonable efforts to obtain a reference in connection with that appointment from any current or previous *employer* of such *person* during the past five years.
- 5.3.9 R If a *relevant authorised person* (A) is required under SYSC 5.3.8R to obtain a reference from a current or previous *employer* (B) in respect of a *person* (P) and B is also a *relevant authorised person*, A must request B to disclose in the reference:
- (1) where B has concluded that P was in breach of *C-CON* and made a notification to the *FCA* of such a breach in the five years before the request for a reference, the facts which led B to that conclusion; and
  - (2) where B, in relation to a breach by P of *C-CON*, also took and made a notification to the *FCA* in the five years before the request for a reference of, disciplinary action against P resulting in:
    - (a) the issuing of a formal written warning;
    - (b) the suspension or dismissal of P; or
    - (c) the reduction or recovery of any of P's remuneration;
- a description of the basis and outcome of the disciplinary action.

- 5.3.10 G *SUP15.11* (Notification of C-CON breaches and disciplinary action) applies to notifications to the FCA under section 64B and section 64C of the *Act* relating to C-CON compliance failures by, and disciplinary actions against, *conduct rules staff*.

Obligation on relevant authorised person to provide a reference

- 5.3.11 R (1) This *rule* applies when:
- (a) a *relevant authorised person* (A) in connection with the appointment of a *person* (P) to a *designated senior management function* or a *specified significant-harm function* requests a reference from a current or previous *employer* (B) in respect of P; and
  - (b) B is a *relevant authorised person*.
- (2) B must, as soon as reasonably practicable, provide such reference and must disclose in the reference:
- (a) where B has concluded that P was in breach of C-CON, the facts which led B to that conclusion; and
  - (b) where B, in relation to a breach by P of C-CON, also took disciplinary action of the type set out in SYSC 5.3.9R(2) against P, a description of the basis and outcome of the disciplinary action.

- 5.3.12 R The obligation under SYSC 5.3.11R to disclose relevant facts and disciplinary action in relation to a breach of C-CON only applies if the *relevant authorised person* requested to provide the reference made a notification to the FCA in relation to the relevant matter in the five years before the request for a reference.

- 5.3.13 G *SUP15.11* (Notification of C-CON breaches and disciplinary action) applies to notifications to the FCA under section 64B and section 64C of the *Act* relating to C-CON compliance failures by, and disciplinary actions against, *conduct rules staff*.

Additional guidance for relevant authorised persons

- 5.3.14 G C-CON sets out *rules* and *guidance* made by the FCA about the conduct of *conduct rules staff*.
- 5.3.15 G *Relevant authorised persons* are reminded that the *rules* and *guidance* in SYSC 5.3.2G to SYSC 5.3.7G apply to a *relevant authorised person* that is required to provide a reference pursuant to SYSC 5.3.11R.
- 5.3.16 G Subsequent to:
- (1) concluding that a *person* who is the subject of the reference was in breach of C-CON; or

- (2) taking any disciplinary action against a *person* who is the subject of the reference for a breach of *C-CON* where the sole reason for taking the disciplinary action was the breach of *C-CON*,

if a *relevant authorised person* providing a reference under SYSC 5.3.11R becomes aware of facts or matters causing it to conclude that the *person* who is the subject of the reference did not breach *C-CON*, it does not need to disclose its original conclusion or the disciplinary action that had been taken, as applicable, in the reference.

5.3.17 G If a *relevant authorised person* is required to obtain a reference pursuant to SYSC 5.3.8R from a current or previous *employer* of a *person* but is unsure whether such current or previous *employer* is a *relevant authorised person*, it should in its request for a reference make it clear that the current or previous *employer* is only required to disclose the matters set out under SYSC 5.3.9R if it is a *relevant authorised person*.

5.3.18 G A *relevant authorised person* should have procedures for the retention of records in place to enable it to respond to any requests for references pursuant to SYSC 5.3.11R.

## 6 Compliance, internal audit, financial crime

### 6.1 Compliance

...

6.1.4-C G (1) This guidance is relevant to a *relevant authorised person* required to appoint a compliance officer under SYSC 6.1.4R.

(2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.

(3) In the FCA's view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the *management body*, including at least a majority of its members who do not perform any executive function in the *firm*.

### 6.2 Internal audit

...

- 6.2.1B G (1) This guidance is relevant to a relevant authorised person required to establish and maintain an internal audit function under SYSC 6.2.1R.
- (2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the internal audit function does not undermine the independence of the internal audit function.
- (3) In the FCA's view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the head of the internal audit function to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.

## 7 Risk control

### 7.1 Risk control

...

- 7.1.22A G (1) This guidance is relevant to a relevant authorised person that has appointed a head of the risk management function.
- (2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the risk management function does not undermine the independence of the risk management function.
- (3) In the FCA's view, it will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the head of the risk management function requires the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.
- (4) Similarly, in the FCA's view, it will also be appropriate, in many cases, for any other disciplinary sanctioning of the head of the risk management function to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.

...

## 21 Risk control: additional guidance

## 21.1 Risk control: guidance on governance arrangements

...

- 21.1.4A    G    (1)    This *guidance* is relevant to a *relevant authorised person* that has appointed a chief risk officer.
- (2)    Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the chief risk officer does not undermine the independence of the chief risk officer.
- (3)    In the *FCA's* view, it will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the chief risk officer requires the approval of a majority of the *governing body*, including at least a majority of its members who do not perform any executive function in the *firm*.
- (4)    Similarly, in the *FCA's* view, it will also be appropriate, in many cases, that any other disciplinary sanctioning of the chief risk officer to require the approval of a majority of the *governing body*, including at least a majority of its members who do not perform any executive function in the *firm*.

## Annex D

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

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

**[Editor's note:** The text in this section is meant to illustrate how the guidance in *FIT* would be amended (in line with the consultation) to apply to *relevant authorised persons*; it is not meant to suggest or imply any changes by either the *FCA* or the *PRA* for *firms* other than *relevant authorised persons*. Insofar as the instrument applies to *relevant authorised persons*, it is *FCA* guidance only (ie, not shared with the *PRA*). The final rule-making instrument will, however, reflect the existing shared provisions currently in *FIT* and any new non-shared *FCA* provisions applicable to *relevant authorised persons* which are made following consultation. If, in the future, the *FCA* proposes to change the guidance in *FIT* as it applies to *firms* other than *relevant authorised persons*, the proposed changes would be the subject of a separate consultation paper.]

### The Fit and Proper test for Approved Persons and Specified significant-harm functions

#### 1 General

#### 1.1 Application and purpose

##### 1.1.1 G FIT applies to:

- (1) a firm (including a relevant authorised person);
- (2) an applicant for *Part 4A permission*;
- (3) [~~and EEA firm, a Treaty firm or a UCITS qualifier that wishes to establish a branch into the United Kingdom using EEA rights, Treaty rights or UCITS directive rights (see SUP 10A.1.10 G and SUP 10B.1.10 G1 and SUP 10A.1.11 R and SUP 10B.1.11 R1), or apply for a top-up permission (see SUP 10A.1.13 R SUP 10B.1.12 R1);~~]  
[EEA provisions to follow in separate consultation]
- (4) an approved person; ~~and~~
- (5) a candidate;
- (6) a certification employee performing an FCA specified significant-harm function; and
- (7) a person whom a firm is proposing to certify to perform an FCA specified significant-harm function.

##### 1.1.2 G The purpose of *FIT* is to set out and describe the criteria that: ~~the appropriate regulator will consider when assessing the fitness and propriety~~

of a *candidate for a controlled function* (see generally SUP 10A and SUP 10B on *approved persons*). The criteria are also relevant in assessing the continuing fitness and propriety of *approved persons*.

- (1) a relevant authorised person should consider when:
  - (a) assessing the fitness and propriety of a candidate whom the firm is proposing to put forward for approval as an FCA-approved SMF manager;
  - (b) assessing the continuing fitness and propriety of a person approved to perform the function of an FCA-approved SMF manager, including for formulating an opinion about whether there are any grounds on which the regulator could withdraw the approval given to that individual to perform that function under section 63(2A) of the Act;
  - (c) assessing the fitness and propriety of a person whom the firm is proposing to certify to perform an FCA specified significant-harm function; and
  - (d) assessing the continuing fitness and propriety of a person whom the firm has certified to perform an FCA specified significant-harm function; and
- (2) the FCA will consider when assessing the fitness and propriety of a candidate for a controlled function, including a designated senior management function (see generally SUP 10A, SUP 10B and SUP 10C on approved persons), and may consider when assessing the continuing fitness and propriety of approved persons.

## 1.2 Introduction

- 1.2.-1 G Under section 60A(1) of the Act, before a relevant authorised person may make an application for the FCA's approval of a designated senior management function, the FCA must be satisfied that the person for whom the application is made is a fit and proper person to perform that function.
- 1.2.1 G Under section 61(1) of the Act (Determination of applications), the *appropriate regulator* FCA may grant an application for approval made under section 60 (Applications for approval) only if it is satisfied that the *candidate* is fit and proper to perform the *controlled function* to which the application relates.
- 1.2.1A G Under section 63F of the Act, a relevant authorised person may issue a certificate to a person to perform a specified significant-harm function only if it is satisfied that the person is a fit and proper person to perform the function to which it relates.

1.2.1B G Under sections 60A and 63F of the Act, in assessing whether a person is a fit and proper person to perform an FCA designated senior management function or an FCA specified significant-harm function, a relevant authorised person must have particular regard to whether that person:

- (1) has obtained a qualification;
- (2) has undergone, or is undergoing, training;
- (3) possesses a level of competence; or
- (4) has the personal characteristics,

required by general rules made by the FCA.

1.2.1C G The key general rules relating to the criteria listed in FIT 1.2.1B include:

- (1) in the case of very senior employees, SYSC 4.2 (persons who effectively direct the business) and SYSC 4.3A.3R (management body);
- (2) for employees of firms generally, SYSC 5.1.1R (the competent employees rule); and
- (3) in relation to retail activities, TC 2.1.12R (employees' competence).

...

1.2.4 G The Act does not prescribe the matters which the ~~appropriate regulator~~ FCA should take into account when determining fitness and propriety. However, section 61(2) states that the ~~appropriate regulator~~ FCA may have regard (among other things) to whether the ~~candidate or approved person; is competent to carry out a controlled function.~~

- (1) has obtained a qualification;
- (2) has undergone, or is undergoing, training;
- (3) possesses a level of competence; or
- (4) has the personal characteristics,

required by general rules made by the FCA.

### **1.3 Assessing fitness and propriety of approved persons and certification employees**

1.3.1 G The FCA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, as more particularly described in FIT 2 (Main assessment criteria). ~~The most~~

~~important considerations will be the person's:~~

- ~~(1) honesty, integrity and reputation;~~
- ~~(2) competence and capability; and~~
- ~~(3) financial soundness.~~

- 1.3.1A G The FCA would expect firms that are required to assess the fitness and propriety of staff being assessed under FIT to have regard to substantially the same factors as those outlined in FIT 2.
- 1.3.1B G In the FCA's view, the most important considerations will be the person's:
- (1) honesty, integrity and reputation;
  - (2) competence and capability; and
  - (3) financial soundness.
- 1.3.2 G In assessing fitness and propriety, the ~~appropriate regulator~~ FCA will also take account of the activities of the *firm* for which the *controlled function* is or is to be performed, the *permission* held by that *firm* and the markets within which it operates.
- 1.3.2A G A relevant authorised person assessing the fitness and propriety of staff being assessed under FIT should consider:
- (1) the nature, scale and complexity of its business, the nature and range of financial services and activities undertaken in the course of that business; and
  - (2) whether the candidate or person has the knowledge, skills and experience to perform the specific role that the candidate or person is intended to perform.
- 1.3.2B G A relevant authorised person is reminded that, in assessing a candidate for a position within the management body of the firm, SYSC 4.3A.3R(3) requires the firm to ensure that the management body, as a collective, possesses adequate knowledge, skills and experience to understand the firm's activities.
- 1.3.3 G The criteria listed in FIT 2.1 to FIT 2.3 are *guidance* and will be applied in general terms when the ~~appropriate regulator~~ FCA is determining a *person's* fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. A relevant authorised person assessing the fitness and propriety of staff being assessed under FIT should be guided by substantially the same criteria in FIT 2.1 to FIT 2.3 (to the extent applicable to the firm), recognising that this is not intended to be a definitive list of matters to be considered.
- 1.3.4 G If a matter comes to the ~~appropriate regulator's~~ FCA's attention which

suggests that the *person* might not be fit and proper, the ~~appropriate regulator~~ FCA will take into account how relevant and how important it is. In the same way, if a matter comes to the attention a relevant authorised person which suggests that any staff being assessed under FIT might not be fit and proper, the firm should take into account how relevant and how important that matter is.

- 1.3.4A G A relevant authorised person assessing the continuing fitness and propriety of an approved person is required to notify the FCA under section 63(2A) of the Act if it forms the opinion that there are grounds on which the FCA could withdraw its approval (see SUP 10C12.28R). In discharging its obligation to notify the FCA, a relevant authorised person should take into account how relevant and how important the matter is that comes to its attention which suggests an approved person might not be fit and proper before determining that a notification should be made.
- 1.3.4B G A relevant authorised person assessing the continuing fitness and propriety of staff being assessed under FIT should assess the role that the individual is actually performing at the time the assessment is done. For this purpose, the assessor(s) should be provided with an up-to-date job description for that individual in advance of the assessment.
- 1.3.5 G During the application process for a controlled function, the ~~appropriate regulator~~ FCA may discuss the assessment of the *candidate's* fitness and propriety informally with the *firm* making the application and may retain any notes of those discussions.

## 2 Main assessment criteria

### 2.1 Honesty, integrity and reputation

- 2.1.1 G In determining a *person's* honesty, integrity and reputation, the ~~appropriate regulator~~ FCA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the *United Kingdom* or elsewhere. The ~~appropriate regulator~~ FCA should be informed of these matters (see SUP 10A.14.17R and SUP 10C12.7R), but will consider the circumstances only where relevant to the requirements and standards of the *regulatory system*. For example, under FIT 2.1.3 G(1), conviction for a criminal offence will not automatically mean an application will be rejected. The ~~appropriate regulator~~ FCA treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted *person*, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.
- 2.1.1A G A relevant authorised person determining the honesty, integrity and reputation of staff being assessed under FIT, should consider all relevant matters, including those set out in FIT 2.1.3G, which may have arisen either

in the United Kingdom or elsewhere. Firms should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that candidate or person. If any staff being assessed under FIT has a conviction for a criminal offence, the firm should consider the seriousness of and circumstances surrounding the offence, the explanation offered by that person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

- 2.1.2 G In considering the matters in FIT 2.1.1G, the ~~appropriate regulator~~ FCA will look at whether the *person's* reputation might have an adverse impact upon the *firm* for which the *controlled function* is or is to be performed and at the *person's* responsibilities.
- 2.1.2A G In considering the reputation of staff being assessed under FIT 2.1.1AG a relevant authorised person should have regard to whether that person's reputation might have an adverse impact upon the firm for which the function is to be performed and the person's responsibilities.
- 2.1.3 G The matters referred to in FIT 2.1.1G to which the ~~appropriate regulator~~ FCA will have regard, and to which a relevant authorised person should also have regard, include, but are not limited to:

...

## 2.2 Competence and capability

- 2.2.1 G In determining a *person's* competence and capability, the *FCA* will have regard, to all relevant matters including but not limited to:
- (1) whether the *person* satisfies the relevant *FCA* training and competence requirements in relation to the *controlled function* the person performs or is intended to perform;
  - (2) whether the *person* has demonstrated by experience and training that ~~the person is~~ they are suitable, or will be suitable if approved to perform the *controlled function* to perform the controlled function;
  - (3) whether the *person* has adequate time to perform the *controlled function* and meet the responsibilities associated with that function.
- 2.2.1A G In determining a person's competence and capability to perform an FCA designated senior management function or an FCA-specified significant-harm function, a relevant authorised person should have regard to all relevant matters including but not limited to:
- (1) whether the person satisfies any applicable training and competence requirements (in relation to the function that the person performs or

is intended to perform);

(2) whether the *person* has demonstrated by experience and training that they are suitable to perform the *function* they are intended to perform;

(3) whether the *person* has adequate time to perform the function in question and meet the responsibilities associated with that function.

2.2.2 G A *person* may have been convicted of, or dismissed or suspended from employment for, drug or alcohol abuses or other abusive acts. This will be considered *by the FCA* only in relation to a *person's* continuing ability to perform the particular *controlled function* for which the person is or is to be employed.

2.2.2A G The *FCA* would expect a *relevant authorised person* determining the competence and capability of *staff being assessed under FIT* to consider convictions, dismissals and suspensions from employment for drug or alcohol abuses or other abusive acts only in relation to a *person's* continuing ability to perform the particular *FCA designated senior management function* or an *FCA-specified significant-harm function* for which the *person* is, or is to be, employed.

## 2.3 Financial soundness

2.3.1 G In determining a *person's* financial soundness, the ~~appropriate regulator~~ *FCA* will have regard, and a *relevant authorised person* should also have regard, to any factors including, but not limited to:

...

2.3.2 G The ~~appropriate regulator~~ *FCA* will not normally require ~~the~~ a *candidate* to supply a statement of assets or liabilities. The fact that a *person* may be of limited financial means will not, in itself, affect ~~his~~ their suitability to perform a *controlled function*. Similarly, the *FCA* would expect a *relevant authorised person* to take a similar view in assessing whether *staff being assessed under FIT*, are fit and proper.

## Annex E

### New Chapter 10C of the Supervision manual (SUP)

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

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

[Note: The material relating to forms is provisional. Square brackets have been used to show incomplete text. There will be a further consultation on forms.]

#### **10C FCA approved persons regime for relevant authorised persons**

##### **10C.1 Application**

###### General

- 10C.1.1 R This chapter applies to every *relevant authorised person*.
- 10C.1.2 G This chapter is also relevant to every *FCA-approved person* of a *relevant authorised person*.
- 10C.1.3 G The *rules* in this chapter specify descriptions of *FCA controlled functions* under section 59 of the *Act* (Approval for particular arrangements) in relation to *relevant authorised persons*.
- 10C.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

- 10C.1.5 R [To follow]

###### Overseas firms: UK establishments

- 10C.1.6 R [To follow]

###### Incoming EEA firms and incoming Treaty firms

- 10C.1.7 R [To follow]

###### Incoming EEA firms: passported activities from a branch

- 10C.1.8 R [To follow]

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

- 10C.1.9 R [To follow]

UK firm with overseas branches or providing services on a cross-border basis

- 10C.1.10 G There are no territorial limitations to *SUP* 10C in relation to the overseas branches of *UK firms* or *UK firms* providing services into or out of the *United Kingdom* on a cross-border basis.

Appointed representatives

- 10C.1.11 R [To follow]

Insolvency practitioners

- 10C.1.12 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.

## **10C.2 Purpose**

- 10C.2.1 G The immediate purpose of *SUP* 10C.3 to *SUP* 10C.8 is to specify, under section 59 of the *Act*, descriptions of the *FCA controlled functions* in relation to *relevant authorised persons* which are listed in *SUP* 10C.4.3R. The underlying purpose is to establish, and mark the boundaries of, the "FCA-approved persons regime" for *relevant authorised persons*.
- 10C.2.2 G *SUP* 10C does not deal with the *PRA's approved persons* regime. The key parts of its regime can be found in the parts of its rulebook titled "Senior Management Functions" and "Allocation of Responsibilities".
- 10C.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* 10C does not deal with these, except as explained in *SUP* 10C.11.1G (Conditional and time-limited approvals).

### 10.3 General

Purpose of this section

- 10C.3.1 G This section has general provisions that apply to the definition of all *controlled functions*.

Types of controlled function

- 10C.3.2 G All the *controlled functions* that the FCA has specified in this chapter are *designated senior management functions*. The FCA has not used its power to specify *controlled functions* that are not *designated senior management functions*.

Definition of FCA controlled function: Arrangements

- 10C.3.3 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*.
- 10C.3.4 G Section 59(1) and (2) of the *Act* provide that approval is necessary for an *FCA controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractor (typically an *appointed representative*), in relation to a *regulated activity*.
- 10C.3.5 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).
- 10C.3.6 G If 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, eg, 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 by conduct, custom and practice.

Definition of FCA designated senior management function

- 10C.3.7 R Each *FCA designated senior management function* is one which comes within the definition of a *senior management function*.
- 10C.3.8 G Section 59ZA(2) of the *Act* says that a function is a “senior management function”, in relation to the carrying on of a *regulated activity* by a *firm*, if:

- (1) the function will require the *person* performing it to be responsible for managing one or more aspects of the *firm's* affairs, so far as relating to the activity, and
- (2) those aspects involve, or might involve, a risk of serious consequences:
  - (a) for the *firm*; or
  - (b) for business or other interests in the *United Kingdom*.

10C.3.9 G Section 59ZA(2) of the *Act* also states that “managing” includes, for these purposes, taking decisions, or participating in the taking of decisions, about how one or more aspects of the *firm's* affairs should be carried on.

#### The 12-week rule

10C.3.10 R If:

- (1) a *firm* appoints an individual to perform a function which, but for this rule, would be an *FCA 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 *FCA controlled function* does not relate to those activities of that individual.

10C.3.11 G *SUP* 10C.3.10R enables cover to be given for (as an example) holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing an *FCA controlled function* for more than 12 weeks, the *firm* should apply for approval. Please see *SUP* 10C.11.7G to *SUP* 10C.11.15G (time-limited approvals) for more information about temporary appointments.

## 10C.4 Specification of functions

10C.4.1 R Each of the functions described in *SUP* 10C.4.3R is an *FCA controlled function* and an *FCA designated senior management function*.

10C.4.2 R Part 1 of the table in *SUP* 10C.4.3R applies in relation to *UK domestic firms*.

[Material on overseas firms to follow]

10C.4.3 R Table of FCA controlled functions for relevant authorised persons

<b>Part One: (FCA controlled functions for UK relevant authorised persons)</b>		
<b>Type</b>	<b>SMF</b>	<b>Description of FCA controlled function</b>
<i>FCA governing functions</i>	SMF 3	<i>Executive director function</i>
	SMF 13	<i>Chair of the nomination committee function</i>
	SMF 15	<i>Non-executive director function</i>
<i>FCA required functions</i>	SMF 16	<i>Compliance oversight function</i>
	SMF 17	<i>Money laundering reporting function</i>
Significant responsibility function	SMF 18	<i>Significant responsibility function</i>

<b>Part 2 ([Non-UK firms – to follow])</b>		
<b>Type</b>	<b>CF</b>	<b>Description of FCA controlled function</b>

**10C.5 FCA governing functions**

Executive director function (SMF3)

10C.5.1 R The *executive director function* is the function of acting in the capacity of a *director* (other than a *non-executive director*) of a *firm*.

Non-executive director function (SMF15)

10C.5.2 R The *non-executive director function* is the function of acting in the capacity of a *non-executive director* of a *firm*.

Chairman of the nomination committee function (SMF13)

10C.5.3 R If the *firm* has a nomination committee, the *chair of the nomination committee function* is the function of acting in the capacity as the chairman of that committee.

- 10C.5.4 G See SYSC 4.3A (CRR firms) for material about nomination committees. Please note that the *chair of the nomination committee function* still applies if the *firm* is not a *CRR firm*.
- 10C.5.5 G (1) If the chairman of the nomination committee is also a *non-executive director*, they will need approval to perform both the *non-executive director function* and the *chair of the nomination committee function*.
- (2) In some *firms* the chairman of the nomination committee is also chairman of the *governing body*. Because being chairman of the *governing body* is a *PRA controlled function*, the chairman may not need approval to perform either the *non-executive director function* or the *chair of the nomination committee function* but instead just need *PRA* approval for being chairman of the *governing body*. See SUP 10C.8 (Minimising overlap with the *PRA* approved persons regime) for an explanation of when *PRA* approval means that *FCA* approval is not needed.

#### Insurance mediation

- 10C.5.6 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 the *non-executive director function*) - to be reviewed in a later consultation].
- 10C.5.7 G Where a *person* performing a *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).

## 10C.6 FCA required functions

### Compliance oversight function (SMF16)

- 10C.6.1 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function set out in SYSC 6.1.4R(2).

### Money laundering reporting function (SMF17)

- 10C.6.2 R The *money laundering reporting function* is the function of acting in the capacity of the *money laundering reporting officer* of a *firm*.
- 10C.6.3 G A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see SYSC 6.3.9R and, for their scope, see the application provisions in SYSC 1 Annex 1).

**10C.7 Significant responsibility function (SMF18)**

10C.7.1 R A person performs the *significant responsibility function* in relation to a *firm* if that *person*:

- (1) is performing a function allocated under SYSC 4.5.25R(2) (Allocation of certain senior management responsibilities) in relation to the *firm*); and
- (2) does not have an approval to perform any other *controlled function* in relation to the *firm*.

10C.7.2 G The table in SUP 10C.7.3G gives examples of how SUP 10C.7.1R(2) works.

10C.7.3 G Table: Examples of how the significant responsibility function applies

Example	Comments
(1) “A” is appointed to perform the <i>executive director function</i> and to perform a potential <i>significant responsibility function</i> for the same <i>firm</i>	A only needs approval to perform the <i>executive director function</i> .
(2) “A” is approved to perform the <i>significant responsibility function</i> . Later, A is appointed to perform the <i>executive director function</i> for the same <i>firm</i> .	A requires approval for the <i>significant responsibility function</i> when A is first appointed. When A is later approved to perform the <i>executive director function</i> , A stops performing the <i>significant responsibility function</i> . The <i>firm</i> should use Form E to apply for approval for A to perform the <i>executive director function</i> .
(3) “A” is appointed to perform the <i>PRA’s Head of Key Business Area controlled function</i> and to a perform a potential <i>significant responsibility function</i> for the same <i>firm</i>	A only needs approval to perform the <i>PRA’s Head of Key Business Area function</i> . It does not make any difference whether the potential <i>significant responsibility function</i> that A performs is connected to the <i>PRA’s Head of Key Business Area controlled function</i> .
(4) “A” is approved to perform the <i>significant responsibility function</i> . Later, A is appointed to perform the <i>PRA’s Head of Key Business Area controlled function</i> for the same <i>firm</i> .	A requires approval for the <i>significant responsibility function</i> when he is first appointed. When A is later approved to perform the <i>PRA’s Head of Key Business Area controlled function</i> , A stops performing the <i>significant responsibility function</i> .

<p>(5) “A” is appointed to perform the <i>compliance oversight function</i> for one <i>firm</i> in a group and to perform a function coming within the scope of the <i>significant responsibility function</i> for another <i>firm</i> in the same group.</p>	<p>A needs approval to perform the <i>compliance oversight function</i> and the <i>significant responsibility function</i>.</p>
<p>(6) “A” is appointed to be head of sales and to report directly to the <i>firm’s governing body</i> about this. This function also comes within the <i>PRA’s Head of Key Business Area controlled function</i>.</p>	<p>A only needs approval to perform the <i>PRA’s Head of Key Business Area controlled function</i>.</p>
<p>(7) “A” is appointed to take on some functions that come within the <i>significant responsibility function</i>. Later, A is appointed as chief risk officer.</p>	<p>On A’s first appointment, A will need to be approved to perform the <i>significant responsibility function</i>.</p> <p>On being appointed as chief risk officer, the answer for example (6) applies because being chief risk officer is a <i>PRA controlled function</i>. A will stop performing the <i>significant responsibility function</i>.</p>
<p>(8) “A” is appointed to a role that comes within the <i>significant responsibility function</i>. Later, the <i>firm</i> reorganises and A’s role becomes the <i>PRA’s Head of Key Business Area controlled function</i>.</p>	<p>The answer for example (7) applies.</p>
<p>(9) “A” is appointed to a role that comes within the <i>PRA’s Head of Key Business Area controlled function</i>. It is also a potential <i>significant responsibility function</i>. Later, the <i>firm</i> reorganises—A’s role stays the same but now it falls outside the <i>PRA’s Head of Key Business Area controlled function</i>.</p>	<p>On A’s first appointment, A only needs approval to perform the <i>PRA’s Head of Key Business Area controlled function</i>. Following the reorganisation, the <i>firm</i> has three months to get approval for A to perform the <i>significant responsibility function</i>. This three-month period applies because the relevant <i>PRA</i> rules keep the <i>PRA’s Head of Key Business Area controlled function</i> in place, which means that the <i>significant responsibility function</i> does not apply during that period.</p> <p>The relevant <i>PRA</i> rules can be found in Chapter 2 of the part of the <i>PRA</i> rulebook titled “Senior Management Functions”.</p>

Note (1): A potential *significant responsibility function* means a function that would have come within the *significant responsibility function* but is excluded by SUP 10C.7.1R(2).

Note (2): A potential *significant responsibility function* should be recorded in A's *statement of responsibilities* and in the *firm's management responsibilities map*.

## 10C.8 Minimising overlap with the PRA approved persons regime

### Introduction

- 10C.8.1 G SUP 10C.8 deals with how the *FCA's approved persons* regime interacts with the *PRA's approved persons* regime.
- 10C.8.2 G Both the *FCA* and the *PRA* may specify a function as a *designated senior management function* in relation to a *PRA-authorised person*.
- 10C.8.3 G Therefore, if a *person's* job for a *firm* involves:
- (1) an *FCA designated senior management function*, the *firm* should apply to the *FCA* for approval;
  - (2) a *PRA designated senior management function*, the *firm* should apply to the *PRA* for approval;
  - (3) both an *FCA designated senior management function* and a *PRA designated senior management function*, the *firm* should apply to both the *FCA* and the *PRA* for approval (the purpose of SUP 10C.8 is to cut down the need for this sort of dual approval).

### FCA controlled functions absorbed into PRA controlled functions

- 10C.8.4 G The *FCA* is under a duty under section 59A of the *Act* (Specifying functions as controlled functions: supplementary) to exercise the power to specify any *senior management function* as an *FCA designated senior management function* in a way that it considers will minimise the likelihood that approvals need to be given by both the *FCA* and the *PRA* for the performance by a *person* of *senior management functions* in relation to the same *PRA-authorised person*.
- 10C.8.5 G The *FCA* and *PRA* have coordinated their *approved persons* regimes to reduce the amount of overlap.
- 10C.8.6 G (1) SUP 10C.8.8R applies when a *firm* is seeking approval from the *PRA* for a *candidate* to perform a *PRA controlled function* and the intention is that the *candidate* will also perform what would otherwise be an *FCA governing function* once the *PRA* gives its approval. SUP 10C.8.8R works by disapplying that *FCA governing function*.

- (2) Where (1) applies, the activities within that *FCA governing function* are included in the *PRA controlled function* for which the *person* has approval. Chapter Two of the part of the *PRA*'s rulebook titled "Senior Management Functions" deals with this.

10C.8.7 G *SUP* 10C.8.9G gives some examples of how *SUP* 10C.8.8R works.

The main rule

10C.8.8 R A *person* (referred to as "A" in this *rule*) is not performing an *FCA governing function* (referred to as the "particular" *FCA governing function* in this *rule*) in relation to a *PRA-authorised person* (referred to as "B" in this *rule*), at a particular time, if:

- (1) A has been approved by the *PRA* to perform any *PRA controlled function* in relation to B;
- (2) throughout the whole of the period between the time of the *PRA* approval in (1) and the time in question, A has been the subject of a *current PRA approved person approval* to perform a *PRA controlled function* in relation to B;
- (3) at the time of the *PRA* approval referred to in (1), A was not subject to a *current FCA approved person approval* to perform the particular *FCA controlled function* in relation to B;
- (4) as part of the application for the *PRA* approval referred to in (1), B notified the *PRA* that A would start to perform what would otherwise have been the particular *FCA governing function* (referred to as the "potential" *FCA governing function* in this *rule*) at or around the time of the *PRA* approval in (1); and
- (5) A started to perform the potential *FCA governing function* at or around the time of the *PRA* approval in (1) and has continued to perform it up to the time in question.

10C.8.9 G Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorised persons is reduced

<b>Example</b>	<b>Whether FCA approval required</b>	<b>Whether PRA approval required</b>	<b>Comments</b>
(1) A is appointed as chief risk officer and a director.	No. He is not treated as performing the <i>executive director function</i> .	Yes	Chief risk officer is a <i>PRA controlled function</i> . A's functions as a director will be included in the <i>PRA controlled function</i> . To avoid the need for <i>FCA</i> approval,

Example	Whether FCA approval required	Whether PRA approval required	Comments
			A's appointment as director 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 the role as a director slightly later because the approval of the <i>firm's</i> shareholders or <i>governing body</i> is needed.	No	Yes	The answer for (1) applies. The arrangements in this section apply if the application to the <i>PRA</i> says that A will start to perform the potential <i>FCA governing function</i> around the time of the <i>PRA</i> approval as well as at that time.
(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 director	Yes	Yes	<i>SUP 10C.8.8R</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 governing function</i> .
(4) A is to be appointed as chief executive and a director	No. A is not treated as performing the <i>executive director function</i> .	Yes	Being a chief executive is a <i>PRA controlled function</i> . A's functions as a director will be included in the <i>PRA controlled function</i> .
(5) A is appointed as chief risk officer. Later, A is appointed as a director while carrying on as chief risk officer.	Yes, when A takes up the director role	Yes, when A takes up the chief risk officer role.	<i>SUP 10C.8.8R</i> does not apply because, when the <i>firm</i> applied for approval for A to perform the <i>PRA</i> chief risk officer <i>controlled function</i> , there was no plan for A also to perform the <i>executive director function</i> .
(6) A is appointed as an executive director. Later, A	Yes, when A is appointed as	Yes, when A takes up the chief risk	When A is appointed as chief risk officer, A is still treated as carrying

Example	Whether FCA approval required	Whether PRA approval required	Comments
takes on the chief risk officer function.	director.	officer role	on the <i>executive director function</i> . A retains the status of 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, A is appointed as a director with the same <i>firm</i> .	Yes, when A is appointed as director.	Yes, when A takes up the chief risk officer role	<i>SUP 10C.8.8R</i> does not apply because there is no current <i>PRA</i> approval when A is being appointed as a director.
(8) A is appointed as a non-executive director and chair of the remuneration committee.	No	Yes	Being a non-executive director who is chair of the remuneration committee is a <i>PRA controlled function</i> . A's other functions as a non-executive director will be included in the <i>PRA controlled function</i> .
(9) A is appointed as a non-executive director. Later, A becomes chair of the remuneration committee.	Yes, before A is appointed as a non-executive director.	Yes, before A becomes chair of the committee.	On appointment as chair, A is still treated as carrying on the <i>non-executive director function</i> . A retains the status of an <i>FCA approved person</i> .
(10) A is appointed as director and chief risk officer at the same time. Later, A gives up the role as chief risk officer but remains as a director.	No, on A's first appointment, But when A gives up the role as chief risk officer, <i>FCA</i> approval is needed to perform the	Yes, on A's first appointment	When A stops being a chief risk officer, A stops performing a <i>PRA controlled function</i> . However, being a director requires <i>FCA</i> approval. A does not have that approval because A did not need it when A was first

Example	Whether FCA approval required	Whether PRA approval required	Comments
	<i>executive director function.</i>		appointed.
	<p>Form E should be used. The application should state that it is being made as a result of A ceasing to perform a <i>PRA controlled function</i>.</p> <p>Form A should be used if there have been changes in fitness of the approved person (<i>SUP 10A.10.4D(4)</i>)</p>		<p>The combined effect of <i>SUP 10C.8.8R</i> and the relevant <i>PRA</i> rules is that the <i>firm</i> has three months to secure approval by the <i>FCA</i>. During that interim period, A keeps the status of a <i>PRA approved person</i> performing the director element of the <i>PRA chief risk controlled function</i> - which is included in that function under relevant <i>PRA</i> rules. The relevant <i>PRA</i> rules say that, during this transitional period, A is still treated as performing the <i>PRA chief risk controlled function</i> and <i>SUP 10C.8.8R</i> says that, for as long as A is performing a <i>PRA controlled function</i>, A does not perform the <i>executive director function</i>.</p>
(11) A is appointed as a non-executive director and chair of remuneration committee at the same time. Later, A switches to being chair of the risk committee while remaining as a non-executive director.	No	Yes	The arrangements in <i>SUP 10C.8.8R</i> continue to apply, even though A switches between <i>PRA controlled functions</i> after the <i>PRA's</i> first approval.

<b>Example</b>	<b>Whether FCA approval required</b>	<b>Whether PRA approval required</b>	<b>Comments</b>
<p>(12) A is appointed to be head of sales and to report directly to the <i>firm's governing body</i> about this. This function comes within the PRA's Head of Key Business Area <i>controlled function</i>.</p>	<p>No. A does not perform the <i>significant responsibility function</i>.</p>	<p>Yes</p>	<p>SUP 10C.8.8R does not apply. See the table in SUP 10C.7.3G for an explanation.</p>
<p>(13) A is appointed to take on some functions that come within the <i>significant responsibility function</i>. Later, A is appointed as chief risk officer.</p>	<p>Yes, on A's first appointment.</p>	<p>Yes, as chief risk officer.</p>	<p>On first appointment A will need to be approved to perform the <i>significant responsibility function</i>.  On being appointed as chief risk officer, the answer for example (12) applies.</p>
<p>(14) A is appointed to a role that comes within the <i>significant responsibility function</i>. Later the <i>firm</i> reorganises. A's role comes within the PRA's Head of Key Business Area <i>controlled function</i>.</p>	<p>Yes, when A is first appointed.</p>	<p>Yes, when the <i>firm</i> reorganises.</p>	<p>The answer for example (13) applies.</p>
<p>(15) A is appointed to a role that comes within the PRA's Head of Key Business Area <i>controlled function</i>. It is also a potential <i>significant responsibility function</i>. Later, the</p>	<p>Yes, when the <i>firm</i> reorganises.</p>	<p>Yes, on A's first appointment.</p>	<p>SUP 10C.8.8R does not apply. See the table in SUP 10C.7.3G for an explanation.</p>

Example	Whether FCA approval required	Whether PRA approval required	Comments
<p><i>firm</i> reorganises— A’s role stays the same but now falls outside the <i>PRA’s</i> Head of Key Business Area <i>controlled function</i> and comes within the <i>significant responsibility function</i>.</p>			
<p>(16) A is appointed chief risk officer and a director. A goes on temporary sick leave. A takes up their old job when he comes back.</p>	<p>No, neither on A’s first appointment nor when A comes back from sick leave.</p>	<p>Yes</p>	<p><i>SUP</i> 10C.8.8R still applies on A’s return because A does not stop performing either the <i>PRA’s</i> chief risk function or what would otherwise have been the <i>executive director function</i> just because A goes on temporary sick leave.</p>
<p>(17) A is appointed to be chairman of the <i>governing body</i>, chairman of the nomination committee and as a <i>non-executive director</i> at the same time.</p>	<p>No. A does not need approval to perform either the <i>non-executive director function</i> or the <i>chair of the nomination committee function</i>.</p>	<p>Yes, on first appointment.</p>	<p>Being chairman of the <i>governing body</i> is a <i>PRA controlled function</i>. Therefore, the answer for example (8) applies.</p>
<p>(18) A is appointed as a <i>non-executive director</i>. Later, A is promoted to be chairman of the <i>governing body</i> and chairman of the nomination committee.</p>	<p>Yes, before A is appointed as a <i>non-executive director</i>.</p>	<p>Yes, before A becomes chairman.</p>	<p>On appointment as chair, A is still treated as carrying on the <i>non-executive director function</i>. A retains the status of an <i>FCA approved person</i>. However, A does not need approval to</p>

Example	Whether FCA approval required	Whether PRA approval required	Comments
			perform the <i>chair of the nomination committee function</i> .
Note: The relevant <i>PRA</i> rules can be found in Chapter 2 of the part of the <i>PRA</i> rulebook titled “Senior Management Functions”			

10C.8.10 G The activities for which A is responsible that are taken out of being an *FCA controlled function* should be recorded in A’s *statement of responsibilities* and in the *firm’s management responsibilities map*.

Further guidance on the arrangements between the FCA and PRA about approvals

10C.8.11 G The *PRA* cannot give its approval for the performance of a *PRA designated senior management function* without the consent of the *FCA*. The *firm* does not need to apply to the *FCA* for that consent.

10C.8.12 G Under section 59B of the *Act* (Role of FCA in relation to PRA decisions), the *FCA* may arrange with the *PRA* that, in agreed cases, the *PRA* may give approval without obtaining the consent of the *FCA*. No such arrangements are currently in force.

## 10C.9 Procedures relating to FCA-approved persons

Forms

10C.9.1 G The forms listed in *SUP* 10C.9.2G are referred to in *SUP* 10C.9 (Procedures relating to FCA-approved persons) to *SUP* 10C.12 (Changes to an FCA-approved person’s details).

10C.9.2 G Table: FCA approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	<i>SUP</i> 10C Annex 4D (See Note)	Application to perform <i>controlled functions</i> under the <i>approved persons regime</i>	<i>SUP</i> 10C.10.3D

Form B	<i>SUP</i> 10C Annex 5R	Notice to withdraw an application to perform <i>controlled functions</i> under the <i>approved persons</i> regime	<i>SUP</i> 10C.10.36R
Form C	<i>SUP</i> 10C Annex 6R	Notice of ceasing to perform <i>controlled functions</i>	<i>SUP</i> 10C.12.5R
Form D	<i>SUP</i> 10C Annex 7R	Notification of changes in personal information or application details	<i>SUP</i> 10C.12.13R
Form E	<i>SUP</i> 10C Annex 8D (See Note)	Internal transfer of an <i>approved person</i>	<i>SUP</i> 10C.10.4D
[Other forms to follow]			
<p>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 if there is a failure of the information technology systems used by the <i>FCA</i>. See the relevant “Handbook requirement”</p>			

- 10C.9.3 G A summary of the forms and their purposes is in *SUP* 10C Annex 2G.
- 10C.9.4 G Unless the context otherwise requires, in *SUP* 10C.9 (Procedures relating to *FCA*-approved persons) to *SUP* 10C.12 (Changes to an *FCA*-approved person’s details) where reference is made to a *firm*, this includes an applicant for *Part 4A permission* and other *persons* seeking to carry on *regulated activities* as an *authorised person*.
- 10C.9.5 G Forms B, C, D, E and [to follow] can only be submitted in respect of an *FCA*-approved person by the *firm* that submitted the *FCA*-approved person’s original application (the relevant Form A).
- 10C.9.6 G Copies of Forms A, B, C, D, E and [to follow] may be obtained from the *FCA* website. *Credit unions* can obtain copies from the *FCA*’s Firm Contact Centre. To contact the *FCA*’s Customer Contact Centre for *approved persons* enquiries:
- (1) telephone 0845 606 9966; or
  - (2) e-mail [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk); or

- (3) fax 020 7066 0017; or
- (4) write to:

Customer Contact Centre  
The Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
LONDON E14 5HS.

How to apply for approval and give notifications: firms other than credit unions

- 10C.9.7     D     (1) This direction applies to an application under Form A or Form E and to the submission of a revised *statement of responsibilities* under section 62A of the Act (see SUP 10C.12.18G for revised *statements of responsibilities*).
- (2) This direction does not apply to a *credit union* (SUP 10C.9.11D applies instead).
- (3) An application or submission by a *firm* must be made by submitting the form or revised *statement of responsibilities* online at fca.org.uk [using (in the case of applications) the form specified on the FCA's and PRA's [to follow] system].
- (4) 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:
- (a) [(for applications)] use the form in SUP 10C Annex 4D or SUP 10C Annex 8D; and
  - (b) submit the form and any revised *statement of responsibilities* in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
- 10C.9.8     R     (1) This *rule* applies to a notification under Form C, Form D or Form [to follow ].
- (2) This *rule* does not apply to a *credit union* (SUP 10C.9.12R applies for *credit unions*).
- (2) A notification must be made in accordance with SUP 10C.9.7D.
- (3) The forms for the notification are found in SUP 10C Annex 6R or SUP 10C Annex 7R and [to follow ].
- 10C.9.9     G     If the information technology systems used by the FCA fail and online

submission is unavailable for 24 hours or more, the *FCA* and *PRA* will endeavour to publish a notice on their websites confirming that:

- (1) online submission is unavailable; and
- (2) the alternative methods of submission in *SUP* 10C.9.7D(4) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification) should be used.

10C.9.10 G Where *SUP* 10C.9.7D(4) or the equivalent situation under *SUP* 10C.9.8R applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.

How to apply for approval and give notifications: Credit unions

10C.9.11 D (1) An application by a *credit union* under Form A or Form E must be made using the form in *SUP* 10C Annex 4D or *SUP* 10C Annex 8D.

(2) An application and any revised *statement of responsibilities* (see *SUP* 10C.12.18G for revised *statements of responsibilities*) must be submitted in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).

10C.9.12 R (1) This rule applies to a notification by a *credit union* under Form C, Form D or Form [to follow].

(2) A notification must be made in accordance with *SUP* 10C.9.11D.

(3) The forms for the notification are found in *SUP* 10C Annex 6R or *SUP* 10C Annex 7R and [to follow ].

## **10C.10 Application for approval and withdrawing an application for approval**

When to apply for approval

10C.10.1 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

10C.10.2 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

- 10C.10.3 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* 10C.10.4D requires Form E).
- 10C.10.4 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* has never before been approved to perform a *designated senior management function* for any *firm*.
- (3) A *firm* must not use Form E if the *approved person* has not been subject to a *current approved person approval* from the *FCA* or *PRA* to perform a *designated senior management function* in relation to any *firm* for more than six months.
- (4) A *firm* must not use Form E if:
- (a) a notification has been made or should be made to the *FCA* under *SUP* 10C.12.23R (Changes in fitness to be notified under Form D) or to the *PRA* under any equivalent *PRA* rule; or
  - (b) a notification has been made or should be made to the *FCA* or *PRA* under any of the following:
    - (i) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval);
    - (i) section 64B(5) (Notification of non-compliance with *C-CON* or equivalent *PRA rules*); or
    - (iii) section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action); or
  - (c) a notification has been made or should be made to the *PRA* under Chapter 11 of the part of the *PRA* rulebook titled "Notifications" (Conduct Rules: Notifications); or
  - (d) any of the circumstances in *SUP* 10C.12.7R (Qualified Form C) apply;

in relation to any *controlled functions* which that *person* is ceasing to

perform (as referred to in (1)) or any *controlled function* that they are continuing to perform for that *firm* or a *firm* in the same *group*.

- 10C.10.5 G *SUP* 10C.9.7D explains how applications should be submitted. For *credit unions*, *SUP* 10C.9.11D applies instead.

Statements of responsibility and other material included in an application

- 10C.10.6 D An application by a *firm* for the *FCA*'s approval under section 59 of the *Act* (Approval for particular arrangements) must be accompanied by a *statement of responsibilities*.

- 10C.10.7 G A *statement of responsibilities* should be:

- (1) drafted to clearly show how the responsibilities that the *candidate* will perform as part of the *candidate's controlled function* fit in with the *firm's* overall governance and management arrangements; and
- (2) consistent with the *firm's management responsibilities map*.

See *SYSC* 4.5.13G for more about this.

- 10C.10.8 G
- (1) *SYSC* or another part of the *regulatory system* will generally impose requirements (referred to as "prescribed requirements" in this paragraph) that relate to a particular post or set of responsibilities.
  - (2) For instance, there are particular responsibilities that go with the *FCA required functions*. The *PRA's* requirements about the allocation of "prescribed responsibilities" and "credit union prescribed responsibilities" in the part of the *PRA* rulebook titled "Allocation of responsibilities" are another example.
  - (3) The allocation of responsibilities under a *statement of responsibilities* should not reduce or alter the scope of any applicable prescribed requirements.
  - (4) If the responsibilities that the *candidate* is to carry out as described in the *statement of responsibilities* go beyond the prescribed requirements, those additional responsibilities should not reduce or alter the scope of the prescribed requirements.

- 10C.10.9 G A *firm* should include, in an application, any handover certificate and a reasonable summary of any other handover material referred to in *SYSC* 4.5.40R to *SYSC* 4.5.44G (Handover certificates and other handover material) that relates to the responsibilities that the *candidate* is to perform.

- 10C.10.10 G A *statement of responsibilities* should include functions that are included in a *PRA controlled function* under *SUP* 10C.8 (Minimising overlap with the *PRA* approved persons regime) or would have come within the *significant responsibility function* but are excluded under *SUP* 10C.7.1R(2) (Exclusion for *approved person* with approval to perform other *controlled functions*).

Who should make the application?

- 10C.10.11 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) Under (1), this will usually be the *firm* that is employing the *FCA candidate* to perform the *FCA controlled function*. (*SUP* 10C.10.12G describes some common situations.)
- (3) 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 the *FCA-approved persons* application forms.
- (4) 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*.

10C.10.12 G Outsourcing arrangements

<b>Outsourcing arrangements</b>	<b>Explanation</b>	<b>Submitting form</b>
<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</i> 10C.3.6G	Either A or B may submit <i>FCA-approved persons</i> forms on behalf of firms in the group (see <i>SUP</i> 15.7.8G).
<p>(i) A to B, where B:</p> <p>(a) is not an <i>authorised person</i>;</p> <p>(b) is not part of the same <i>group</i> as A; or</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>; or</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>	Responsibility for (as opposed to the performance of) any activity <i>outsourced</i> to B will remain with A. See <i>SYSC</i> 8.	A ensures that an individual approved by the <i>FCA</i> or the <i>PRA</i> to perform a <i>significant management function</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual.

10C.10.13 G Where the notification of an *appointed representative* (*SUP* 12.7.1R) is linked to 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*.

#### Vetting of candidates by the firm

10C.10.14 G Under section 60A of the *Act*, before a *firm* makes an application for approval, it should be satisfied that the *candidate* is a fit and proper person to perform the function to which the application relates. In deciding that question, the *firm* should have particular regard to whether the *candidate*, or any *person* who may perform a function on the *candidate's* behalf:

- (1) has obtained a qualification; or
- (2) has undergone, or is undergoing, training; or
- (3) possesses a level of competence; or
- (4) has the personal characteristics;

required by *FCA rules* in relation to *persons* performing functions of the kind to which the application relates.

- 10C.10.15 G For *guidance* on criteria that a *firm* should use for assessing whether an *FCA candidate* is fit and proper, see *FIT*.

Criminal records checks and verifying fitness and properness

- 10C.10.16 R A *firm* must (as part of its assessment of whether a *candidate* is a fit and proper person to perform an *FCA controlled function* and to verify the information contained in the application to carry out the *controlled function*) obtain the fullest information that it is lawfully able to obtain about the *candidate* under Part V of the Police Act 1997 (Certificates of Criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK* before making the application.
- 10C.10.17 G (1) In England and Wales a *firm* should get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks).
- (2) The *firm* should ask the *candidate* to fill in and return the form to the *firm*. The *firm* should then send the completed application form to DBS or the *firm's* umbrella body.
- (3) The *firm* should then ask the *candidate* to show the *firm* the certificate when the *candidate* receives it from the DBS.
- (4) There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI).
- 10C.10.18 G The *firm* should not send a copy of the certificate to the *FCA*.
- 10C.10.19 G If the *candidate* is employed by a contractor the *firm* may ask the contractor to obtain the certificate.
- 10C.10.20 G A *firm* should also check the *Financial Services Register* as part of its assessment of whether a *candidate* is fit and proper and to verify the information contained in the application for approval.
- 10C.10.21 G If appropriate, a *firm* should carry out a criminal record check in a jurisdiction outside the *UK* and check any equivalent of the *Financial Services Register* in an overseas jurisdiction. This may be appropriate if the *candidate* has spent a considerable time working or living in that jurisdiction.
- 10C.10.22 G A *firm* should consider whether it should take additional steps to verify any information contained in an application to carry out an *FCA controlled function* or that it takes into account in its assessment of whether a *candidate* is a fit and proper person.

Application for approval: References

10C.10.23 G Please see SYSC 5.3 (References and accurate information) about the requirement for a *firm* to ask for references from previous employers.

#### Processing an application

10C.10.24 G The *Act* sets out the time that the *FCA* has to consider an application and come to a decision.

10C.10.25 G In any case where the application for approval is made by a *person* applying for a *Part 4A permission*, the *FCA* has until the end of whichever of the following periods ends last:

- (1) the period within which an application for that *permission* must be determined; and
- (2) the period of three months from the time it receives a properly completed application.

10C.10.26 G In any other case, it is the period of three months from the time it receives a properly completed application.

10C.10.27 G The *FCA* will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, the processing time will be longer than the published standard response times if:

- (1) an application is incomplete when received; or
- (2) the *FCA* has knowledge that, or reason to believe that, the information is incomplete.

10C.10.28 G Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information about the *FCA candidate*. If it does this, the three-month period in which the *FCA* must determine a completed application:

- (1) will stop on the day the *FCA* requests the information; and
- (2) will start running again on the day on which the *FCA* finally receives all the requested information.

10C.10.29 G If there is a delay in processing the application within the standard response time, the *FCA* will tell the *firm* making the application as soon as this becomes apparent.

10C.10.30 G (1) Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form.

(2) If forms are not completed fully and honestly, applications will be subject to investigation and the *FCA candidate's* suitability to be approved to undertake an *FCA controlled function* will be called into

question.

- (3) A *person* who provides information to the *FCA* that is false or misleading may commit a criminal offence and could face prosecution under section 398 of the *Act*, regardless of the status of their application.

10C.10.31 G The *FCA* may grant an application only if it is satisfied that the *FCA candidate* is a fit and proper *person* to perform the *FCA 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.

10C.10.32 G For further *guidance* on criteria for assessing whether an *FCA candidate* is fit and proper for the purposes of SUP 10C.3.31G, see *FIT*.

#### Decisions on applications

10C.10.33 G The *FCA* must either:

- (1) grant the application; or
- (2) grant the application subject to conditions or limitations (see SUP 10C.11 for more information); or
- (3) refuse the application.

10C.10.34 G Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

10C.10.35 G If the *FCA* proposes to take the steps in SUP 10C.10.33G(2) or (3) 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

10C.10.36 R A *firm* applying to withdraw an application for approval must notify the *FCA*, using Form B in SUP 10C Annex 5R.

10C.10.37 G Under section 61(5) of the *Act* (Determination of applications), the *firm* may withdraw an application only if it also has the consent of:

- (1) the *candidate*; and
- (2) the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.

### **10C.11 Conditional and time-limited approvals**

## Purpose

- 10C.11.1 G (1) *SUP* 10C.11 describes the regime for conditional and time-limited approvals.
- (2) In particular, it sets out the *FCA*'s policies on giving of approval under section 59 subject to conditions or for a limited period only and on variation of approvals at the request of a *firm*, as required by section 63ZD of the *Act* (Statement of policy relating to conditional approval and variation).
- (3) The policies described in *SUP* 10C.11 also apply when the *FCA* is considering whether to give its consent to an application made to the *PRA* for approval.
- (4) The *FCA*'s policy on variations of approval on the *FCA*'s initiative is in *DEPP* 8.
- 10C.11.2 G The power to grant an approval subject to conditions or for a limited period only applies to *senior management functions*. However, as all *FCA controlled functions* are *senior management functions*, this means that this power applies to all *FCA controlled functions*.

## Qualified approval on initial application: general

- 10C.11.3 G The *FCA* may:
- (1) grant an application for approval subject to any conditions that the *FCA* considers appropriate; and
- (2) grant the application so as to give approval only for a limited period.
- 10C.11.4 G The *FCA* may use this power only if it appears to the *FCA* that it is desirable to do so to advance one or more of its *operational objectives*.
- 10C.11.5 G Factors that the *FCA* will take into account include:
- (1) those relating to the *firm* at the time of the application, such as:
- (a) its size, scale and complexity; and
- (b) its plans and prospects; and
- (2) those relating to the *candidate* and, in particular, the *candidate's* fitness and properness.
- 10C.11.6 G The *FCA* expects that the commonest uses of the power to give qualified approvals would be:
- (1) time-limited approvals;
- (2) a competency-related condition;

- (3) a role-limited condition; and
- (4) a time limitation in relation to an ongoing or prospective enforcement investigation.

Qualified approval on initial application: time-limited approval

- 10C.11.7 G An example of a time-limited approval is where a *firm* needs to appoint the *candidate* on an interim basis while the *firm* seeks to appoint a permanent *candidate*. The *FCA* may approve the interim appointee on a time-limited basis.
- 10C.11.8 G The *FCA* would not generally impose a time limitation in these circumstances for a period of less than 12 weeks. The *FCA* would expect the *firm* to use the 12-week rule in *SUP* 10C.3.10R.
- 10C.11.9 G An example of when the *FCA* may approve an individual on a time-limited basis is where, following a sudden or unexpected departure:
- (1) a *firm* needs to fill an *FCA designated senior management function* vacancy immediately; but
  - (2) it is likely to take longer than 12 weeks to recruit a permanent replacement; and
  - (3) there is an individual at the *firm* not currently approved to perform the relevant *FCA designated senior management function* whom the *firm* and the *FCA* think capable of fulfilling the role on an interim, provisional basis but not necessarily on a permanent basis.
- 10C.11.10 G Generally, the *FCA* would not impose a time limitation of this type for longer than 12 to 18 months.
- 10C.11.11 G The *FCA* would consider using this power for a person who is in the running for the long-term appointment.
- 10C.11.12 G
- (1) An example of how the *FCA* could deal with a *person* who is in the running for the long-term appointment is this.
  - (2) The head of compliance resigns unexpectedly from a *firm*. The *firm* wishes to appoint one of the deputies. The *FCA* and the *firm* believe the deputy to be capable of running the *firm's* compliance function on a day-to-day 'business as usual basis' but the deputy has no experience developing a long-term, firm-wide strategy. The *firm* estimates that it could take up to a year to recruit a permanent head of compliance. It also believes that the deputy could be the ideal candidate if the deputy could outline a viable compliance strategy for the *firm*.
  - (3) In this situation, it may be appropriate to approve the deputy as head of compliance subject to a 12-month time limit.

- (4) Before the end of that period, the deputy would have to prepare a new compliance strategy and the deputy's ability to do so would be taken into account when deciding whether to approve the deputy on a permanent basis.

10C.11.13 G In deciding whether a *candidate* is fit and proper, the *FCA* will take into account the role that the *candidate* is going to perform. The standard for a *person* who is appointed on a temporary basis may be different from a *person* appointed on a permanent basis.

10C.11.14 G The *FCA* may impose a condition on the approval, as well as a time limitation. For example, in the example in *SUP* 10C.11.12G, the *FCA* may impose a condition prohibiting the *candidate* from significantly amending the management structure of the department.

10C.11.15 G The other main examples of a time limited approval are:

- (1) a time limitation used in conjunction with a competence condition (see *SUP* 10C.11.26G);
- (2) an enforcement action time limited approval (see *SUP* 10C.11.16G); and
- (3) a time limitation in relation to the scale of a role (see *SUP* 10C.11.35G).

Qualified approval on initial application: enforcement action time limited

10C.11.16 G An enforcement action time-limited approval relates to a case in which there is an enforcement investigation ongoing, or in prospect, the results of which may call into question the *candidate's* fitness and propriety, but at the time of application there are no or insufficient grounds to refuse approval. The *candidate* may or may not be a subject of that investigation.

10C.11.17 G The *FCA* will limit an enforcement action time-limited approval for a period long enough to allow the investigation to be completed so far as relevant to the *candidate*. Imposing a time limitation on approval would allow the *FCA* to look at the situation in more detail after approval, with the benefit of all the facts arising from the investigation.

10C.11.18 G The policy on the length of time-limited approvals in *SUP* 10C.11.8G does not apply to time limitations of this type.

Qualified approval on initial application: Competence and related conditions

10C.11.19 G The *FCA* may take the view that a *candidate* would meet the fit and proper requirement with an approval subject to either, or both, of the following:

- (1) one or more conditions;
- (2) a time limitation;

who would not have met that requirement without the qualification.

- 10C.11.20 G *Firms* should not see the power to give approval on this basis as an opportunity to put forward sub-standard *candidates* in the knowledge that they are unlikely to gain unconditional approval but may scrape through by way of a qualified approval.
- 10C.11.21 G The *FCA* is likely only to give a qualified approval on the basis described in *SUP* 10C.11.19G in limited circumstances. Generally, the *FCA* would only use this power in place of rejection where the deficiency is in only a relatively small proportion of the required job competencies. Lack of technical knowledge is more likely to be easier to remedy than a problem with personal characteristics. The *FCA* is only likely to give its approval on this basis when the *candidate* has fallen short of the required standard by a reasonably small margin (a “near miss”).
- 10C.11.22 G One example of a conditional approval based on the competence of the *candidate* would be where the *candidate* would have met the fitness and propriety standard but for a shortfall in the *candidate’s* technical knowledge and the shortfall is in a relatively narrow and specific area.
- 10C.11.23 G The *FCA* does not see this as being a probationary or standalone measure. The competency-related limitation would be time specific and linked to something that the *FCA* would wish to re-examine after the period has expired.
- 10C.11.24 G Where there is a shortfall, approval will only be granted on the condition that the *candidate* is required to undertake training or receive mentoring so as to eliminate the knowledge shortfall.
- 10C.11.25 G An example of where a qualified approval based on competence may be used is for a *candidate* with proven management skills who is new to the role or the industry and requires some new technical knowledge for the new role. For instance, a *candidate* for the role of a senior manager may have a proven track record as a senior manager but may lack detailed knowledge of a specific area, such as money laundering or of the technical details of prudential capital requirements. A competence condition would require the *candidate* to undertake training in the area of shortfall after appointment.
- 10C.11.26 G A competency-related approval is likely to be linked with a time-limited approval. Under an approval of this kind, the *candidate* will be required to undertake the necessary training or other remedial measures. The time for which the approval will last would be set to give the *firm* and the *candidate* a reasonable time to complete the measures. At the end of the period, the *firm* would need to apply to the *FCA* to appoint the *candidate* on a permanent basis.
- 10C.11.27 G The *FCA* would only be likely to consider a qualified approval based on competence if it was sure that the *candidate* could achieve the required level of competence within a specified period, which is unlikely to be more than

12 to 18 months.

- 10C.11.28 G The *FCA* may give a conditional approval instead of rejection in cases where the condition does not relate to the *candidate's* abilities. For example, the *FCA* may consider that the *candidate* is suitable only if the *candidate* refrains from, or ceases undertaking, certain actions and make the approval conditional on that basis. The *FCA* may require the *candidate* to go beyond the regulatory requirements in a given area.
- 10C.11.29 G An example of *SUP* 10C.11.28G is a *firm* that wishes to appoint someone as a non-executive director who has a number of other non-executive directorships. The *FCA* may be concerned about the potential impact of these other commitments on that individual's ability to devote sufficient time to his proposed role with the *firm*. In this situation, it might be appropriate to attach a condition to the individual's approval requiring him to resign from some of his other non-executive directorships.

Qualified approval on initial application: role-limited

- 10C.11.30 G A role-limited approval means a time limited approval or condition relating to the nature or scope of the *candidate's* role.
- 10C.11.31 G One example of a role-limited approval relates to the fact that the size, nature, scope and complexity of a *firm's* activities can change over time. An individual may be fit and proper to perform a *senior management function* at a certain *firm* at a point in time but the *FCA* may wish to re-assess him if the *firm's* situation changes.
- 10C.11.32 G It is not *FCA* policy to impose role-limited approvals routinely for all *firms* or for a certain category of *firm*. For example, there is no blanket policy that approval of a *candidate* for a post in a small *firm* would be subject to a qualification based on the *firm* remaining small.
- 10C.11.33 G Where a *firm* is expanding or transforming its business model or its risk profile and there are identifiable upcoming milestones, the *FCA* may wish to link the duration of a *candidate's* approval to these milestones.
- 10C.11.34 G If the change is likely to occur in the near future and the details are clear, the *FCA* may consider its approval of the application in the light of this proposed change.
- 10C.11.35 G Very often it will be uncertain whether a change in circumstances will happen at all, the details may not yet be known or the timing may be uncertain. In that case, the *FCA* may make its judgement based on the *candidate's* proposed role without taking into account the possible change. This reflects the fact that the judgement of whether a *candidate* is fit and proper takes into account the role that he is actually going to play. However, to reflect the possible change, the *FCA* would give a time-limited approval that would come to an end on the occurrence of the milestone. The *firm* could then apply for a new and possibly unqualified approval.

10C.11.36 G An example under *SUP* 10C.11.35G is as follows.

(1) In this example:

- (a) an individual is to perform an *FCA designated senior management function* in an unlisted *firm* which currently operates only in the *UK*; and
- (b) the *firm* is planning a listing and a string of acquisitions which are projected to treble the size of its balance sheet and give it a global footprint over the next three years, but the *candidate* has never worked for an institution as large or as complex.

(2) In this situation:

- (a) it may be appropriate to limit the *candidate's* approval to a specified period. If the projected time for completing the transactions is three years then the approval would be for three years; or
- (b) it may instead be appropriate to draft the time limitation by reference to the milestone. For example, the approval might be expressed to come to an end at the point at which the *firm's* balance sheet exceeds a certain size.

10C.11.37 G The policy on the length of time-limited approvals in *SUP* 10C.11.8G does not apply to time limitations of this type.

10C.11.38 G Another way of dealing with a *firm* that plans to reorganise itself but has not made a firm decision to do so or worked out the details, is to make the approval subject to the condition that the nature or scope of the *candidate's* role should not change. The *firm* could apply for the condition to be removed once the plans are ready to be carried out.

10C.11.39 G Another example of a limited-role approval is where a *candidate* is not competent to carry out all the functions that are capable of falling within the *FCA designated senior management function* for which approval is sought but the *candidate* will be fit to carry out most of them and the *firm* has adequate arrangements to deal with the other aspects. In such circumstances, the condition would be that the *candidate* does not get involved in the aspects of the role for which he is not competent, as specified in the condition.

Qualified approval on initial application: condition not based on fitness

10C.11.40 G The power to impose a conditional or time-limited approval does not depend on the *candidate* being unfit without that condition or limit. The *FCA* can impose a condition or limit even if the *candidate* would still be fit and proper without it.

- 10C.11.41 G One example of a conditional approval when the *candidate* is fit and proper is to support supervisory action in relation to the *firm*. So, if a *firm* is running a remedial programme, it may be a condition of the *candidate's* approval that the *candidate* takes responsibility for aspects of that programme.
- 10C.11.42 G Although it is not general *FCA* policy to use the power to give qualified approval as a probationary measure, there may be circumstances where a *firm* wants to appoint a *candidate* to perform an *FCA designated senior management function* who, although fit and proper, may, in his role, be responsible for the *firm's* approach to dealing with particularly unusual or severe challenges in the near future. In this situation, it might be appropriate to approve the *candidate* subject to a time limit with a view to reassessing him for a permanent position in due course.
- 10C.11.43 G In this scenario, the time-limited approval may be accompanied by a condition requiring the *candidate* to:
- (1) complete an action or deliverable on or before the end of the time limit, eg, a requirement on the acting Head of Sales to produce a revised strategy for treating customers fairly within the next six months; and
  - (2) refrain from taking specific actions or decisions associated with the role until he receives permanent approval, eg, a requirement not to introduce a new sales channel until he receives permanent approval.

#### Effects of a breach of condition

- 10C.11.44 G Under section 59 of the *Act*, a *firm* must take reasonable care to ensure that no *person* performs a *controlled function* unless that *person* is acting in accordance with an approval given by the appropriate regulator.
- 10C.11.45 G Under section 63A of the *Act*, if the *FCA* is satisfied that:
- (1) a *person* (“P”) has at any time performed a *controlled function* without approval; and
  - (2) at that time P knew, or could reasonably be expected to have known, that P was performing a *controlled function* without approval;
- the *FCA* may impose a penalty on P of such amount as it considers appropriate.
- 10C.11.46 G For the purpose of section 63A of the *Act*, a *person* performs a *controlled function* without approval if that *person* is not acting in accordance with an approval given under section 59 (Approval for particular arrangements).
- 10C.11.47 G Sections 59 (see *SUP* 10C.11.44G) and 63A (see *SUP* 10C.11.45G) apply not only to the performance of a *controlled function* by someone who has not been approved to perform that function at all but also to the performance

of a *controlled function* for which the *person* has been approved in breach of a condition or time limitation.

10C.11.48 G Sections 59 (see *SUP* 10C.11.44G) and 63A (see *SUP* 10C.11.45G) show that failure to observe a condition does not in itself invalidate an approval. Instead, both the *firm* and the *approved person* may be subject to a penalty for breach of the *Act*. Such a failure may also:

- (a) involve a breach of *FCA rules* by the *firm* and a breach by the *approved person* of *C-CON*; and
- (b) call into question the fitness of the individual.

10C.11.49 G So for example, if an *approved person* is subject to a role-limited condition under which the *approved person* is not allowed to carry out certain specified aspects of the *FCA designated senior management function* but the *approved person* goes ahead and carries out those aspects, the *approved person's* approval does not automatically come to an end. Instead, both the *firm* and the *approved person* may be subject to a fine.

Variation of a conditional approval at the request of the firm: general description

10C.11.50 G A *firm* may apply to the *FCA* to change a conditional approval. The changes for which a *firm* may apply are:

- (1) a variation of the condition;
- (2) removal of the condition; and
- (3) the imposition of a new condition.

10C.11.51 G If a *firm* is applying for a change of the type described in *SUP* 10C.11.50G(1) or (2) the *firm* should apply to the *FCA* if the *FCA* imposed that condition, even if the approval was given by the *PRA*. If the *firm* is applying for the imposition of a new condition, the *firm* should apply to the *FCA* if the approval to which the application relates was given by the *FCA*.

10C.11.52 G The power to apply for a variation does not apply to a time limitation.

Variation of a conditional approval at the request of the firm: process

10C.11.53 D An application by a *firm* to the *FCA* under section 63ZA of the *Act* (Variation of senior manager's approval at request of relevant authorised persons) must be:

- (1) made by completing Form [to follow] in the form set out in [to follow]; and
- (2) accompanied by a *statement of responsibilities* for the *approved person* concerned.

10C.11.54 G *SUP* [to follow] explains how applications for conditional approval should

be submitted.

- 10C.11.55 G The *FCA* has until the end of the period of three months from the time it receives a properly completed application to consider the application and come to a decision.
- 10C.11.56 G The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see *DEPP 2*).
- 10C.11.57 G The *FCA* may refuse an application if it appears to the *FCA* that it is desirable to do so to advance one or more of its *operational objectives*.
- 10C.11.58 G Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information. If it does this, the three-month period in which the *FCA* must determine a completed application:
- (1) will stop on the day the *FCA* requests the information; and
  - (2) will start running again on the day on which the *FCA* finally receives all the requested information.
- 10C.11.59 G Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.
- 10C.11.60 G If the *FCA* proposes to refuse an application, it must follow the procedures for issuing *warning notices* and *decision notices* to all *interested parties*. The requirements relating to warning and decision notices are in *DEPP 2*.
- 10C.11.61 R A *firm* applying to withdraw an application for variation of an approval must notify the *FCA*, using Form [to follow], in [to follow].
- 10C.11.62 G [to follow] explains how applications should be submitted.
- 10C.11.63 G Under section 61(5) of the *Act* (Determination of applications), as applied by section 63ZA(8) of the *Act* (Variation of senior manager's approval at request of relevant authorised person), the *firm* may withdraw an application only if it also has the consent of:
- (1) the *approved person*; and
  - (2) the *person* by whom the *approved person* is employed if this is not the *firm* making the application.

Variation of a conditional approval at the request of the firm: policy

- 10C.11.64 G The *FCA*'s policy on approving or refusing a request for a variation is the same as it is for imposing conditions on approval.
- 10C.11.65 G An example of a situation in which the *FCA* would consider varying a condition would be a competency-related condition which required a training course to be completed. If the *firm* later concludes that a different course would be better, the *firm* may apply for a variation of the condition.

- 10C.11.66 G Another example of a situation in which the *FCA* would consider varying a condition would be a condition relating to a remedial plan (see *SUP* 10C.11.41). If the remedial plan is changed, it may be appropriate to change the condition.
- 10C.11.67 G Examples of where the *FCA* may agree to removing a condition are where the *approved person's* role has changed so that the reason for the condition originally being imposed no longer applies, or where new information has come to light that removes any doubt about the *approved person's* competence so a condition is no longer necessary. For example, the *FCA* may agree to removing a condition about the scope of the *approved person's* role of the type described in *SUP* 10C.11.39G.
- 10C.11.68 G See *SUP* 10C.11.38G for another example of a case where the *FCA* may agree to removing a condition (condition imposed pending reorganisation).

Variation of a conditional approval: action at the initiative of the *FCA*

- 10C.11.69 G Under section 63ZB of the *Act* (Variation of senior manager's approval on initiative of regulator), the *FCA* may vary an approval given by the *FCA* or the *PRA* for the performance of a *designated senior management function* if the *FCA* considers that it is desirable to do so to advance one or more of its *operational objectives*.
- 10C.11.70 G The *FCA* may vary an approval by:
- (1) imposing a condition;
  - (2) varying a condition;
  - (3) removing a condition; or
  - (4) limiting the period for which the approval is to have effect.
- 10C.11.71 G More information about the *FCA's* powers to vary a condition, including its policy on using these powers, can be found in *DEPP* 8.

## **10C.12 Changes to an *FCA*-approved person's details**

Moving within a firm

- 10C.12.1 G (1) 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*.
- (2) Where the changes will involve the *person* performing one or more *FCA controlled functions* different from those for which approval has already been granted, an application must be made to the *FCA* for approval for the *person* to perform those *FCA controlled*

*functions.*

- (3) 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*.
- (4) 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*.

- 10C.12.2 G (1) A *firm* should generally use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* within the same *firm* or *group*.
- (2) In certain cases a *firm* should use Form A.
- (3) The details can be found in *SUP* 10C.10.3D to *SUP* 10C.10.4D.

Moving between firms

- 10C.12.3 G If it is proposed that an *FCA-approved person*:
- (1) will no longer be performing an *FCA controlled function* under an *arrangement* entered into by one *firm* or one of its contractors; but
  - (2) will be performing the same or a different *FCA 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*.

- 10C.12.4 G In certain circumstances, when the *FCA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

Ceasing to perform an FCA-controlled function

- 10C.12.5 R (1) A *firm* must notify the *FCA* no later than seven *business days* after an *FCA-approved person* ceases to perform an *FCA controlled function*.
- (2) It must make that notification by submitting to the *FCA* a completed Form C in *SUP* 10C Annex 6R.
- (3) If:
- (a) a *firm* is also making an application for approval for that

*approved person* to perform a *controlled function*; and

- (b) ceasing to perform the *controlled function* in (1) has triggered a requirement to make that application:
  - (i) to the *FCA* using Form E (rather than a Form A) under *SUP* 10C.10.4D; or
  - (ii) to the *PRA* using the *PRA*'s Form E in accordance with the corresponding *PRA* requirements;

it may make the notification under (1) using that Form E.

- 10C.12.6 G *SUP* 10C.9.8R explains how notifications should be submitted. For *credit unions*, *SUP* 10C.9.12R applies instead.
- 10C.12.7 R (1) A *firm* must notify the *FCA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C for an *FCA-approved 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.
- 10C.12.8 G (1) Notification under *SUP* 10C.12.7R may be made by telephone, email or fax and should be made, where possible, within one *business day* of the *firm* becoming aware of the information.  
(2) Oral notifications should be given directly to the *firm*'s usual supervisory contact at the *FCA*. An oral notification left with another *person* or left on a voicemail, or other automatic messaging service, is unlikely to have been given appropriately.  
(3) 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.
- 10C.12.9 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*
- 10C.12.10 G (1) A *firm* can submit Form C or Form E to the *FCA* in advance of the cessation date.

- (2) If the actual cessation date turns out to be different from the one notified in advance, the *firm* should notify the *FCA*.
- 10C.12.11 G (1) 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*.
- (2) 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 for another *FCA controlled function*.
- 10C.12.12 G Sending forms promptly will help to ensure that any fresh application can be processed within the standard response times.

#### Changes to an approved person's personal details

- 10C.12.13 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 *SUP 10C Annex 7R*, of that change within seven *business days* of the *firm* becoming aware of the matter.
- 10C.12.14 G The duty to notify in *SUP 10C.12.13R* does not apply to changes to an *FCA-approved person's* private address.

#### Changes to arrangements

- 10C.12.15 R (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP 10C 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 10C 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.
- (4) This *rule* also applies to a *firm* for an *approved person* to whom the grandfathering arrangements relating to the coming into force of the *Act* applied as if the *firm* had completed the relevant Form A for that *person*.
- 10C.12.16 G *SUP 10C.9.8R* explains how notifications should be submitted. For *credit unions*, *SUP 10C.9.12R* applies instead.
- 10C.12.17 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 but continues to perform the *controlled function* for the *firm*. The *firm*

should notify the *FCA* by completing section 1.07 of Form D.

Revised statements of responsibilities and changes in responsibilities

- 10C.12.18 G Under section 62A of the *Act* a *firm* must provide the *FCA* with a revised *statement of responsibilities* if there has been any significant change in responsibilities of an *FCA-approved SMF manager*. More precisely:
- (1) if a *firm* has made an application (which was granted) to the *FCA* for approval for a *person* to perform an *FCA designated senior management function*; and
  - (2) the application contained, or was accompanied by, a *statement of responsibilities*; and
  - (3) since the granting of the application, there has been any significant change in the aspects of the *firm's* affairs which the *FCA-approved SMF manager* is responsible for managing in performing the function;
- the *firm* should provide the *FCA* with a revised *statement of responsibilities*.
- 10C.12.19 G *SUP* 10C.9.7D explains how any revised *statement of responsibilities* under section 62A of the *Act* (Changes in the responsibilities of senior managers) should be submitted. For *credit unions*, *SUP* 10C.9.11D applies instead.
- 10C.12.20 R A *firm* must, at all times, have a complete set of current *statement of responsibilities* for all its *SMF managers*.
- 10C.12.21 G (1) A complete set of current *statement of responsibilities* means all *statements of responsibilities* that the *firm* has provided to the *FCA* or *PRA* as revised under section 62A of the *Act*.
- (2) A *statement of responsibilities* is not current if the *person* in question no longer performs any of the *controlled function* to which it relates.
- 10C.12.22 G (1) A *firm* should notify the *FCA* if there is any significant change to the allocation of any of the responsibilities referred to in a current *statement of responsibilities* that does not trigger a requirement for that *statement of responsibilities* to be revised under section 62A of the *Act*.
- (2) This notification should be within one *month* of the change taking place.
- (3) Such notification is required under *Principle 11* and *SUP* 15.3.7G (Communication with the appropriate regulator in accordance with *Principle 11*).

Notifications about fitness, disciplinary action and breaches of C-CON

- 10C.12.23 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* either:

- (1) on Form D; or
- (2) if it is more practical to do so and with the prior agreement of the *FCA*, by e-mail or fax, as soon as practicable.

10C.12.24 G *SUP* 10C.9.7D applies to the submission of Form D. For *credit unions*, *SUP* 10C.9.11D applies instead.

10C.12.25 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

10C.12.26 G The duty to notify in *SUP* 10C.12.23R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in *FIT* 2.

10C.12.27 G Section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval) states that, at least once a year, each *firm* must, in relation to every *SMF manager* for whom an approval has been given on the application of that *firm*:

- (1) consider whether there are any grounds on which the *FCA* could withdraw the approval; and
- (2) if the *firm* is of the opinion that there are such grounds, notify the *FCA* of those grounds.

10C.12.28 G The duty to notify the *FCA*, described in *SUP* 10C.12.27G(2), applies in relation to *PRA-approved persons* as well as *FCA-approved persons*.

10C.12.29 G *FIT* sets out *guidance* on the factors a *firm* should take into account when assessing the fitness and propriety of an *approved person*.

10C.12.30 G As explained in *SUP* 15.11 (Notification of C-CON breaches and disciplinary action), section 64B(5) of the *Act* (Breach of conduct rules) states, among other things, that if a *firm* knows or suspects that an *approved person* has failed to comply with *C-CON*, the *firm* should notify the *FCA* of that fact.

10C.12.31 G As explained in *SUP* 15.11 (Notification of C-CON breaches and disciplinary action), section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action) says, among other things, that if:

- (1) a *firm* takes disciplinary action in relation to an *approved person*; and
- (2) the reason, or one of the reasons, for taking that action is a reason specified in *SUP* 15.11.6R;

the *firm* should notify the *FCA* of that fact.

- 10C.12.32 R If a *firm* is required to notify the *FCA* under any of the following:
- (1) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or
  - (2) section 64B(5) of the *Act* (Breach of conduct rules); or
  - (3) section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action);
- it must give that notification:
- (4) under *SUP* 10C.12.5R(2) (Form C) or *SUP* 10C.12.7R (Qualified Form C) if either of those *rules* apply; or
  - (5) (in any other case) under *SUP* 10C.12.23R (Form D).
- 10C.12.33 G An example of when a notification should be made using Form C is when a *firm* is required to notify the *FCA* under section 64C of the *Act* that it has dismissed an *SMF manager*.
- 10C.12.34 G (1) When considering how to notify the *FCA* under *SUP* 10C.12.23R or *SUP* 10C.12.32R, a *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting a written notification.
- (2) Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another *person* or left on a voicemail, or other automatic messaging service, is unlikely to have been given appropriately.

The need for complete and accurate information

- 10C.12.35 G (1) The obligations to supply information to the *FCA* under:
- (a) *SUP* 10C; or
  - (b) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or
  - (c) section 64B(5) of the *Act* (Breach of conduct rules); or
  - (d) section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action);
- apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm*

and an *employee* upon termination of the *employee's* employment.

- (2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

10C.12.36 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

**10C**      **The main business areas and management functions of a relevant**  
**Annex 1R**   **authorised person**

Business areas and management functions	Explanation
(1) Establishing and operating systems and controls in relation to <i>financial crime</i>	
(2) Safekeeping and administration of assets of <i>clients</i>	This includes oversight of the <i>firm's</i> operational compliance with CASS. In particular, it includes the function set out in CASS 1A.3.1AR or CASS 11.3.4R. However, this item applies even if those <i>rules</i> do not apply.
(3) Payment services	This means:  (1) <i>payment services</i> ;  (2) issuing and administering other means of payment (for example, cheques and bankers' drafts);  (3) issuing <i>electronic money</i> ; and  (4) current accounts.
(4) Settlement	This means clearing and settlement of any transactions described in row (12) in this annex and of transactions in those products for its own account
(5) Investment management	This has the same meaning as <i>managing investments</i> with the following adjustments:  (a) it covers all types of assets; and  (b) the exclusions in the <i>Regulated Activities Order</i> do not apply.  It also covers fund management, including:  (c) <i>establishing, operating or winding up a collective investment scheme</i> ; and  (d) <i>managing a UCITS</i> ; and

	(e) <i>managing an AIF.</i>
(6) Financial or investment advice	This includes <i>advising on investments.</i>
(7) Mortgage advice	This has the same meaning as <i>advising on regulated mortgage contracts</i> but is expanded to cover land outside the <i>United Kingdom</i> and to cover security of any kind.
(8) Corporate investments	This means acquiring, holding, managing and disposing a <i>firm's</i> investments made for its own account.
(9) Wholesale sales	This means the <i>selling</i> of any <i>investment</i> to a <i>person</i> other than a <i>retail customer</i>
(10) Retail sales	This means the <i>selling</i> of any <i>investment</i> to a <i>retail customer</i> . It includes savings accounts.
(11) First line quality assurance of sales	This means independent quality assurance checking of sales or advice, undertaken within the <i>firm</i> but not by the compliance or audit functions.
(12) Trading for clients	This means <i>dealing in investments as agent</i> and <i>execution of orders on behalf of clients</i> but the list of products includes money market instruments and foreign exchange.  It includes market making as defined by <i>MIFID</i> .
(13) <i>Investment research</i>	
(14) Origination/syndication and underwriting	Origination includes:  (1) entering into or acquiring (directly or indirectly) any commitment or <i>investment</i> with a view to transferring some or all of it to others, or with a view to others investing in the same transaction;  (2) sub-participation;  (3) any transaction described in the <i>Glossary</i> definition of <i>originator</i> .  Underwriting includes underwriting that is not on a firm commitment basis.

	This activity also includes the provision of services relating to such transactions.
(15) Retail lending decisions	Deciding whether and on what terms to lend to <i>retail customers</i> .  Lending includes granting credit, leasing and hire (including finance leasing).
(16) Wholesale lending decisions	Deciding whether and on what terms to lend to <i>persons</i> who are not <i>retail customers</i> .  Lending includes granting credit, leasing and hire (including finance leasing).
(17) Design and manufacturing of products intended for wholesale customers	Wholesale customers mean <i>persons</i> who are not <i>retail customers</i>
(18) Design and manufacture of products intended for <i>retail customers</i>	
(19) Production and distribution of marketing materials and communications	This includes <i>financial promotions</i>
(20) Customer service	This means dealing with <i>clients</i> after the point of sale, including queries and fulfilment of <i>client</i> requests
(21) Customer complaints handling	This includes oversight of the <i>firm's</i> compliance with <i>DISP</i> .  It also includes:  (1) oversight of any similar procedures relating to activities that do not come under the jurisdiction of the <i>Financial Ombudsman Service</i> ;  (2) activities that take place outside the <i>UK</i> ; and  (3) activities that are not subject to any ombudsman service.
(22) Collection and recovering amounts owed to a <i>firm</i> by its customers	“Customer” means any <i>person</i> falling into any of the definitions of <i>client</i> in the <i>Glossary</i> so far as they apply to the <i>FCA's Handbook</i> . The

Dealing with customers in arrears	definition is extended to cover services provided by the <i>firm</i> that are not provided in the course of carrying on a <i>regulated activity</i> or an <i>ancillary service</i> .
(23) Middle office	This means risk management and controls in relation to, and accounting for, transactions in <i>securities</i> or <i>derivatives</i>
(24) The <i>firm's</i> information technology	
(25) Business continuity planning	This means the functions described in SYSC 4.1.6R and SYSC 4.1.7R
(26) Human resources	This includes recruitment, training and competence and performance monitoring
(27) Incentive schemes for the <i>firm's</i> staff	This is not limited to schemes based on sales.

**10C**            **Approved person regime: summary of forms and their use for applications**  
**Annex**        **for approval to perform an FCA-controlled function**  
**2G**

<b>Function</b>	<b>Form</b>	<b>Submission</b>
(1) <i>Person</i> about to perform an <i>FCA controlled function</i> if he has never been approved by the <i>FCA</i> or <i>PRA</i> before.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
(2) The <i>candidate</i> is to perform an <i>FCA designated senior management function</i> and either:  (a) has current approval to perform an <i>FCA designated senior management function</i> or a <i>PRA designated senior management function</i> ; or  (b) has had such an approval within the previous six <i>months</i> .	Shortened Form  A  if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
(3) <i>Candidate</i> ceased to be an <i>approved person</i> more than six months ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.

<p>(4) Either:</p> <p>(a) <i>candidate</i> is seeking to perform an <i>FCA designated senior management function</i> for the first time and has never been approved to perform a <i>PRA designated senior management function</i> before; or</p> <p>(b) <i>candidate</i> ceased to have approval from the <i>FCA</i> or <i>PRA</i> to perform a <i>designated senior management function</i> more than six months ago.</p>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<p>(5) <i>Firm</i> applying for an outstanding application to perform an <i>FCA controlled function</i> to be withdrawn.</p>	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<p>(6) <i>Person</i> ceasing to perform an <i>FCA controlled function</i>.</p>	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> .
<p>(7) Either:</p> <p>(a) an <i>FCA-approved person's</i> title, name or national insurance number changes; or</p> <p>(b) there is information which may be material to the continuing assessment of an <i>approved person's</i> fitness and propriety.</p>	D	Submitted by <i>firm</i> within seven <i>business days</i> of the firm becoming aware of the matter.
<p>(8) <i>Firm</i> obliged to notify the <i>FCA</i> under:</p> <p>(a) section 63(2A) of the <i>Act</i> (Duty to notify regulator of grounds for withdrawal of approval); or</p> <p>(b) section 64B(5) of the <i>Act</i> (Breach of conduct rules); or</p> <p>(c) section 64C of the <i>Act</i> (Requirement for relevant authorised persons to notify regulator of disciplinary action).</p>	Form D.  Form C to be used instead where the <i>person</i> is ceasing to perform a <i>controlled function</i>	
<p>(9) <i>Person</i> remaining with the same <i>firm</i> but changing <i>FCA controlled functions</i>.</p>	E	Submitted by <i>firm</i> to the <i>FCA</i> before changes take place.
<p>(10) <i>Person</i> remaining with the same <i>firm</i> but giving up a <i>PRA controlled function</i></p>	E	Submitted by <i>firm</i> to the <i>FCA</i>

and taking up an <i>FCA controlled function</i> .		before changes take place.
(11) <i>Person</i> remaining with the same <i>firm</i> in the circumstances described in example 10 in the table in SUP 10C.8.10G (giving up a <i>PRA controlled function</i> triggering need for <i>FCA</i> approval).	E	Submitted by <i>firm</i> to the <i>FCA</i> in hard copy in advance of giving up the <i>PRA controlled function</i> .
(12) <i>Person</i> remaining with the same <i>firm</i> but giving up an <i>FCA designated senior management function</i> and taking up a <i>PRA designated senior management function</i> .	E	Submitted by <i>firm</i> to the <i>PRA</i> before changes take place (see the <i>PRA</i> 's requirements).
(13) <i>Firm</i> applying for the variation of a conditional approval	[To follow]	
(14) <i>Firm</i> applying for an outstanding application to vary a conditional approval to be withdrawn.	[To follow]	
[Other examples to cover moving from firms in other sectors]	[To follow]	

Amend the following provisions as shown.

## 15 Notifications to the FCA or PRA

### 15.1 Application

...

#### Relevant authorised persons

15.1.7 R The following apply only to relevant authorised persons:

- (1) SUP 15.2.5G and SUP 15.2.6G (Purpose);
- (2) SUP 15.11 (Notification of C-CON breaches and disciplinary action); and
- (3) SUP 15.12 (Ongoing alerts for retail adviser complaints).

### 15.2 Purpose

...

15.2.5 G SUP 15.11 (Notification of C-CON breaches and disciplinary action)

provides rules and guidance on notifications to the FCA by a relevant authorised person where it knows or suspects that any conduct rules staff has failed to comply with C-CON or it takes disciplinary action in relation to any conduct rules staff and the reason(s) for taking that action is a reason specified in rules made by the FCA. These are requirements imposed under sections 64B and 64C of the Act.

- 15.2.6     G     SUP 15.3 (Ongoing alerts for retail adviser complaints) sets out rules and guidance on a relevant authorised person's obligation to notify the FCA of complaints against an employee acting as a retail investment adviser.

The following text is new and is not underlined.

## **15.11     Notification of C-CON breaches and disciplinary action**

Reasons for making a notification to the FCA

- 15.11.1     G     Under section 64A of the Act, the FCA may make rules about the conduct of approved persons and persons who are employees of relevant authorised persons.
- 15.11.2     G     C-CON sets out rules and guidance about the conduct of conduct rules staff.
- 15.11.3     G     Under section 64B of the Act, if a firm knows or suspects that any conduct rules staff has failed to comply with C-CON, it must notify the FCA.
- 15.11.4     G     Under section 64C of the Act, a firm must notify the FCA if it takes disciplinary action against any conduct rules staff and the reason(s) for this action is a reason specified in rules made by the FCA in SUP 15.11.6R.
- 15.11.5     G     Disciplinary action is defined in section 64C of the Act as the issuing of a formal written warning, the suspension or dismissal of a person who is member of a relevant authorised person's conduct rules staff or the reduction or recovery of any of such person's remuneration.
- 15.11.6     R     If a reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of C-CON, then the firm is required to notify the FCA of the disciplinary action.
- 15.11.7     G     A firm should make a separate notification about a person under section 64C of the Act where:
- (1)     it has made a notification to the FCA about a person pursuant to section 64B of the Act; and

- (2) it subsequently takes disciplinary action against the *person* for the action, failure to act, or circumstance, that amounted to a breach of *C-CON*.

15.11.8 G If, after a *firm* has made a notification for a *person* (A) pursuant to:

- (1) section 64B of the *Act*; or
- (2) section 64C of the *Act*,

it becomes aware of facts or matters which cause it to change its view that A had breached *C-CON* or cause it to determine that A had breached a provision of *C-CON* other than the provision to which the notification related, the *firm* should inform the *FCA* of such facts and matters and its revised conclusion in line with a *firm's* obligation to comply with Principle 11.

15.11.9 G A *firm* that is considering whether to make a notification in respect of a suspected breach of *C-CON* should satisfy itself that it has reasonable grounds for such a suspicion prior to making the notification. If a *firm* has made a notification about a *person* pursuant to section 64B of the *Act* based on a suspicion, the *firm* should inform the *FCA* of any subsequent determination it makes in relation to that matter.

15.11.10 G A *firm* should make a notification pursuant to section 64B of the *Act* even if the matter giving rise to the notification relates to a *person* who is no longer a member of the *conduct rules staff* of the *firm*, including where such *person* is no longer an *employee* of the *firm*.

15.11.11 G In relation to any *conduct rules staff*, the *FCA* does not expect a *firm* to notify it pursuant to section 64B or section 64C of the *Act* if the known or suspected breach of *C-CON* occurred prior to the application of *C-CON* to that *firm*.

Timing and form of notifications: SMF managers

15.11.12 G Where a *firm* is required to notify the *FCA* pursuant to section 64B or section 64C of the *Act* and such notification relates to a *SMF manager*, *SUP 10C* sets out how and when the notification must be made and the relevant *notification rules* in *SUP 10C* apply.

Timing and form of notifications: certification employees and other conduct rules staff

15.11.13 R A *firm* must make any notifications required pursuant to section 64B or section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* quarterly.

15.11.14 R A *firm* must make any notifications required pursuant to section 64B or section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* on the form specified in [**to follow**].

- 15.11.15 R A *firm* must make notifications pursuant to section 64B or section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* in accordance with the *rules* and *guidance* in SUP 15.7.

General guidance on notifications of rule breaches and disciplinary action

- 15.11.16 G The obligation to notify pursuant to section 64B or section 64C of the *Act* does not replace or limit a *firm's* obligation to comply with *Principle 11*.
- 15.11.17 G When considering whether to make a notification pursuant to section 64B or section 64C of the *Act*, a *firm* should also consider whether a notification should be made under any *notification rules*, including, without limitation, any *notification rules* that require a notification to be made to the *PRA*.
- 15.11.18 G The obligations to make a notification pursuant to section 64B or section 64C of the *Act* apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.
- 15.11.19 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

## 15.12 Ongoing alerts for retail adviser complaints

- 15.12.1 R (1) A *firm* must notify the *FCA*, in the form in [SUP 10 Annex 9R], where:
- (a) in any 12-month period, it has upheld three *complaints* about matters relating to activities carried out by any one *employee* when acting as a *retail investment adviser*; or
  - (b) it has upheld a *complaint* about matters relating to activities carried out by any one *employee* when acting as a *retail investment adviser*, where the redress paid exceeds £50,000.
- (2) A notification 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.
- (3) A notification 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.
- 15.12.2 G For the purpose of SUP 15.12.1R:
- (1) when calculating the number of *complaints* in SUP 15.12.1R(1)(a),

the *firm* should exclude *complaints* previously notified to the *FCA* under this rule;

- (2) redress, under *SUP* 15.12.1R(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 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) the amount of redress paid under *SUP* 15.12.1R(1)(b) 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) and 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*]

15.12.3 R Notifications under *SUP* 15.12.1R must be made electronically using a method of notification prescribed by the *FCA*.

## Annex F

### Amendments to the Decision Procedure and Penalties manual (DEPP)

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

#### 1.1 Application and Purpose

##### Application

- 1.1.1 G This manual (*DEPP*) is relevant to *firms*, *approved persons* and other *persons*, whether or not they are regulated by the *FCA*. It sets out:

...

- (4) the *FCA*'s policy regarding the variation of an *SMF manager*'s approval on the *FCA*'s initiative under section 63ZB of the *Act* (see *DEPP* 8).

##### Purpose

- 1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 63ZD(1), 69(1), 88C(1), 89S(1), 93(1), 124(1), 131FA, 131J(1), 169(9), 192N(1), 210(1), 312J(1), 345D(1) and 395 of the *Act* that the *FCA* publish the statements of procedure or policy referred to in *DEPP* 1.1.1G.

...

- 1.2.4A G Section 395 of the *Act* also requires the *FCA* to publish a statement of its procedure for decisions which gives rise to an obligation for the *PRA* to include a statement under section 387(1A) in a *warning notice* or a statement under section 388(1A) in a *decision notice* as follows:

- (1) Section 387(1A) provides that where the *FCA* proposes to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5), ~~or 55I(8)~~ or 61(2D), the *warning notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s proposal.
- (2) Section 388(1A) provides that where the *FCA* has decided to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5), ~~or 55I(8)~~, or 61(2D), the *decision notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s decision.

...

- 1.2.4D G Where an application to perform a *controlled function* is made to the *PRA* as the appropriate regulator, the *PRA* can only approve a person to perform a

*controlled function* with the consent of the *FCA* (section 59(4)(b)) of the *Act*. Where the application is a *relevant senior management application*, *FCA* consent can be conditional on the *PRA* imposing conditions, or the *PRA* giving approval only for a limited period.

...

## 2 Statutory notices and the allocation of decision making

...

### 2.5 Provision for certain categories of decision

...

2.5.3 G *FCA* staff under *executive procedures* will take the decision to give a *warning notice* if the *FCA* proposes to:

...

4A grant a *relevant senior manager application*, subject to any conditions or approved only for a limited period;

4B refuse an application to vary an approval under section 59 of the *Act* that was granted subject to conditions;

...

2.5.5 G If representations are made in response to a *warning notice* proposing the action set out at *DEPP 2.5.3G(1)*, *DEPP 2.5.3G(4)*, *DEPP 2.5.3G(4A)*, *DEPP 2.5.3G(4B)* or *DEPP 2.5.3G(5)*, then the *RDC* will take the decision to give a *decision notice*.

...

Decisions relating to applications for *PRA* authorisation or approval

2.5.6A G *FCA* staff under *executive procedures* will take the decision where the *FCA* is proposing or deciding to:

...

(3) refuse its consent to the granting by the *PRA* of an application to perform a *controlled function*, or give its consent subject to conditions.

...

2.5.8 G ...

FCA's power to vary SMF manager's approval on its own initiative

- 2.5.8A    G    The RDC will take the decision under section 63ZB of the Act to vary an approval given to an SMF manager (by imposing a condition, varying a condition, removing a condition or limiting the period for which the approval is to have effect).
- 2.5.8B    G    Notwithstanding DEPP 2.5.7G, FCA staff under executive procedures will be the decision maker whenever all of the interested parties (as defined by section 63ZC(6) of the Act) agree not to contest the FCA's exercise of its power under section 63ZB of the Act.
- 2.4.8C    G    The FCA's statement of policy on the use of the power to vary an SMF manager's approval on its own initiative is set out in DEPP 8.

...

**2 Annex 1G    Warning notices and decision notices under the Act and certain other enactments**

...

<b>Section of the Act</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
62(2)	when the FCA is proposing to refuse an application for approval of a person performing a <u>controlled function</u> or to <u>grant the application subject to conditions or for a limited period (or both)</u>	<u>SUP 10A and SUP 10C</u>	<i>Executive procedures</i>
62(3)	when the FCA is deciding to refuse an application for approval of a person performing a <u>controlled function</u> or to <u>grant the application subject to conditions or for a limited period (or both)</u>	<u>SUP 10A and SUP 10C</u>	<i>RDC or executive procedures See DEPP 2.5.5G</i>
...			
<u>63ZA(4)(b) and 62(2)</u>	when the FCA is proposing to <u>refuse an application for variation of an approval granted to an SMF manager, subject to conditions</u>	<u>SUP 10C</u>	<i>Executive procedures</i>
<u>63ZA(8) and 62(3)</u>	when the FCA is deciding to <u>refuse an application for variation of an</u>	<u>SUP 10C</u>	<i>RDC or executive</i>

	<u>approval granted to an <i>SMF manager</i>, subject to conditions</u>		<u>procedures</u> <u>See DEPP 2.5.5G</u>
67(1)/(4)	when the <i>FCA</i> is proposing or deciding to take action against an <del>approved person</del> <u>individual</u> by exercising the disciplinary powers conferred by section 66*		<i>RDC</i>
...			
<u>142T(1)/ (4)</u>	<u>when the <i>FCA</i> is proposing or deciding to take action against a <i>person</i> under section 142S*</u>		<i>RDC</i>
...			

**2 Annex 2G Supervisory notices**

<b>Section of the Act</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<u>63ZC(4)</u> <u>63ZC(8)</u> <u>63ZC(9)(b)</u>	when the <i>FCA</i> is exercising its <u>power to vary, on its own initiative, an approval granted to an <i>SMF manager</i></u>		<i>RDC</i> or <i>executive procedures</i>  <u>See DEPP 2.5.8AG and DEPP 2.5.8BG</u>
...			

...

**6 Penalties**

...

6.2.3 G ...

Action against ~~approved persons~~ individuals under section 66 of the Act

- 6.2.4 G ~~The primary responsibility for ensuring compliance with a *firm's* regulatory obligations rests with the *firm* itself. However, the *FCA* may take disciplinary action against an *approved person* where there is evidence of personal culpability on the part of that *approved person*. Personal culpability arises where the *behaviour* was deliberate or where the *approved person's* standard of *behaviour* was below that which would be reasonable in all the circumstances at the time of the conduct concerned. Disciplinary action against senior managers of firms and other individuals is one of the *FCA's* key tools in deterring firms and individuals from committing breaches.~~
- 6.2.5 G In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an ~~*approved person*~~ individual (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FCA* to take action against both the *firm* and the ~~*approved person*~~ individual. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (*SYSC* 3.1.1R or *SYSC* 4.1.10R), and an ~~*approved person*~~ individual may have taken advantage of those deficiencies to front run orders or misappropriate assets.
- 6.2.6 G In addition to the general factors outlined in *DEPP* 6.2.1G, there are some additional considerations that may be relevant when deciding whether to take action against an ~~*approved person*~~ individual pursuant to section 66 of the *Act*. This list of those considerations is non-exhaustive. Not all considerations below may be relevant in every case, and there may be other considerations, not listed, that are relevant.
- (1) The ~~*approved person's*~~ individual's position and responsibilities. The *FCA* may take into account the responsibility of those exercising *significant influence functions* or *designated senior management functions* in the *firm* for the conduct of the *firm*. The more senior the ~~*approved person*~~ individual responsible for the misconduct, the more seriously the *FCA* is likely to view the misconduct, and therefore the more likely it is to take action against the ~~*approved person*~~ individual.
  - (2) Whether the most appropriate regulatory response would be disciplinary action against the *firm*, rather than the ~~*approved person*~~ individual or both.
  - (3) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the ~~*approved person*~~ individual.
- 6.2.6A G *DEPP* 6.2.6BG to *DEPP* 6.2.9G apply to action taken by the *FCA* under section 66 of the *Act*, save for action taken by virtue of section 66A(5). *DEPP* 6.2.9-AG and *DEPP* 6.2.9-BG apply only to action taken by virtue of section 66A(5).

- 6.2.6B G The FCA may take disciplinary action against an individual where there is evidence of personal culpability on the part of that individual. Personal culpability arises where the behaviour was deliberate or where it was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned.
- 6.2.7 G The FCA will not discipline ~~approved persons~~ individuals on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see *APER* 4.6.13G, ~~and~~ *APER* 4.6.14G, and *C-CON* 4.1.9G to *C-CON* 4.1.12G). In particular, disciplinary action will not be taken against an *approved person* performing a *significant influence function* simply because a regulatory failure has occurred in an area of business for which he is responsible. The FCA will consider that an *approved person* performing a *significant influence function* may have breached *Statements of Principle* 5 to 7, or that an SMF manager may have breached Rules SM1 to SM4 in C-CON 2.2, only if his conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also *APER* 3.1.8AG and *C-CON* 3.1.6G).
- 6.2.8 G An ~~approved person~~ individual will not be in breach if he has exercised due and reasonable care when assessing information, has reached a reasonable conclusion and has acted on it.
- 6.2.9 G Where disciplinary action is taken against an ~~approved person~~ individual the onus will be on the FCA to show that the ~~approved person~~ individual has been guilty of misconduct.

Action against an SMF manager further to section 66A(5) of the Act

- 6.2.9-A G The FCA is able to take action against an SMF manager further to section 66A(5) of the Act where:
- (1) there has been (or continued to be) a contravention of a relevant requirement by the SMF manager's firm;
  - (2) at the time of the contravention, the SMF manager was responsible for the management of any of the firm's activities in relation to which the contravention occurred; and
  - (3) the SMF manager does not satisfy the FCA that they had taken such steps as a person in their position could reasonably be expected to take to avoid the contravention by the firm occurring (or continuing).
- 6.2.9-B When deciding whether to take action further to section 66A(5) of the Act, the FCA will follow the approach in DEPP 6.2.1G and DEPP 6.2.6G.

Action under section 63A of the Act against persons that perform a controlled function without approval

- 6.2.9A G ...

- (2) The extent to which the *person* could reasonably be expected to have known that he was performing a *controlled function* without approval. The circumstances in which the *FCA* would expect to be satisfied that a *person* could reasonably be expected to have known that he was performing a *controlled function* without approval include:

...

- (e) the *person* had, at any time, been aware that their approval was subject to a condition or was granted for a limited period, and they failed to act in accordance with that condition or time limitation.

...

## 6.5B The five steps for penalties imposed on individuals in non-market abuse cases

...

### 6.5B.2 G ...

- (9) Factors relating to the nature of a *breach* by an individual include:

...

- (r) in relation to a contravention of section 63A of the *Act*, the extent to which the individual could reasonably be expected to have known that he was performing a *controlled function* without approval. The circumstances in which the *FCA* would expect to be satisfied that a *person* could reasonably be expected to have known that he was performing a *controlled function* without approval include:

...

- (v) the *person* had, at any time, been aware that his approval was subject to a condition or was granted for a limited period, and he failed to act in accordance with that condition or time limitation.

...

## 6.6 Financial penalties for late and incomplete submission of reports

...

6.6.3 G In addition, in appropriate cases, the *FCA* may bring disciplinary action against the ~~approved persons~~ individuals within the *firm's* management who are ultimately responsible for ensuring that the *firm's* reports are completed and returned to the *FCA*.

...

## 6.7 Discount for early settlement

6.7.1 G *Persons* subject to enforcement action may be prepared to agree the amount of any financial penalty, or the length of any period of suspension, ~~or~~ restriction, condition or limitation (see *DEPP* 6A), and other conditions which the *FCA* seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The *FCA* recognises the benefits of such agreements, ~~in that~~ as they offer the potential for securing earlier redress or protection for consumers and ~~the~~ a cost saving of cost to the *person* concerned and to the FCA itself in contesting the financial penalty or other disciplinary action, suspension or restriction. The penalty that might otherwise be payable, or the length of the period of suspension, ~~or~~ restriction or condition that might ~~otherwise~~ be imposed, ~~in respect of~~ for a breach by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.

...

6.7.5 ...

The settlement discount scheme applied to suspensions, ~~and~~ restrictions and conditions

6.7.6 G The *settlement discount scheme* which applies to the amount of a financial penalty, described in *DEPP* 6.7.2G to *DEPP* 6.7.5G, also applies to the length of the period of a suspension, ~~or~~ restriction or condition, having regard to the *FCA's* statement of policy as set out in *DEPP* 6A.3. The settlement discount scheme does not apply to the length of the period for which approvals under section 59 of the Act have effect as a result of a limitation, as different considerations apply to determining the appropriate length of this period: see DEPP 6A.1.5G and DEPP 6A.3AG. However, the FCA will take into account that the approved person is willing to enter into a settlement agreement when determining the appropriate period.

## 6A The power to impose a suspension, ~~or~~ restriction, condition or limitation

### 6A.1 Introduction

6A.1.1 G *DEPP* 6A sets out the *FCA's* statement of policy with respect to the

imposition of suspensions or restrictions under sections 88A, 89Q and 206A of the *Act*, and the period for which those suspensions or restrictions are to have effect, ~~under the *Act*~~, as required by sections ~~69(1)~~, 88C(1), 89S(1) and 210(1) of the *Act*. It also sets out the *FCA's* statement of policy on the imposition of suspensions, conditions or limitations under section 66 of the *Act*, the period for which suspensions or conditions are to have effect, and the period for which approvals under section 59 have effect as a result of a limitation, as required by section 69(1).

- 6A.1.2 G (1) For the purposes of *DEPP* 6A, ...
- (2) "restriction" refers to limitations or other restrictions in relation to:
- ...
- (b) ~~the performance by an *approved person* of any function to which any approval relates (under section 66 of the *Act*),~~  
[deleted]
- ...
- (3) "condition" refers to a condition imposed in relation to any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the *Act*); and
- (4) "limitation" refers, save in *DEPP* 6A.1.2G(2), to a limitation of the period for which any approval of the performance by an *approved person* of any function to which the approval relates is to have effect (under section 66 of the *Act*).

6A.1.3 G The power to impose a suspension, ~~or a restriction, condition or limitation~~ is a disciplinary measure which the *FCA* may use in addition to, or instead of, imposing a financial penalty or issuing a *public censure*. The principal purpose of imposing ~~a suspension or a restriction~~ such a measure is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. ~~Suspensions and restrictions~~ These measures are therefore tools that the *FCA* may employ to help it to achieve its *statutory objectives*. Examples of ~~restrictions~~ measures that we may impose include:

- (1) we may ~~limit~~ restrict an *authorised person's* carrying on of a *regulated activity* so that they can only sell certain products or provide certain services;
- (2) we may ~~restrict~~ place a condition on an *approved person's* performance of their *controlled functions* so that they can only give advice to *consumers* or deal in certain products if they are appropriately supervised.

6A.1.4 G The powers to impose a suspension, ~~or a restriction, condition or limitation~~ in relation to *authorised persons* and *approved persons* are disciplinary measures; where the *FCA* considers it necessary to take action, for example, to protect *consumers* from an *authorised person*, the *FCA* will seek to cancel or vary the *authorised person's permissions*. If the *FCA* has concerns with a *person's* fitness to be approved, and considers it necessary to take action, the *FCA* will seek to prohibit the *approved person* or withdraw ~~their~~ ~~its~~ approval. For an *SMF manager*, the *FCA* may instead vary their approval by imposing one or more conditions, if the *FCA* is satisfied that they would be a fit and proper person to perform functions in relation to *regulated activities* if the conditions are imposed, and that it is appropriate to do so. While the powers to impose a suspension or a restriction in relation to *sponsors* and *primary information providers* under sections 88A(2)(b)/(c) and 89Q(2)(b)/(c) of the *Act* are disciplinary measures, the *FCA* can impose suspensions, limitations or other restrictions in relation to *sponsors* and *primary information providers* in other circumstances.

6A.1.5 G The *FCA* expects to impose a limitation in two situations. The *FCA* may impose a limitation where it considers it appropriate for an approval to cease to have effect:

(1) after a certain period, unless the *approved person* demonstrates during the period of limitation that it is appropriate for him to be reapproved without the limitation;

(2) after a short period, without giving the *approved person* the opportunity to demonstrate that he should be re-approved.

The imposition of a limitation in (2) is equivalent to a withdrawal of approval, save that it is carried out for disciplinary reasons and the *FCA* will have made no finding of lack of fitness or propriety. The *FCA* recognises that the use of this power will have serious consequences for the *approved person* concerned; therefore, it will exercise its power in a proportionate manner. The *FCA's* policy on determining the length of the limitation is set out in *DEPP* 6A.3AG.

## 6A.2 Deciding whether to take action

6A.2.1 G The *FCA* will consider the full circumstances of each case and determine whether it is appropriate to impose a suspension, ~~or a restriction, condition or limitation~~. The *FCA* will usually make this decision at the same time as it determines whether or not to impose a financial penalty or a *public censure*.

6A.2.2 G The *FCA* will take into account relevant factors in deciding whether it is appropriate to impose a suspension, ~~or a restriction, condition or limitation~~. These may include factors listed in *DEPP* 6.2. There may also be other factors, not listed in *DEPP* 6.2, that are relevant.

6A.2.3 G The *FCA* will consider it appropriate to impose a suspension, ~~or a~~ restriction, condition or limitation where it believes that such action will be a more effective and persuasive deterrent than the imposition of a financial penalty alone. This is likely to be the case where the *FCA* considers that direct and visible action in relation to a particular *breach* is necessary. Examples of circumstances where the *FCA* may consider it appropriate to ~~impose a suspension or restriction~~ take such action include:

...

(7) where, in view of the nature and seriousness of an *approved person's* misconduct, the *FCA* considers it appropriate to impose a limitation on part or all of his approval.

6A.2.4 G The *FCA* expects usually to ~~suspend or restrict a *person* from carrying out~~ impose a suspension, restriction, condition or limitation in relation to activities directly linked to the *breach*. However, in certain circumstances the *FCA* may also ~~suspend or restrict a *person* from carrying out~~ impose a suspension, restriction, condition or limitation in relation to activities that are not directly linked to the *breach*, for example, where an *authorised person's* relevant business area no longer exists or has been restructured.

...

### 6A.3 **Determining the appropriate length of the period of suspension, ~~or~~ restriction or condition**

6A.3.1 G The *FCA* will consider all the relevant circumstances of a case when it determines the length of the period of suspension, ~~or~~ restriction or condition (if any) that is appropriate for the *breach* concerned, and is also a sufficient deterrent. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

6A.3.2 G The following factors may be relevant to determining the appropriate length of the period of suspension, ~~or~~ restriction or condition to be imposed on a *person* under the *Act*:

(1) Deterrence

When determining the appropriate length of the period of suspension, ~~or~~ restriction or condition, the *FCA* will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches* and helping to deter other *persons* from committing similar *breaches*, as well as demonstrating generally the benefits of

compliant business.

...

- (4) The impact of suspension, ~~or~~ restriction or condition on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person*, *sponsor* or *primary information provider*:

...

- (e) whether the suspension or restriction would cause the *authorised person*, *sponsor* or *primary information provider* serious financial hardship.

The following considerations may be relevant to the assessment of the impact of suspension or condition ~~restriction~~ on an *approved person*:

...

...

### **6A.3A Determining the appropriate length of the period of limitation for approvals under section 59 of the Act**

6A.3A.1 G The FCA will consider all the relevant circumstances when it determines the period of limitation. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable and there may be other factors, not listed, that are relevant.

6A.3A.2 G The following factors may be relevant to determining the period of limitation:

- (1) whether the FCA may be minded to reapprove the *approved person* in the future, for instance if the *approved person* takes action specified by the FCA during the period of limitation;
- (2) the *approved person's* expected lost earnings if the FCA imposes a short period of limitation;
- (3) whether imposing a short period of limitation would cause the *approved person* serious financial hardship.

### **6A.4 The interaction between the power to impose suspensions, ~~or~~ restrictions, conditions and limitations and the power to impose penalties or public**

## censures

6A.4.1 G The deterrent effect and impact on a *person* of a suspension, ~~or~~ restriction, condition or limitation by itself or in combination with a financial penalty, may be greater than where only a financial penalty is imposed. The *FCA* will consider the overall impact and deterrent effect of the sanctions it imposes when determining the level of penalty and the length of suspension, ~~or~~ restriction, condition or limitation.

6A.4.2 G The *FCA* expects usually to take the following approach in respect of the interaction between a suspension, ~~or~~ restriction, condition or limitation and a financial penalty or *public censure*:

...

(3) If the *FCA*, following the approach set out in *DEPP* 6A.2, considers it appropriate to impose a suspension, ~~or~~ restriction, condition or limitation, it will calculate the appropriate length of the period of ~~suspension or restriction~~ this measure, following the approach set out in *DEPP* 6A.3 or *DEPP* 6A.3A, as appropriate.

(4) Where the *FCA* considers it appropriate to impose both a financial penalty and a suspension, ~~or~~ restriction, condition or limitation, it will decide whether the combined impact on the *person* is likely to be disproportionate in respect to the *breach* and the deterrent effect of the sanctions.

(5) If the *FCA* considers the combined impact on the *person* is likely to be disproportionate, it will decide whether to reduce the period of suspension, ~~or~~ restriction, or condition, the amount of the financial penalty or both, so that the combined impact of the sanctions is proportionate in relation to the *breach* and the deterrent effect of the sanctions. The *FCA* will decide which sanction to reduce after considering all the circumstances of the case.

(6) In deciding the final level of the financial penalty and the length of the period of suspension, ~~or~~ restriction, condition or limitation, the *FCA* will also take into account any representations by the *person* that the combined impact will cause them serious financial hardship. The *FCA* will take the approach set out in *DEPP* 6.5D in assessing this.

6A.4.3 G The *FCA* may depart from the approach set out in *DEPP* 6A.4.2G. For example, the *FCA* may at the outset consider that a financial penalty is the only appropriate sanction for a *breach* but, having determined the appropriate level of financial penalty, may consider it appropriate to reduce the amount of the financial penalty for serious financial hardship reasons. In such a situation, the *FCA* may consider it appropriate to impose a suspension, ~~or~~ restriction, condition or limitation even if the *FCA* at the outset did not consider such a sanction to be appropriate. The *FCA* will take into account whether the *person* would suffer serious financial hardship in

deciding the length of the period of suspension, ~~or restriction, condition or limitation~~ and may decide not to impose ~~a suspension or restriction~~ such a measure if it considers such action would result in serious financial hardship.

...

Insert the following new chapter after DEPP 7. This text is not underlined.

## **8 Variation of SMF managers' approval on the FCA's own initiative**

### **8.1 Introduction**

- 8.1.1 G *DEPP 8 sets out the FCA's statement of policy on the exercise of its power under section 63ZB of the Act to vary, on its own initiative, an approval given by the FCA or the PRA for the performance of a designated senior management function in relation to the carrying on of a regulated activity by a relevant authorised person. The FCA is required to publish this statement of policy by section 63ZD of the Act.*

[**Note:** the FCA's statement of policy on the exercise of its power under section 63ZA of the Act to vary an approval at the request of a *relevant authorised person* is set out in SUP 10C]

- 8.1.2 G In *DEPP 8*, the power under section 63ZB of the *Act* described in *DEPP 8.1.1G* is referred to as the FCA's "own-initiative variation of approval power".

### **8.2 Use of the own-initiative variation of approval power: general**

- 8.2.1 G The FCA may use the own-initiative variation of approval power where it considers that it is desirable to do so to advance one or more of its operational objectives. The FCA will assess this on a case-by-case basis, taking into account the specific circumstances of the *firm* and the *SMF manager*.
- 8.2.2 G When considering the use of this power to deal with a particular concern, the FCA will have regard to the range of regulatory tools that are available. The FCA will consider dealing with any concerns informally through discussion and agreement with the *firm* and the *SMF manager*, instead of using the own-initiative variation of approval power.
- 8.2.3 G The power to impose a conditional or time-limited approval does not depend on the *SMF manager* being unfit without that condition or time limitation. The FCA can impose a condition or time limitation even if the candidate would still be fit and proper without it. Conversely, where an *SMF manager*

is not fit and proper but might be if a condition or time limitation is imposed, the *FCA* is not obliged to impose a condition or time limitation, and may take the view that a *prohibition order* or withdrawal of approval is the appropriate course of action.

8.2.4 G The *FCA* may vary an approval by:

- (1) imposing a condition;
- (2) varying a condition;
- (3) removing a condition; or
- (4) limiting the period for which the approval is to have effect.

8.2.5 G The *FCA* may use the own-initiative variation of approval power in a wide range of circumstances. A number of examples are set out in *DEPP* 8.3. These are not exhaustive.

8.2.6 G The circumstances which may lead to a condition or time limitation being imposed on a *candidate* for an *SMF manager* role may, where appropriate, also lead to an incumbent *SMF manager's* approval being varied. *SUP* 10C is, therefore, relevant to the *FCA's* use of the own-initiative variation of approval power.

### **8.3 Use of the own-initiative variation of approval power: specific examples**

8.3.1 G Examples of situations where the *FCA* may use the own-initiative variation of approval power are where:

- (1) it has concerns about an *SMF manager's* fitness to remain approved in relation to the performance of a *designated senior management function* but, in all the circumstances, it considers it appropriate to vary their approval by imposing one or more conditions or a time limitation, rather than making a *prohibition order* or withdrawing approval;
- (2) the nature or scope of the *SMF manager's* role has changed, for instance where they have taken on additional or different responsibilities. In this situation, the *FCA* may consider it appropriate to impose a condition that they undertake training to enhance their competency and capability regarding their new responsibilities, or a condition that they receive mentoring;
- (3) the size, nature, scope or complexity of the *firm's* activities has significantly changed since the *SMF manager* was first approved;
- (4) the *SMF manager* is required to personally support supervisory action in relation to the *firm*. For instance, where a *firm* is running a remedial programme the *FCA* may impose a condition that the *SMF*

*manager* take responsibility for managing or overseeing delivery of aspects of that programme;

- (5) it is appropriate to use the own-initiative variation of approval power as a matter of urgency (see *DEPP* 8.4);
- (6) the *SMF manager's* approval is subject to an existing condition but the *FCA* considers that that condition is insufficient to mitigate the risk in respect of which it was imposed. In this case, the *FCA* will vary the condition to make it more effective. The *FCA* may also, or instead, limit the period of the approval.

[**Note:** The *FCA* expects that removal of a condition, or varying a condition to make it less onerous, will normally occur on the application of the *firm* (see *SUP* 10C).]

#### **8.4 Use of the own-initiative variation of approval power in urgent cases**

- 8.4.1 G The *FCA* may impose a variation of approval to take effect immediately, or on a specified date, if it reasonably considers that this is necessary having regard to the reasons for which it is exercising the own-initiative variation of approval power.
- 8.4.2 G The *FCA* will consider exercising its own-initiative variation of approval power as a matter of urgency where:
  - (1) the information available to it indicates serious concerns about the *SMF manager* or his *firm* that need to be addressed immediately; and
  - (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *SMF manager* to ensure these concerns are addressed.

#### **8.5 Effects of a breach of condition or time limitation**

- 8.5.1 G The effects of breaching a condition or time limitation are set out in *SUP* 10C.

...

#### **Sch 4 Powers Exercised**

- Sch 4.1 G The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the statements of policy in *DEPP*:

...

Section 63ZD (Statement of policy relating to conditional approval and variation)

## Annex G

### Amendments to the Enforcement Guide

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

#### 1 Introduction

...

1.2 In the areas set out below, the *Act* expressly requires the *FCA* to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*.

(1) ...

(1-A) section 63ZD requires the *FCA*, among other things, to publish a statement of its policy on the exercise of its power to vary an approval under section 63ZB.

(1A) sections 69 and 210 require the *FCA* to publish statements of policy on the imposition of financial penalties, suspensions, ~~or~~ restrictions, conditions or limitations on firms, ~~approved persons~~ individuals and unauthorised persons to whom section 404C applies, the amount of financial penalties imposed, ~~and~~ the period for which suspensions, ~~or~~ restrictions or conditions are to have effect, and the period for which approvals under section 59 are to have effect as a result of a limitation;

#### 2 The FCA's approach to enforcement

...

Case selection: Firms and ~~approved persons~~ individuals, market abuse cases and listing matters

2.5 Other than in the area of a *firm's* failure to satisfy the *FCA's Threshold Conditions* for authorisation (as to which, see paragraph 2.11), the selection method for cases involving *firms* and ~~approved persons~~ individuals, *market abuse* and listing matters (for example, breaches of the listing, prospectus or disclosure *rules*) occurs at two main levels:

...

...

Senior management responsibility

2.31 The *FCA* is committed to ensuring that senior managers of *firms* fulfil their

responsibilities. The *FCA* expects senior management to take responsibility for ensuring *firms* identify risks, develop appropriate systems and controls to manage those risks, and ensure that the systems and controls are effective in practice. ~~The *FCA* will not pursue senior managers where there is no personal culpability. However, where~~ Where senior managers have failed to meet our standards ~~are themselves responsible for misconduct,~~ the *FCA* will, where appropriate, bring cases against individuals as well as, or instead of, *firms*. The *FCA* believes that deterrence will most effectively be achieved by bringing home to such individuals the consequences of their actions. The *FCA*'s policy on disciplinary action against senior management and against other ~~approved persons~~ individuals under section 66 of the *Act* is set out in *DEPP* 6.2.4G to *DEPP* 6.2.9-BG. The *FCA*'s policy on prohibition and withdrawal of approval is set out in ~~chapter~~ EG 9 of this guide.

...

#### 4 Conduct of investigations

...

- 4.9 ~~*Firms, and approved persons*~~ and conduct rules staff have an obligation to be open and co-operative with the *FCA* (as a result of Principle 11 for Businesses, ~~and~~ Statement of Principle 4 for Approved Persons and Rule 3 of C-CON 2.1 respectively). The *FCA* will make it clear to the *person* concerned whether it requires them to produce information or answer questions under the *Act* or whether the provision of answers is purely voluntary. The fact that the *person* concerned may be a regulated person does not affect this.
- 4.10 The *FCA* will not bring disciplinary proceedings against a *person* ~~under the above Principles~~ for failing to be open and co-operative with the *FCA* simply because, during an investigation, they choose not to attend or answer questions at a purely voluntary interview. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of a *person* (whether or not they are a *firm* or ~~approved person~~ individual) to participate in a voluntary interview. If a *person* provides the *FCA* with misleading or untrue information, the *FCA* may consider taking action against them.
- 4.11 If a *person* does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The *FCA* may also choose to bring proceedings for breach of *Principle* 11, ~~or~~ Statement of Principle 4 or Rule 3 of C-CON 2.1 as this is a serious form of non-cooperation.
- Scoping discussions
- 4.12 For cases involving ~~*firms, or approved persons*~~ or employees of relevant authorised persons, the *FCA* will generally hold scoping discussions with the *firm* or individuals concerned close to the start of the investigation (and may do so in other cases). The purpose of these discussions is to give the *firm* or individuals concerned in the investigation an indication of: why the *FCA* has

appointed investigators (including the nature of and reasons for the *FCA's* concerns); the scope of the investigation; how the process is likely to unfold; the individuals and documents the team will need access to initially and so on. There is a limit, however, as to how specific the *FCA* can be about the nature of its concerns in the early stages of an investigation. The *FCA* team for the purposes of the scoping discussions will normally include the nominated supervisor if the subject is a fixed portfolio *firm*.

...

## 5 Settlement

...

The settlement discount scheme

5.14 The *settlement discount scheme* allows a reduction in a financial penalty or, period of suspension, ~~or period of restriction~~ or condition that would otherwise be imposed on a *person* according to the stage at which the agreement is reached. Full details of the scheme are set out in *DEPP* 6.7.

...

5.16 The scheme does not apply to civil or criminal proceedings brought in the courts, or to *public censure, prohibition orders*, withdrawal of *authorisation* or approval, limitations of the period for which any approval is to have effect, or the payment of compensation or redress.

...

5.19A The procedure for the *settlement discount scheme* where the outcome is potentially a financial penalty, described in paragraphs 5.14 to 5.19, will also apply where the outcome is potentially a suspension, ~~or restriction~~ or condition.

...

## 6 Publicity

...

Warning notice statements

6.7B The *FCA* may publish information about *warning notices* which fall within section 391(1ZB) of the *Act*. These are essentially disciplinary *warning notices*, for example, where the *FCA* is proposing to censure, fine, ~~suspend or restrict~~ or impose a suspension, restriction, condition or limitation on a firm or individual. The power to publish information does not apply, for example, to *warning notices* which only propose to prohibit an individual, withdraw the approval of an

individual or cancel the permission of a *firm*.

...

6.7G If, after consulting the persons to whom the notice is given or copied, the *FCA* still considers it is appropriate to publish information about a *warning notice*, it will publish this information in a statement (a warning notice statement). This will ordinarily include a brief summary of the facts which gave rise to the *warning notice* to enable consumers, *firms* and market users to understand the nature of the *FCA*'s concerns. Where the *FCA* considers it appropriate to identify the subject of the warning notice, it will also include details of:

...

(3) in the case of an approved person or employee of a relevant authorised person, his or her employer at the relevant time.

...

Supervisory notices varying a firm's Part 4A permission, ~~or~~ imposing a requirement or varying an approval on the *FCA*'s own initiative (see ~~chapter EG 8 of this guide~~ and DEPP 8)

...

6.12 ~~Publishing~~ It is important that the *FCA* maintains an accurate public record, including by publishing the reasons for variations of Part 4A permission, the imposition of requirements, and variations of the approval of SMF managers. ~~and maintaining an accurate public record, are important elements of the *FCA*'s approach to its statutory objectives.~~ The *FCA* will always aim to balance both the interests of *consumers* and the possibility of unfairness to the *person* subject to the *FCA*'s action. The *FCA* will publish relevant details of both fundamental and non-fundamental variations of *Part 4A permission* and requirements which it imposes on *firms*, and variations of approval of SMF managers. But it will use its discretion not to do so if it considers this to be unfair to the *person* on whom the variation is imposed, prejudicial to the interests of *consumers*, or detrimental to the stability of the *UK financial system*. Publication will generally include placing the notice on the *FCA* website and this may be accompanied by a press release. As with warning notice statements, *decision notices* and *final notices*, *supervisory notices* and related press releases that are published on the *FCA*'s website will be reviewed upon request. The *FCA* will determine at that time whether continued publication is appropriate, or whether notices and related press releases should be removed or amended. The *FCA* expects usually to conclude that *supervisory notices* and related press releases that have been published for less than six years should not be removed from the website.

6.12A The *FCA* will amend the *Financial Services Register* to reflect a *firm*'s actual Part 4A permission or the terms of an SMF manager's actual approval under section 59 of the Act following any variation.

...

7 **Financial penalties, ~~suspensions and public censures~~ and other disciplinary sanctions**

7.1 Financial penalties, suspensions, ~~restrictions, conditions, limitations~~ and *public censures* are important regulatory tools. However, they are not the only tools available to the *FCA*, and there will be many instances of non-compliance which the *FCA* considers it appropriate to address without the use of ~~financial penalties, suspensions or public censures~~ formal disciplinary sanctions. ~~Having said that~~ However, the effective and proportionate use of the *FCA*'s powers to enforce the requirements of the *Act*, the *rules*, *C-CON* and the Statements of Principle for Approved Persons (APER) will play an important role in the *FCA*'s pursuit of its *statutory objectives*. Imposing ~~financial penalties, suspensions and public censures~~ disciplinary sanctions shows that the *FCA* is upholding regulatory standards and helps to maintain market confidence and deter *financial crime*. An increased public awareness of regulatory standards also contributes to the protection of *consumers*.

7.2 The *FCA* has the following powers to impose a financial penalty and to publish a *public censure*.

(1) It may publish a statement:

(a) against an *approved person* or an employee of a relevant authorised person under section 66 of the *Act*;

...

(2) It may impose a financial penalty:

...

(aa) on an *approved person* or an employee of a relevant authorised person, under section 66 of the *Act*;

...

(3) It may impose a suspension, limitation or other restriction:

(a) ~~on an approved person under section 66 of the Act;~~ [deleted]

...

(4) It may impose a suspension, condition or limitation on an approved person under section 66 of the Act;

...

## Alternatives to financial penalties and public censures

7.3 The *FCA* also has measures ~~available to it~~ where it considers it is appropriate to take protective or remedial action. These include:

(1) where a *firm's* continuing ability to meet the *threshold conditions* or where an *approved person's* or other individual's fitness and propriety ~~to perform the controlled functions to which his approval relates~~ are called into question:

...

(1A) where it is desirable to do so in order to advance one or more of its operational objectives, the *FCA* may vary the approval of an *SMF manager* (see *DEPP 8*);

...

*FCA's* statements of policy

7.4 The *FCA's* statement of policy ~~in relation to~~ on the imposition of financial penalties is set out in *DEPP 6.2* (Deciding whether to take action), *DEPP 6.3* (Penalties for market abuse) and *DEPP 6.4* (Financial penalty or public censure). The *FCA's* statement of policy ~~in relation to~~ on the amount of a financial penalty is set out in *DEPP 6.5* to *DEPP 6.5D*. The *FCA's* statement of policy ~~in relation to~~ on financial penalties for late submission of reports is set out in *DEPP 6.6*. The *FCA's* statement of policy ~~in relation to~~ on the imposition of suspensions, ~~or~~ restrictions, conditions and limitations is set out in *DEPP 6A* (The power to impose a suspension, ~~or~~ restriction, condition or limitation). The *FCA's* statement of policy on the variation of an *SMF manager's* approval on its own initiative is set out in *DEPP 8*.

...

7.13 Generally, the *FCA* would expect to use private warnings in the context of *firms*, ~~and approved persons~~ and employees of relevant authorised persons. However, the *FCA* may also issue private warnings in circumstances where the *persons* involved may not necessarily be authorised or approved. For example, private warnings may be issued in potential cases of *market abuse*; cases where the *FCA* has considered making a *prohibition order* or a disapplication order; or cases involving breaches of provisions imposed by or under Part VI of the *Act* (Official Listing).

7.14 In each case, the *FCA* will consider the likely impact of a private warning on the recipient and whether any risk that *person* poses to the *statutory objectives* requires the *FCA* to take more serious action. Equally, where the *FCA* gives a private warning to an *approved person* or employee of a relevant authorised person, the *FCA* will consider whether it would be desirable and appropriate to inform the ~~approved person's firm~~ (or employer, if different) of the conduct giving rise to the warning and the *FCA's* response.

...

## 9 Prohibition Orders and withdrawal of approval

...

Prohibition orders and withdrawal of approval – approved persons

...

9.9 When it decides whether to make a *prohibition order* against an *approved person* and/or withdraw ~~its~~ their approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

...

(10) Where the *approved person* is an *SMF manager*, whether they would be a fit and proper person to perform functions in relation to *regulated activities* if the *FCA* varied their approval by imposing one or more conditions. If so, whether it is appropriate for the *FCA* to exercise its power to impose such conditions, instead of making a prohibition order or withdrawing the *approved person's* approval.

...

Applications for variation or revocation of prohibition orders

...

9.21 If the individual applying for a revocation or variation of a *prohibition order* proposes to take up an offer of employment at a *relevant authorised person* or to perform a *controlled function*, the *approved persons* regime will also apply to him the *FCA* will take this into account in considering whether to grant or refuse the application. In these cases, the *firm* concerned will be required to apply to the *FCA* for approval of that individual's employment in that capacity. The *FCA* will assess the individual's fitness and propriety to perform *controlled functions* on the basis of the criteria set out in *FIT 2.1* (Honesty, integrity and reputation); *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).

9.22 The *FCA* will not generally grant an application to vary or revoke a *prohibition order* unless it is satisfied that: the proposed variation will not result in a reoccurrence of the risk to *consumers* or confidence in the *financial system* that resulted in the order being made; and the individual is fit to perform functions in relation to *regulated activities* generally, or to those specific *regulated activities* in relation to which the individual has been prohibited. The *FCA* will assess the individual's fitness and propriety to perform these functions on the basis of the criteria in *FIT 2.1* (Honesty, integrity and reputation), *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).

...

## 12 Prosecution of Criminal Offences

...

FCA cautions

...

- 12.6 Where the *FCA* decides to administer a formal caution, a record of the caution will be kept by the *FCA* and on the Police National Computer. The *FCA* will not publish the caution, but it will be available to parties with access to the Police National Computer. The issue of a caution may influence the *FCA* and other prosecutors in their decision whether or not to prosecute the offender if he offends again. ~~If the offender is a firm or an approved person, a~~ A caution given by the *FCA* will form part of the ~~firm's or approved person's~~ regulatory record for the purposes of *DEPP* 6.2.1G(3). If relevant, the *FCA* will take the caution into account in deciding whether to take ~~disciplinary~~ regulatory action for subsequent ~~regulatory~~ misconduct by the ~~firm or the approved person~~. The *FCA* may also take a caution into account when considering a *person's* honesty, integrity and reputation and his fitness or propriety to perform controlled or other functions in relation to *regulated activities* (see *FIT* 2.1.3G).

...

## Annex 2 - Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies

...

### Indicators for deciding which agency should take action

- 9 The following are indicators of whether action by the *FCA* or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.
- (a) Tending towards action by the *FCA*
- ...
- Where the likely defendants are *authorised persons*, ~~or approved persons~~ or employees of relevant authorised persons.

...

**APPENDIX TO THE GUIDELINES ON INVESTIGATION OF CASES OF INTEREST OR CONCERN TO THE FINANCIAL CONDUCT AUTHORITY AND OTHER PROSECUTING AND INVESTIGATING AGENCIES**

...

1.4 The *FCA* has the power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons and other individuals under s.66 of the 2000 Act;

...

# Annex 7

## PRA Draft Rules

Glossary	7.1
Senior Management Functions	7.2
Allocation of Responsibilities	7.3
Certification	7.4
Fitness and Propriety	7.5
Conduct Rules	7.6

**PRA RULEBOOK: GLOSSARY AMENDMENTS INSTRUMENT [NUMBER] [YEAR]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 60A (Vetting of candidates by relevant authorised persons);
  - (3) section 61 (Determination of applications);
  - (4) section 63E (Certification of employees by relevant authorised persons);
  - (5) section 63F (Issuing of certificates);
  - (6) section 64A (Rules of conduct);
  - (7) section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action);
  - (8) section 137G (The PRA’s general rules); and
  - (9) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: Glossary Amendments Instrument [NUMBER] [YEAR]**

- D. The PRA makes the rules in Annex A to this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Glossary Amendments Instrument [NUMBER] [YEAR].

**By order of the Board of the Prudential Regulation Authority**

[DATE]

## Annex A

## Amendments to the Glossary

In the Glossary Part of the PRA Rulebook, insert the following new definitions:

*certificate*

means a certificate issued under section 63F of *FSMA* (Issuing of certificates).

*certification function*

has the meaning given in Certification 2.2 – 2.4.

*certified employee*

means an employee (within the meaning in section 63E(9) of *FSMA* (certification of employees by relevant authorised persons)) of a *firm* who has a valid *certificate* issued by that *firm*.

*FCA controlled function*

means a *controlled function* specified by the *FCA*.

*FCA Handbook*

means the *FCA*'s Handbook of rules and guidance

*PRA approved person*

means a *person* approved by the *PRA* under section 59 of *FSMA* (Approval for particular arrangements) to perform a *PRA senior management function*.

*PRA senior management function*

means a function specified as a *controlled function* in Senior Management Functions 2 in relation to the carrying on of a *regulated activity* by a *firm*.

*small credit union*

means a *credit union* which has average total gross assets of £25 million or less, determined on the basis of the annual average amount of gross assets calculated across a rolling period of five years or, if it has been in existence for less than five years, across the period during which it has existed (in each case, calculated with reference to the *firm*'s annual accounting reference date).

In the Glossary Part of the PRA Rulebook, make the following amendments. New text is underlined and deleted text is struck through.

*regulatory system*

means the arrangements for regulating a *firm* or other *person* in or under *FSMA*, the Bank of England Act 1998 and the Banking Act 2009, including the *threshold conditions*, the *Fundamental Rules* and other ~~rules~~ rules, the *Statements of Principle*, codes and ~~guidance~~ guidance given by the *PRA*, the Bank of England or the *FCA* and including any relevant directly applicable provisions of an EU Directive or Regulation including those specified under section 204A(2) of *FSMA*.

**PRA RULEBOOK: CRR FIRMS: SENIOR MANAGEMENT FUNCTIONS INSTRUMENT [YEAR]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 137G (the PRA’s general rules);
  - (3) section 137T (general supplementary powers); and
- B. The rule-making powers referred to above are specified for the purpose of section 138G (2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: Senior Management Functions Instrument [YEAR]**

- D. The PRA makes the rules in the Annex to this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Senior Management Functions Instrument [Year].

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex

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

Part

# SENIOR MANAGEMENT FUNCTIONS

---

Chapter content

1. APPLICATION AND DEFINITIONS
2. GENERAL
3. EXECUTIVE
4. OVERSIGHT
5. GROUP ENTITIES
6. CREDIT UNIONS
7. COMBINATION OF SENIOR MANAGEMENT FUNCTIONS
8. TRANSITIONALS

Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 In this Part, the following definitions shall apply:

*FCA approval*

means at any time an approval granted and in effect to a *person* by the *FCA* under section 59 of *FSMA* (Approval for particular arrangements) for the performance of a *controlled function* specified by the *FCA*.

*FCA governing function*

means a *controlled function* specified by the *FCA* as an *FCA governing function* in SUP 10C.4.3 R of the *FCA Handbook*.

*FCA responsibilities*

means any of the functions referred to in

- (1) SYSC 4.5.16 R (Table of senior management responsibilities); and
- (2) SUP 10C Annex 1 (The main business areas and management functions of a relevant authorised person),

of the *FCA Handbook*.

## 2 GENERAL

---

2.1 Each of the functions in 3- 6 is a *controlled function*.

2.2 (1) A *firm* (other than a *small credit union*) must ensure that one or more *person* performs each of the following *PRA senior management functions* on its behalf:

- (a) the *Chief Executive function*;
- (b) the *Chief Finance function*; and
- (c) the *Chairman function*.

(2) If a vacancy arises in respect of one or more of the *PRA senior management functions* set out in (1), a *firm* must ensure that it appoints a *person* to fill that vacancy as soon as practicable.

2.3 To the extent that,

- (1) a *firm* appoints a *person* to perform a function which, but for this rule, would be a *PRA senior management function*;
- (2) the appointment is solely to provide cover for a *PRA 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 that *PRA senior management function* does not relate to those activities of that *person*.

2.4 If a *person* has been approved to perform a *PRA senior management function* in relation to a *firm* and also performs a function which would, except for SUP10C.8 8R of the *FCA Handbook*, be an *FCA governing function* (such function, the *FCA activities*) performance of the *PRA senior management function* will include the performance of those *FCA activities*, provided the following conditions are met:

- (1) the *PRA*'s approval to perform a *PRA senior management function* has been granted and continues in force;
- (2) at the time of approval being granted by the *PRA*, that *person* was not subject to an *FCA approval* to perform that particular *FCA governing function*;
- (3) the *firm* made the notification required by SUP10.8.8 R (4) of the *FCA Handbook*; and
- (4) that *person* performs and is continuing to perform those *FCA activities*.

2.5 If a *PRA approved person* who has been performing a *PRA senior management function* which includes *FCA activities* in the circumstances set out in 2.4, ceases to perform a *PRA senior management function* but continues to perform the *FCA activities*, 2.4 will continue to apply in respect of the performance of the *FCA activities* until the earlier of:

- (1) approval by the *FCA* in respect of the performance by that *person* of those *FCA activities* as an *FCA governing function* in relation to the *firm*; or
- (2) three *months* from the time that the *person* ceased to perform that *PRA senior management function*.

2.6 If a *PRA approved person*:

- (1) (other than in the circumstances set out in 2.4), performs one or more *FCA responsibilities* allocated under SYSC 4.5.25 R(2) of the *FCA Handbook*;
- (2) ceases to perform any *PRA senior management function*; and
- (3) that *person* does not have an *FCA approval* to perform an *FCA controlled function* in relation to that *firm*

the functions in (1) will continue to be part of the *PRA senior management function* which the *person* most recently performed for that *firm*) until the earlier of:

- (1) approval by the *FCA* in respect of the performance by that *person* of an *FCA controlled function* in relation to the *firm*; or
- (2) three *months* from the time that the *person* ceased to perform that *PRA senior management function*.

2.7 (1) A *firm* must take all reasonable steps to ensure that before a *person*:

- (a) begins to perform a *PRA senior management function*; or
- (b) begins to perform new or revised responsibilities in performance of a *PRA senior management function*

that *person* is provided with all of the information and materials that the *person* may reasonably expect in order to perform that *PRA senior management function* or those new or revised responsibilities effectively and in accordance with the *regulatory system*.

- (2) A *firm* must have a policy about how it complies with (1) including the systems and controls it uses and must maintain adequate records of the steps taken to comply with (1).

### 3 EXECUTIVE

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- 3.1 This Chapter does not apply to a *small credit union*.
- 3.2 The *Chief Executive function* (SMF1) is the function of having responsibility, under the immediate authority of the *management body*, alone or jointly with others, for carrying out the management of the conduct of the whole of the business (or relevant activities) of a *firm*.
- 3.3 The *Chief Finance function* (SMF2) is the function of having responsibility for management of the financial resources of a *firm* and reporting directly to the *management body* of the *firm* in relation to its financial affairs.
- 3.4 The *Chief Risk function* (SMF4) is the function of having responsibility for overall management of the risk controls of a *firm*, including the setting and managing of its risk exposures, and reporting directly to the *management body* of the *firm* in relation to its risk management arrangements.
- 3.5 The *Chief Internal Audit function* (SMF5) is the function of having responsibility for management of the internal audit function of a *firm* and for reporting directly to the *management body* of the *firm* on the internal audit function.
- 3.6 The *Head of Key Business Area function* (SMF6) is the function of having responsibility, for management of a business area or division of a *firm*, where:
  - (1) that business or division:
    - (a) has gross total assets equal to or in excess of £10 billion; and /or
    - (b) either
      - (i) accounts for more than 20% of the *firm's* gross revenue; or
      - (ii) where the *firm* is part of a *group*, accounts for more than 20% of the total gross revenue of the *group*; and
  - (2) the *person* performing that function does not report to a *person* performing the *Head of Key Business Area function* in respect of that same business area or division of the *firm*.

For the purposes of this rule, the gross total assets of the *firm* or the percentage of the gross revenue of the *firm* or *group* shall be determined on the basis of either:

- (1) the assets and /or revenues for the *firm* and/or *group*, as the case may be, for the *firm's* financial year immediately preceding that in which the *person* is allocated with the specified responsibilities; or,
- (2) if the threshold amount is not met for that period, on the basis of the annual average amount calculated across a rolling period of five years (calculated by reference to the *firm's* annual accounting date). Where the *firm* and/or the business line or division has been in existence for less than five years, the calculation will be made on the basis of the annual average amount for the period during which the *firm* and/or that business line or division has existed (calculated by reference to the *firm's* annual accounting date).

#### **4 OVERSIGHT**

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- 4.1 This Chapter does not apply to a *small credit union*.
- 4.2 The *Chairman function* (SMF9) is the function of having responsibility for chairing, and overseeing the performance of the role of, the *management body* of a *firm*.
- 4.3 The *Chairman of Audit Committee function* (SMF10) is the function of having responsibility for chairing, and overseeing the performance of the role of, the audit committee of a *firm*.
- 4.4 The *Chairman of Risk Committee function* (SMF11) is the function of having responsibility for chairing, and overseeing the performance of the role of, the risk committee of a *firm*.
- 4.5 The *Chairman of Remuneration Committee function* (SMF12) is the function of having responsibility for chairing, and overseeing the performance of the role of, the remuneration committee of a *firm*.
- 4.6 The *Senior Independent Director function* (SMF14) is the function of performing the role of a senior independent *director*, and having particular responsibility for leading the assessment of the performance of the *person* performing the *Chairman function*.

#### **5 GROUP ENTITIES**

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- 5.1 This Chapter does not apply to a *small credit union*.
- 5.2 The *Group Entity Senior Manager function* (SMF7) is the function of having a significant influence on the management or conduct of one or more aspects of the affairs of a *firm* in relation to its *regulated activities* (other than in the course of the performance of another *PRA senior management function*) and which is performed by a *person* employed by, or an officer of:
  - (1) a parent undertaking or holding company of a firm; or
  - (2) another *undertaking* which is a member of the *firm's group*.

#### **6 CREDIT UNIONS**

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- 6.1 This Chapter applies only to *small credit unions*.
- 6.2 The *Credit Union Senior Executive Manager function* (SMF8) is the function of having responsibility for the conduct of, and/or chairing the committee of management of a *small credit union*.

- 6.3 (1) A *small credit union* must ensure that at least one *person* performs the *Credit Union Senior Executive Manager Function* on its behalf.
- (2) If a vacancy arises in respect of the *PRA senior management functions* set out in (1), a *firm* must ensure that it appoints a *person* to fill that vacancy as soon as practicable.

## 7 COMBINATION OF SENIOR MANAGEMENT FUNCTIONS

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- 7.1 Except as otherwise provided in this Chapter, a *person* may perform more than one *PRA senior management function* on behalf of a *firm*.
- 7.2 A *firm* must ensure that a *person* who performs the *Chairman function* on its behalf does not simultaneously perform the *Chief Executive function* within the same *firm*.

**[Note: Art. 88(1)(e) of CRD]**

## 8 TRANSITIONALS [TBD]

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**PRA RULEBOOK: CRR FIRMS: ALLOCATION OF RESPONSIBILITIES INSTRUMENT [YEAR]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 137G (the PRA’s general rules); and
  - (2) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook CRR Firms: Allocation of Responsibilities Instrument [YEAR]**

- D. The PRA makes the rules in the Annex to this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the CRR Firms: Allocation of Responsibilities Instrument [YEAR].

**By order of the Board of the Prudential Regulation Authority**

[DATE]

**Annex**

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

**Part**

# **ALLOCATION OF RESPONSIBILITIES**

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**Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. STATEMENT OF RESPONSIBILITIES**
- 3. ALLOCATION OF RESPONSIBILITIES**
- 4. PRESCRIBED RESPONSIBILITIES**
- 5. PRESCRIBED RESPONSIBILITIES: CREDIT UNIONS**
- 6. RECORDS**
- 7. CHAIRMAN'S OFFICE**
- 8. TRANSITIONALS**

**Links**

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 In this Part, the following definitions shall apply:

*ancillary activity*

means an activity which is not a *regulated activity* but which is:

- (1) carried on in connection with a *regulated activity*; or
- (2) held out as being for the purposes of a *regulated activity*.

*ancillary services*

means any of the services listed in Section B of Annex I to *MiFID*.

*certification rules*

means the rules set out in Certification of Employees.

*Chairman function*

has the meaning given in Senior Management Functions 4.2.

*Chief Risk function*

has the meaning given in Senior Management Functions 3.3.

*credit union prescribed responsibility*

means the responsibilities in 5.2.

*Credit Union Senior Executive function*

has the meaning given in Senior Management Functions 6.2.

*FCA approved person*

means a *person* approved to perform an *FCA controlled function* by the *FCA* under section 59 of *FSMA*.

*FCA Chairman of nominee committee function*

means an *FCA controlled function* specified in SUP 10C.5.3 R of the *FCA Handbook*.

*FCA designated senior management function*

means an *FCA controlled function* specified in SUP 10C.4.3R of the *FCA Handbook*;

*FCA significant responsibility senior management function*

means the *FCA controlled function* specified in SUP10C.7.1 R of the *FCA Handbook*.

*FCA non-executive director function*

means the *FCA controlled function* specified in SUP10C.5.2 R of the *FCA Handbook*.

*FCA business functions*

means any of the functions set out in SUP10C Annex 1R of the *FCA Handbook*.

*FCA responsibilities*

means any of the functions set out in

- (1) SYSC 4.5.16 R (Table of senior management responsibilities); and
- (2) SUP 10C Annex 1 (The main business areas and management functions of a relevant authorised person),

of the *FCA Handbook*.

*Group Entity Senior Manager function*

has the meaning given in Senior Management Functions 5.2.

*management responsibilities map*

has the meaning given in 6.

*oversight PRA senior management function*

means a *PRA senior management function* set out in Senior Management Functions 4.

*prescribed responsibility*

means the responsibilities in 4.

*proprietary trading*

means the *regulated activity of dealing in investments as principal* as specified in Article 14 of the *Regulated Activities Order* (Dealing in investments as principal), disregarding the exclusion in Article 15 of the *Regulated Activities Order* (Absence of holding out etc.), *ancillary activities* and (in relation to *MiFID business*) *ancillary services*.

*recovery plan*

has the meaning given in Recovery and Resolution Rules 1.2.

*resolution pack*

has the meaning given in Recovery and Resolution Rules 1.2.

*Senior Independent Director function*

has the meaning given in Senior Management Functions 4.6.

*senior personnel*

has the meaning given in the Glossary of the *FCA Handbook*.

*senior management regime*

means the requirements of the *regulatory system* applying to *relevant authorised persons* insofar as they relate to *approved persons* performing *PRA senior management functions* and *FCA designated senior management functions*, including Senior Management Functions and Allocation of Responsibilities.

*statement of responsibilities*

means a statement of the affairs of a *relevant authorised person* for which it is intended that a *person* who performs (or is subject to an application to perform) a *PRA senior management function* is (or will be) responsible.

## **2 STATEMENT OF RESPONSIBILITIES**

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- 2.1 A *firm* must ensure that any application it makes for the approval of a *person* to perform a *PRA senior management function* is accompanied by a *statement of responsibilities*.
- 2.2 A *firm* must ensure that the *statement of responsibilities* accompanying an application for approval to perform a *PRA senior management function* in relation to it includes any *prescribed responsibilities*, *credit union prescribed responsibilities*, *FCA responsibilities* allocated to, and which are to form part of the responsibilities of, that *person*.
- 2.3 A *firm* must ensure that any responsibilities allocated to, and that form part of the responsibilities of, a *person* who performs a *PRA senior management function* in relation to it are consistent with the scope of that *PRA senior management function* and of any *prescribed responsibilities*, *credit union prescribed responsibilities* and *FCA responsibilities* allocated to that *person*.

## **3 ALLOCATION OF RESPONSIBILITIES**

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- 3.1 A *firm* (other than a *small credit union*) must allocate each of the *prescribed responsibilities* set out in Chapter 4 (other than 4.1(5) to (8) and 4.1 (20)) to one or more *persons* who perform:
- (1) a *PRA senior management function*; or
  - (2) subject to 3.4, an *FCA designated senior management function*.
- 3.2 A *firm* (other than a *small credit union*) must allocate each of the *prescribed responsibilities* in 4.1(5) to (8) and 4.1 (20) to one or more *persons* who perform:
- (1) an *oversight PRA senior management function*;
  - (2) the *FCA non-executive director function*; or
  - (3) the *FCA Chairman of nominee committee function*.
- 3.3 A *small credit union* must allocate each of the *credit union prescribed responsibilities* to one or more *persons* who perform:
- (1) the *Credit Union Senior Executive function*; or

(2) subject to 3.4, an *FCA designated senior management function*.

3.4 A *firm* must not allocate a *prescribed responsibility* (or in the case of a *small credit union*, a *credit union prescribed responsibility*) to a *person* who performs an *FCA significant responsibility senior management function*.

#### 4 PRESCRIBED RESPONSIBILITIES

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4.1 Each of the responsibilities set out in this rule is a *prescribed responsibility*:

- (1) responsibility for the *firm's* performance of its obligations under the *senior management regime*, including implementation and oversight;
- (2) responsibility for the *firm's* performance of its obligations under the *certification rules*;
- (3) responsibility for compliance with the *firm's* obligations in relation to its *management responsibilities map*;
- (4) responsibility for the induction, training and professional development of all *persons* performing *PRA senior management functions* on behalf of the *firm* and all members of the *firm's management body*;
- (5) responsibility for ensuring and overseeing the integrity and independence of the internal audit function in accordance with SYSC 6.2 (Internal audit) of the *PRA Handbook*;
- (6) responsibility for ensuring and overseeing the integrity and independence of the compliance function in accordance with SYSC 6.1 (Compliance) of the *PRA Handbook*;
- (7) responsibility for ensuring and overseeing the integrity and independence of the risk function in accordance with SYSC 7.1.21 R and SYSC 7.1.22 R (Risk control) of the *PRA Handbook*;
- (8) responsibility for maintenance of the independence, integrity and effectiveness of the *firm's* policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment;
- (9) responsibility for the allocation of all *prescribed responsibilities* in accordance with 3.1;
- (10) responsibility for leading the development of the *firm's* culture and standards in relation to the carrying on of its business and the behaviours of its staff;
- (11) responsibility for embedding the *firm's* culture and standards in relation to the carrying on of its business and the behaviours of its staff in the day-to-day management of the *firm*;
- (12) responsibility for the development and maintenance of the *firm's* business model;
- (13) responsibility for management of the allocation and maintenance of capital, funding and liquidity;
- (14) responsibility for the *firm's* treasury management functions;
- (15) responsibility for the production and integrity of the *firm's* financial information and its regulatory reporting in respect of its *regulated activities*;

- (16) responsibility for the *firm's recovery plan* and *resolution pack* and for overseeing the internal processes regarding their governance;
- (17) if the firm carries out *proprietary trading*, responsibility for the *firm's proprietary trading* activities;
- (18) if the *firm* does not have a *person* who perform the *Chief Risk function*, responsibility for overseeing and demonstrating that the risk management policies and procedures which the *firm* has adopted in accordance with SYSC 7.1.2 R to SYSC 7.1.5 R of the *PRA Handbook* satisfy the requirements of those rules and are consistently effective in accordance with SYSC 4.1.1R of the *PRA Handbook*;
- (19) if the *firm* outsources its internal audit function, responsibility for taking reasonable steps to ensure that every *person* involved in the performance of that function is independent from the *persons* who perform external audit, including:
  - (a) supervision and management of the work of outsourced internal auditors; and
  - (b) management of potential conflicts of interest between the provision of external audit and internal audit services;.
- (20) if the *firm* does not have a *person* who performs the *Senior Independent Director function*, responsibility for:
  - (a) carrying out oversight of the person who performs the *Chairman function*; and
  - (b) oversight of the adequacy and quality of the resources available to the office of that person to enable the role to be fulfilled within the *firm*.

## 5 PRESCRIBED RESPONSIBILITIES: CREDIT UNIONS

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- 5.1 This Chapter applies only to *small credit unions*.
- 5.2 Each of the responsibilities listed in this rule is a *credit union prescribed responsibility*:
  - (1) responsibility for providing the committee of management with an up-to-date business plan and all relevant management information;
  - (2) responsibility for management of the *small credit union's* financial resources;
  - (3) responsibility for ensuring the committee of management is informed of its legal and regulatory obligations; and
  - (4) responsibility for oversight of systems and controls proportionate to the nature, scale, and complexity of the risks inherent in the business model of the *small credit union's* activities

## 6 RECORDS

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- 6.1 A *firm* must at all times have a comprehensive and up-to-date single document (a *management responsibilities map*) that describes the *firm's* management and governance arrangements including:
  - (1) details of the reporting lines and the lines of responsibility; and
  - (2) reasonable details about the *persons* who are part of these arrangements;

- (3) the responsibilities of those *persons*.
- 6.2 Where responsibilities covered by a *firm's management responsibility map* have been allocated to more than one *person*, the *firm must* show clearly how those responsibilities are shared or divided between the *persons* concerned in its *management responsibilities map*.
- 6.3 A *management responsibilities map* must in particular include:
- (1) the names of all the *firm's approved persons* (including *FCA approved persons*), *senior management* and *senior personnel* and the responsibilities held by each;
  - (2) all responsibilities included in any current *statement of responsibilities*;
  - (3) details of the management and governance arrangements relating to all of the *prescribed responsibilities* (or in the case of a *small credit union*, the *credit union prescribed responsibilities*);
  - (4) the *FCA business functions* the *firm* has and details of the *persons* performing them and the *persons* having overall responsibility for them;
  - (5) details of any other *FCA responsibilities* allocated by the *firm* and of the *persons* to whom they are allocated;
  - (6) matters reserved to the *management body* (including its committees);
  - (7) where the *firm* is a member of a *group*;
    - (a) how the *firm's* management and governance arrangements fit together with those of its *group* and the extent to which the *firm's* management and governance arrangements are provided by or shared with other members of its *group*; and
    - (b) details of the reporting lines and the lines of responsibility (if any) to *persons* who are *employees* or officers of other *group* members or to committees or other bodies of the *group* or of other *group* members;
  - (8) reasonable details about the *persons* described or identified in the *management responsibilities map*, including whether they are *employees* of the *firm*, whether they perform a *certification function* for the *firm* and the responsibilities they have in relation to other *group* members; and
  - (9) details of how the matters set out in (1) to (8) fit into the *firm's* management and governance arrangements as a whole.
- 6.4 If a *firm* assigns responsibility for any of the *prescribed responsibilities* or overall responsibility for an *FCA business function* to more than one *person* jointly or divides overall responsibility for it between different *persons*, the *firm must* record in its *management responsibilities map* how and why this has been done.
- 6.5 If the content of a *statement of responsibilities* is modified or revised, a *firm must* send a copy of that revised *statement of responsibilities* to the *PRA* as soon as possible.
- 6.6 A *firm must* retain a copy of each version of:
- (1) its *management responsibilities map*; and

- (2) the *statement of responsibilities* for each person who performs or has performed a *PRA senior management function* for the *firm*

for a period of ten years from the date on which the *management responsibilities map* or the *statement of responsibilities*, as the case may be, is superseded by a more up-to-date version.

- 6.7 At least once every twelve months, a *firm* must certify in writing to the *PRA* whether or not it has complied with this Part. If it has not done so, the certificate must give details of that non-compliance. A *firm* must ensure that its *management body* approves the content and issue of the certificate and that the certificate is signed on behalf of the *management body*.

## **7 CHAIRMAN'S OFFICE**

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- 7.1 A *firm* must ensure that the office of the *Chairman function* has resources that are adequate as to both quality and quantity to enable it to fulfil its role within the *firm*.

## **8 TRANSITIONALS [TBD]**

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**PRA RULEBOOK: CERTIFICATION OF EMPLOYEES INSTRUMENT [DATE]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 63E (Certification of employees by relevant authorised persons);
  - (2) section 137G (The PRA’s general rules); and
  - (3) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: Certification of Employees Instrument [Date]**

- D. The PRA makes the rules in Annex A to this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Certification of Employees Instrument [YEAR].

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex A

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

### Part

# CERTIFICATION

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### Chapter content

1. APPLICATION AND DEFINITIONS
2. PERFORMANCE OF CERTIFICATION FUNCTIONS

### Links

Material Risk Takers Regulation

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 This Part 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;
- (2) a *person* acting as a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;
- (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 Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

1.3 In this Part, the following definitions shall apply:

*employee*

in relation to a *firm*, includes any *person* within the description set out in section 63E(9) of FSMA.

*Material Risk Takers Regulation*

means Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

*significant risk taker*

means:

- (1) any *employee* of a *CRR firm* who meets any of the criteria set out in Articles 3 to 5 of the Material Risk Takers Regulation; or
- (2) any *employee* of a *credit union* who:
  - (a) is a member of the *management body*;
  - (b) is a member of the *senior management*;
  - (c) is responsible and accountable to the *management body* for the activities of the independent risk management function, compliance function or internal audit function; or

- (d) heads a function responsible for legal affairs, finance including taxation and budgeting, human resources, remuneration policy, information technology or economic analysis.

## 2 PERFORMANCE OF CERTIFICATION FUNCTIONS

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- 2.1 A *firm* must take reasonable care to ensure that none of its *employees* performs a *certification function* under an *arrangement* entered into by the *firm* in relation to the carrying on by the *firm* of a *regulated activity*, unless the *employee* has a valid *certificate* issued by the *firm*.
- 2.2 For the purposes of this Part, any function that is performed by a *significant risk taker* for a *firm* is a *certification function* to the extent that the function requires the *significant risk taker* to be involved in one or more aspects of the *firm's* affairs, so far as relating to a *regulated activity* carried on by the *firm*.
- 2.3 However, a *significant risk taker* does not perform a *certification function* for a *firm* under 2.2 if the *significant risk taker* is performing any *controlled function* for that *firm*.
- 2.4 To the extent that:
- (1) a *firm* appoints a *person* to perform a function which, but for this rule, would be a *certification function*;
  - (2) the appointment solely is to provide cover for a *certified employee* whose absence is reasonably unforeseen; and
  - (3) the appointment is for less than 2 weeks;
- such a *person* does not perform a *certification function*.

**PRA RULEBOOK: CRR FIRMS: FITNESS AND PROPRIETY INSTRUMENT [DATE]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 60A (Vetting candidates by relevant authorised persons);
  - (2) section 61 (Determination of applications);
  - (3) section 63F (Issuing of certificates);
  - (4) section 137G (the PRA’s general rules); and
  - (5) section 137T (general supplementary powers);
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: CRR Firms: Fitness and Propriety Instrument [Date]**

- D. The PRA makes the rules in Annex A to this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Fitness and Propriety Instrument [Date].

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex A

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

### Part

# FITNESS AND PROPRIETY

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### Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. REGULATORY REFERENCES

### Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 The matters referred to in 2 are relevant to the *PRA*'s determination of whether a *person* to whom a *senior management application* relates is fit and proper.

1.3 In this Part, the following definitions shall apply:

*certification function*

has the meaning given in the Certification Part.

*certificate*

means the certificate referred to in section 63F(1) of *FSMA*.

*senior management application*

means an application for the *PRA*'s approval under section 59 of *FSMA*.

## 2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

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2.1 (1) A *firm* must not make a *senior management application* in relation to a *person* unless it is satisfied that *person* is fit and proper to perform the *PRA senior management function* to which the application relates.

(2) A *firm* must not issue a *certificate* in relation to a *person*, unless it is satisfied that *person* is fit and proper to perform the *certification function* to which the *certificate* relates.

(3) In deciding whether a *person* is fit and proper, a *firm* must be satisfied that *person*:

- (a) has the personal characteristics (including being of good repute and integrity);
- (b) possesses the level of competence, knowledge and experience;
- (c) has the qualifications; and
- (d) has undergone or is undergoing all training,

required to enable such *person* to perform his or her function effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.

(4) Before deciding the whether a *person* is fit and proper, a *firm* must take reasonable steps to obtain appropriate references from that *person*'s previous employers covering at least the past 5 years.

(5) In deciding whether a *person* (P) is fit and proper in connection with a *senior management application*, a *firm* must:

- (a) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 (Certificates of Criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK*;
- (b) if P has lived or worked outside the *UK* for a material time in the previous five years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
- (c) request, and have regard to, such information.

### 3 REGULATORY REFERENCES

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- 3.1 (1) If a *firm* (A), including a *firm* that is not a *CRR firm* or a *credit union*:
- (a) is considering issuing a *certificate* to, or making a *senior management application* in respect of, a *person* (P);
  - (b) makes a request, for a reference or other information in respect of P from a *firm* to which this Part applies (B), in B's capacity as P's current or former employer; and
  - (c) indicates to B the purpose of the request,
- B must, as soon as reasonably practicable, give to A all information of which B is aware that is relevant to A's assessment of whether P is fit and proper.
- (2) When giving information to A under (1), B must in particular disclose:
- (a) where B has concluded that P:
    - (i) was in breach of the Conduct Rules Part and has made a notification to the *PRA* of such a breach; or
    - (ii) was not fit and proper to perform any function;
 in the 5 years before the request for a reference, the facts which led B to that conclusion;
  - (b) where B, following a finding that P:
    - (i) was in breach of the Conduct Rules Part, which breach B has notified to the *PRA*; or
    - (ii) was not fit and proper;
 has taken, in the 5 years before the request for a reference, disciplinary action, a description of the basis for, and outcome of, the disciplinary action.
- (3) A *firm* must provide the information in (2)(b) regarding disciplinary action that resulted in:
- (a) the issue of a formal written warning; or

- (b) the suspension or dismissal of P; or
- (c) the reduction or recovery of any of P's remuneration.

**PRA RULEBOOK: CRR FIRMS: CONDUCT RULES AND NOTIFICATIONS INSTRUMENT [DATE]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 64A (rules of conduct);
  - (2) section 64C (requirement for relevant authorised persons to notify regulator of disciplinary action);
  - (3) section 137G (the PRA’s general rules); and
  - (4) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: CRR FIRMS: Conduct Rules and Notifications Instrument [Date]**

- D. The PRA makes the rules in **Annex A and Annex B** to this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the PRA Rulebook: CRR FIRMS: Conduct Rules and Notifications Instrument [Date].

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex A

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

Part

# CONDUCT RULES

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Chapter content

1. APPLICATION AND DEFINITIONS
2. INDIVIDUAL CONDUCT RULES
3. SENIOR MANAGER CONDUCT RULES

Links

## 1 APPLICATION AND DEFINITIONS

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- 1.1 (1) This Part applies to every function a *person* (P) performs in relation to a *firm* (A) that is a *CRR firm* or *credit union*.
- (2) This Part only applies if P:
- (a) is approved under section 59 of *FSMA* to perform a *PRA senior management function* or an *FCA senior management function* in relation to A;
  - (b) is an *employee* of A that should have been so approved;
  - (c) is an *employee* who is performing a function that would have been a controlled function but for *Senior Management Functions 2.3*; or
  - (d) performs a *certification function* in relation to A.
- (3) Chapter 3 only applies to a *person* in (2)(a) or (b).

- 1.2 In this Part, the following definitions shall apply:

*employee*

has the meaning given in Certification 1.3.

*FCA senior management function*

means an *FCA controlled function* specified in *SUP 10C.4.3R* of the *FCA Handbook*.

*senior management function*

means either a *PRA senior management function* or an *FCA senior management function*.

## 2 INDIVIDUAL CONDUCT RULES

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- 2.1 Individual Conduct Rule 1: You must act with integrity.
- 2.2 Individual Conduct Rule 2: You must act with due skill, care and diligence.
- 2.3 Individual Conduct Rule 3: You must be open and co-operative with the *FCA*, the *PRA* and other regulators.

## 3 SENIOR MANAGER CONDUCT RULES

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- 3.2 Senior Manager Conduct Rule 1: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 3.3 Senior Manager Conduct Rule 2: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*

- 3.4 Senior Manager Conduct Rule 3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate *person* and that you oversee the discharge of the delegated responsibility effectively.
- 3.5 Senior Manager Conduct Rule 4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

**Annex B**  
**Amendments to Notifications Part**

In the Amendments Part of the PRA Rulebook, insert the following new chapter 11. In this Annex, the text is all new and is not underlined.

**11 CONDUCT RULES: NOTIFICATIONS**

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- 11.1 This Chapter applies to every *firm* that is a *CRR firm* or *credit union*.
- 11.2 In this Chapter, the following definitions shall apply:
- disciplinary action*
- has the meaning given in *FSMA* section 64C.
- conduct rules*
- means the rules in the Conduct Rules Part.
- 11.3 If a *firm* knows or suspects that a *person* has failed to comply with any *conduct rules* it must notify the *PRA*.
- 11.4 If a *firm* is required to notify the *PRA* in compliance with 11.3 based on a suspicion, it must notify the *PRA* of any subsequent determination it makes in relation to that matter.
- 11.5 If a *firm* is required to notify the *PRA* in compliance with 11.3 – 11.4 based on a determination, it must notify the *PRA* of any different determination it subsequently makes in relation to that matter.
- 11.6 If a *firm* takes *disciplinary action* against a *person* relating to any action, failure to act, or circumstance that amounts to a breach of any conduct rule it must notify the *PRA*.
- 11.7 If a *firm* is required to notify the *PRA* under this Chapter in respect of *persons* performing *certification functions*, it must do so quarterly by submitting Form [ ]<sup>1</sup>.
- 11.8 If a *firm* is required to notify the *PRA* under this Chapter in respect of a *person* performing a *senior management function*, it must do so within seven *business days* of becoming aware of the matter by submitting Form D<sup>2</sup>.
- 11.9 A *firm* other than a *credit union* must submit the forms referred to in this Chapter using the [FCA ONA/INTACT system].

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<sup>1</sup> The PRA and FCA will consult on the certification function notifications form at a future date.

<sup>2</sup> The PRA and FCA will consult on amendments to Form D necessary to accommodate FSMA 64B/64C notifications at a future date.

# **Annex 8**

## **Draft Statement of the PRA's Policy On Conditions, Time Limits and Variations Of Approval**

Statement of Policy

# The Prudential Regulation Authority's policy on conditions, time limits and variations of approval

July 2014



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Prudential Regulation Authority  
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BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Statement of Policy

# The Prudential Regulation Authority's policy on conditions, time limits and variations of approval

July 2014



## Introduction

1. This statement of policy is issued by the Prudential Regulation Authority (PRA) in accordance with the requirements of section 63ZD of the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services (Banking Reform) Act 2013 ('the Act'). This section requires the Financial Conduct Authority (FCA) and the PRA ('the regulators') to issue a statement of their respective policies on:

- giving an approval under section 59 subject to conditions or for a limited period only; and
- variation of an approval under section 63ZA or 63ZB given under section 59.

2. The PRA and the FCA must consult each other and the general public before issuing their respective Statements of Policy.<sup>(1)</sup> The regulators may also alter or replace the Statements at any time after publication subject to the above consultation requirements.

3. The PRA has worked closely with the FCA to develop its Statements of Policy. Both regulators are mindful of the importance of minimising divergence in this area and have sought, wherever possible, to agree a co-ordinated approach and principles. Differences in policy or practice may, however, arise due to the different objectives of each regulator.

4. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way that advances its statutory objectives.<sup>(2)</sup> The PRA is also required to have regard to certain regulatory principles.<sup>(3)</sup>

5. The PRA invites comments on this Statement of Policy by electronic submission using the details given in CP14/14.<sup>(4)</sup> Comments are requested by 31 October 2014.

## Background

6. The final report of the Parliamentary Commission on Banking Standards (PCBS) recommended that under the proposed new Senior Persons Regime regulators should be:

- '...able to make approval of an individual Senior Person subject to conditions, for example where it is felt that they need to acquire a certain skill to carry out the job well'; and
- 'given clear discretionary powers to review the assignment of responsibilities to a particular individual and require the redistribution of certain responsibilities or the addition of certain conditions'.<sup>(5)</sup>

7. These recommendations sought to address what the PCBS described as the 'all or nothing' nature of the approval process under the Approved Persons Regime and to respond to feedback from regulators suggesting that time limits and conditions on approval 'would enable them to formally identify actions which they require members of management to undertake'.

## Statutory framework

8. Section 61 of FSMA allows the PRA to approve applications to perform a Senior Management Function (SMF) under section 59:

- subject to any conditions that [it] considers appropriate; and/or
- only for a limited period;

and in either case, only

- where it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

9. Similarly, sections 63ZA and 63ZB of FSMA allow the PRA to vary approvals granted under section 59 for the performance of a SMF, including at its own initiative, where:

- the PRA gave the approval; or
- the FCA gave the approval and the 'relevant authorised person'<sup>(6)</sup> is PRA-authorised; and
- the PRA considers that it is desirable to do so in order to advance any of its objectives.

10. Variations of approval may include imposing, varying or removing conditions and/or time limits on the approval.

11. Before exercising its power under section 63ZB, the PRA will be required to consult with the FCA. Moreover, where the PRA intends for an own initiative variation of approval to take place immediately, it must comply with the requirements in section 63ZC of FSMA, which include a right on the individual and the firm to make representations.

(1) The duty of the FCA to consult the PRA under the Act applies only in so far as the statement of policy applies to persons whose approval under section 59 relates to the performance of a function designated by the FCA as an SMF under section 59(6A) in relation to the carrying on by PRA-authorised persons of regulated activities.

(2) As set out in sections 2B and 2C of FSMA.

(3) As set out in sections 2G and 3B of FSMA.

(4) *FCA/PRA Consultation Paper CP14/14*, 'Strengthening accountability in banking', July 2014; [www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1414.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1414.aspx).

(5) 'Changing banking for good', Report of the PCBS, [www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf](http://www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf).

(6) The Act uses the phrase 'relevant authorised person' as an umbrella term for all firms in scope of the new regime namely deposit-takers and PRA-designated investment firms.

## General approach

12. The new statutory powers will give the regulators greater flexibility to address circumstances and issues which can arise when considering applications for approval to perform an SMF or assessing incumbent Senior Managers.

13. However, the new powers under sections 61, 63ZA and 63ZB can only be used if it appears to the PRA that it is desirable to do so in order to advance any of its objectives. This will be assessed on a case-by-case basis and take into account the specific circumstances of the firm and the individual.

14. Moreover, the new powers will complement but not replace the PRA's ability to:

- discuss informally with firms their shortlists of candidates (without in any way detracting from the firms' obligations to vet candidates under section 60A);
- make non-binding recommendations on issues such as candidates' learning and development, both at the point of approval and on an ongoing basis;
- reject or remove candidates who do not meet its standards of fitness and propriety; or
- approve applications unconditionally.

15. Similarly, under section 63ZA the PRA may refuse an application by a firm under that section if it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

16. As noted in the PRA's Approach Document,<sup>(1)</sup> the PRA will engage with the boards and senior management of firms in forming its decisions relating to the imposition of conditions and time limits on approvals. However, firms should not view conditions as a way of enabling the approval of individuals who fail to meet minimum standards of fitness and propriety.

17. Similarly, while the PRA will continue relying in part on supervisory dialogue in seeking to ensure that Senior Managers address risks to firms' safety and soundness on an *ex-ante* basis, it will reserve the right to use its own-initiative variation of approvals powers to impose conditions requiring individuals to take *ex-post* action where warranted.

18. The remainder of this Statement of Policy sets out, for illustrative purposes, a series of non-binding, non-exhaustive circumstances where the PRA may use its new statutory powers. As noted above, each application will be assessed on a case-by-case basis, so firms should not rely on these examples

to predict or develop expectations on the likely outcome of a given application.

## Time-limited approvals

### Temporary vacancies

19. The PRA will retain its approach to temporary vacancies under the Senior Managers Regime. Consequently, to the extent that:

- (1) a firm appoints a person to perform a function which, but for this rule, would be a PRA senior management function;
- (2) the appointment is solely to provide cover for a PRA approved person whose absence is:
  - (a) temporary; or
  - (b) reasonably unforeseen; and
- (3) the appointment is for less than twelve weeks in a consecutive twelve-month period,

the description of that PRA senior management function does not relate to those activities of that person.<sup>(2)</sup>

20. However, as soon as it becomes apparent that the individual will be performing a PRA-specified Senior Management Function for more than twelve weeks, the firm will be required to apply for approval.

21. The use of time-limited approvals will therefore only apply to applications to perform an SMF on an interim, provisional or temporary basis for a period exceeding or likely to exceed twelve weeks in a consecutive twelve-month period.

22. An example of where the PRA may approve an individual on a time-limited basis is where there is a sudden or unexpected departure from the firm and it needs to fill an SMF vacancy immediately. It is likely to take longer than twelve weeks to recruit a permanent replacement and there is an individual at the firm not currently approved to perform the relevant SMF who the firm and the PRA deem capable of fulfilling the role on an interim, provisional basis but not necessarily on a permanent basis.

23. There will be no formal upper limit on the duration of time-limited approvals, which will be set on a case-by-case basis. However, where the aim of the approval is to provide temporary cover, it will typically be granted for a finite amount of time.

(1) The PRA's approach to banking supervision, paragraphs 42 and 193 [www.bankofengland.co.uk/publications/Documents/praapproach/bankingappr1304.pdf](http://www.bankofengland.co.uk/publications/Documents/praapproach/bankingappr1304.pdf).

(2) Rule 2.3 of the rules on Senior Management Functions in the PRA Rulebook.

## Probationary time limits

24. There may be circumstances where a firm wants to appoint a candidate to perform an SMF who, although fit and proper may, in their role, be responsible for the firm's approach to dealing with particularly unusual or severe challenges in the near future. In this situation, it might be appropriate to approve the candidate subject to a time limit with a view to reassessing them for a permanent position in due course.

25. In this scenario, the time-limited approval may be accompanied by a condition requiring an individual to:

- Complete an action or deliverable on or before the end of the time limit, eg a requirement on the acting Head of Internal Audit to produce a revised Audit Plan for the firm within the next six months.
- Refrain from taking specific actions or decisions associated with the role until permanent approval is granted, eg a requirement on the interim Chief Risk Officer (CRO) not to review the firm's risk appetite until permanent approval is granted.

26. A possible example could be where the Chief Executive Officer (CEO) of a large retail bank resigns unexpectedly. The firm wants to appoint the Head of Retail Banking, which is the bank's largest and most significant business line, as acting CEO. Supervisors believe him capable of running the firm on a day-to-day 'business as usual basis' but note that he has no experience developing a long-term, firm-wide strategy. The Chairman and Head of HR estimate that it could take up to a year to recruit a permanent CEO. They also believe that the Head of Retail Banking could be the ideal candidate if he could outline a viable five-year plan. In this situation, it may be appropriate to approve the Head of Retail Banking as CEO subject to a twelve-month time limit. On or before that time, as they would have to prepare a five-year plan for the firm and their ability to do so would be taken into account when considering whether to grant approval on a permanent basis.

27. Once a time limit is imposed, FSMA does not allow the regulator to remove or reduce it before it lapses. Consequently, where a time limit is imposed in conjunction with a condition, fulfilment of the condition will not automatically cause the time limit to lapse. In this situation, when the time limit lapses, the regulator will re-examine the individual's circumstances, including fulfilment of any conditions, and if it deems it appropriate, will grant a fresh approval not subject to a time limit.

## Role-scale limited approvals

28. The assessment of whether an individual is considered fit and proper is made at any given point in time with the individual's competence and capability in performing the role

being assessed in line with the size, nature, scope and complexity of a firm's activities. However, given that a firm's size, nature, scope and complexity can change over time, the PRA may wish to reassess the individual to ensure they continue to be competent and capable in light of these changes.

29. Where a firm is expanding, transforming its business model or its risk profile and there are identifiable upcoming milestones, the PRA may wish to link the duration of one or more Senior Managers' approvals to these milestones.

30. This is without prejudice to the obligations that may arise on a firm in these circumstances under section 62A, to provide the PRA with a revised Statement of Responsibilities for the Senior Manager(s) and to meet any information or verification requirements imposed by the PRA under that section.

31. By way of illustration, an individual is approved to perform the Chief Finance function of an unlisted bank which currently operates only in the United Kingdom. The firm is planning an initial public offering and a string of acquisitions which are projected to treble the size of its balance sheet and give it a global footprint over the next three years. The Chief Finance function holder has never managed the financial resources of an institution as large or as complex. In this situation, it may be appropriate to either limit the individual's approval to three years (the projected time for completing the transactions), or to certain expected future milestones, ie the point at which the firm's balance sheet exceeds a certain size, at which point they would be reassessed.

## Performing an SMF after a time limit lapses

32. Should an individual continue to perform an SMF following expiry of a time-limited approval, it is considered that the individual will be performing an SMF without approval and, therefore, may be liable to penalties under section 63A of the Act.<sup>(1)</sup>

33. The firm may also be liable under section 59(1) of the Act for failing to take reasonable care to ensure that the individual does not perform an SMF without approval.

34. Likewise, the Senior Manager responsible for managing or overseeing the firm's compliance with the Senior Managers Regime, may be guilty of misconduct under section 66B(5) in this scenario (although a Senior Manager is not guilty if they are able to satisfy the PRA that they took responsible steps to avoid the contravention of section 59 occurring or continuing).

(1) The PRA's approach to enforcement: statutory statements of policy and procedure sets out the PRA's policy on the imposition and amount of penalties under *inter alia* sections 63A of the FSMA.

35. Section 66B(3) also provides that any person knowingly concerned in any breach by the firm of section 59(1) is also guilty of misconduct (where the person is either an approved Senior Manager in relation to the firm, or is an employee of the firm).

36. Firms must remain aware of the expiry of all time limited approvals and promptly inform the regulator of any additional steps they intend, or may be required, to take ahead of their expiry.

## Conditional approvals

37. Conditional approvals will be granted in cases where a candidate has been deemed fit and proper overall but, typically, where the assessment has unveiled an action or development point whose completion would advance the PRA's objectives.

38. Before imposing certain conditions, the PRA may undertake an interview to assess the candidate's competency and capability relating to the role to be performed. However, it may also impose conditions without a prior interview.

39. The PRA may ask a candidate to undertake training to enhance their competency and capability in a specific area, where this is desirable to advance the PRA's objectives. Fulfilment of conditions may be subject to a deadline (which would differ from any statutory time limits on the individual's approval).

40. An example could be where a bank is looking to appoint its Head of Credit Risk as CRO and have them approved as the Chief Risk function. The candidate has substantial experience in credit and operational risk but their knowledge of market risk, which accounts for a significant but not major part of the firm's risk profile, is out-of-date. In this situation, it might be appropriate to attach a condition to the individual's approval requiring them to undertake training to update their knowledge of market risk by a specified date.

41. In some circumstances conditions may require a candidate to refrain from or cease undertaking, certain actions. They may also require the candidate to go beyond the regulatory requirements in a given area. For example, a systemically significant bank that is seeking approval for their proposed new Chairman. The candidate is a non-executive director on the board of two non-financial firms, which is within the directorship limits imposed under CRD IV. However, supervisors are concerned about the potential impact of these other commitments on his ability to devote sufficient time to his proposed Chairman role which, for a firm of this size and complexity, would typically be expected to require a near full-time commitment. In this situation, it might be

appropriate to attach a condition to the individual's approval requiring they resign from one or both of the other non-executive directorships.

42. The PRA recognises that there are circumstances where conditions imposed on an individual's approval could also be imposed on the firm using the PRA's own initiative requirements power under section 55M of FSMA. An example of this might be a condition requiring a Senior Manager taking over a Business Unit to produce a plan within a specified time period setting out the process by which the Business Unit intends to rectify deficiencies in prudential systems and controls that have been identified by the PRA.

43. In considering whether to impose such a condition on approval, or instead (or additionally) to impose a requirement under section 63ZB, the PRA would expect to take account of a number of factors, including the extent to which:

- the proposed condition could more appropriately be imposed on the firm itself as a requirement under section 55M (for example because it is a matter which is explicitly reserved to the firm's governing body);
- the subject matter of the condition already forms part of a Senior Manager's Statement of Responsibility; and
- the outcome the condition is seeking is under the control of the Senior Manager concerned (including through any direct reports for which they are responsible).

## Failure to observe a condition

44. Individual Senior Managers should, in conjunction with the firm, take ownership of fulfilling any conditions which the PRA may impose on their approval. However, the ultimate responsibility for ensuring that the completion of any conditions imposed on individual Senior Managers have been met, continues to lie with the firm.

45. Failure to observe a condition by the set deadline does not in itself invalidate an approval granted under section 59 of the FSMA Act but — depending on the facts and circumstances — may constitute a breach of a number of regulatory requirements by the firm and/or the relevant individual. These may include (without limitation):

- Section 63A(2)(b) of FSMA.
- Fundamental Rules 1, 2, 6 and 7.<sup>(1)</sup>
- Conduct Rules 1 & SM4.<sup>(2)</sup>
- SYSC 4.3A.1(5)(R), SYSC 4.3A.3 and SYSC 4.3A.4(R).

(1) PRA Policy Statement PSS/14, 'The PRA Rulebook', June 2014; [www.bankofengland.co.uk/pradocuments/publications/ps/2014/ps514.pdf](http://www.bankofengland.co.uk/pradocuments/publications/ps/2014/ps514.pdf).  
 (2) FCA/PRA Consultation Paper CP14/14, 'Strengthening accountability in banking', July 2014; [www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1414.aspx](http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1414.aspx).

46. Moreover, non-fulfilment or late fulfilment of a condition may be deemed to constitute a failure by a Senior Manager to observe minimum standards of fitness and propriety and may trigger disciplinary action, including, withdrawal of approval.

## Variations of approval

47. The circumstances which may lead to a time limit or condition being imposed on a prospective Senior Manager may also lead to incumbent Senior Managers' approval being varied, either at the firm's or the PRA's initiative.

48. In addition, the PRA may vary an individual's approval to give explicit responsibility for managing or overseeing delivery

of a specific and potentially *ad hoc* and time-limited, regulatory requirement or remedial action.

49. For example, a UK-regulated firm has just entered into a three-year deferred prosecution agreement (DPA) with overseas authorities after being accused of local market misconduct. Breach of the DPA could seriously imperil the firm's safety and soundness, eg through fines and/or loss of key local authorisations. The PRA may vary the approvals of one or more Senior Managers so as to make them explicitly responsible for ensuring and overseeing compliance with the terms of the agreement, in order to further the firm's safety and soundness.

# Annex 9

## PRA Draft Supervisory Statements

Senior Managers Regime	9.1
Certifications Regime	9.2
Fitness and Propriety	9.3
Conduct Rules	9.4

## Annex 9.1

### Draft supervisory statement: the PRA Senior Managers Regime

#### 1 Introduction

1.1 This supervisory statement applies to all 'relevant authorised persons' as defined in section 71A of FSMA namely:

- banks;
- PRA-designated investment firms;
- building societies; and
- credit unions.<sup>(1)</sup>

1.2 The statement sets out the PRA's expectations of how these firms should comply with the rules in the PRA Rulebook dealing with Senior Management Functions (SMFs) and Allocation of Responsibilities<sup>(2)</sup> including:

- the responsibilities of the Chairman and Senior Independent Director (SID); and
- the content of Statements of Responsibilities and Management Responsibilities Maps.

1.3 This statement seeks to advance the PRA's statutory objectives by ensuring the safety and soundness of the firms it regulates by promoting good corporate governance and strengthening the accountability of key decision-makers through a clearer allocation of responsibilities.

#### 2 PRA SMFs

2.1 This section sets out the PRA's expectations of how firms should comply with, and interpret, the rules on SMFs in the PRA Rulebook, which govern the scope of the PRA's Senior Managers Regime.

##### Link to the firm's regulated activities

2.2 For a function to be an SMF as defined in section 59ZA(2) of FSMA it must relate to carrying out a regulated activity. An individual based outside the United Kingdom can perform an SMF if he is responsible for managing an area relating to the firm's Part IV Permissions.

2.3 The PRA therefore expects firms to put forward individuals performing an SMF for approval even if they are physically located outside the United Kingdom.

##### Meaning of 'managing' in FSMA

2.4 Section 59ZA(2) of FSMA also requires a senior manager to be responsible for managing one or more aspects of the firm's regulated affairs which, as section 59ZA(3) clarifies, can include taking part in decisions about how those affairs should be carried on.

2.5 Consistent with the definition of 'managing' in section 59ZA, the PRA expects relevant authorised persons to, where appropriate, put individuals employed by parent or group entities forward for approval as senior managers if they are involved in decisions affecting its business and meet the statutory test.

2.6 The PRA does not expect senior managers to have ultimate authority over the areas they manage; ultimate authority and responsibility will continue to rest with the board. In the PRA's view 'responsibility for managing' includes, but is not limited to:

- managing or overseeing an area or function under the delegated authority of the board;
- direct responsibility for briefing, reporting and putting matters for decision to the board in respect of an area; and/or
- chairing the board or a board committee and taking part in their collective decision-making.

##### Executive and oversight SMFs

2.7 The PRA distinguishes between two types of PRA SMF (except for small credit unions) as set out in the rules on SMFs in the PRA Rulebook:<sup>(3)</sup>

- executive functions (listed in Chapter 3) comprising individuals responsible for actively managing specific areas or functions and reporting on them to the board and its committees;<sup>(4)</sup> and
- oversight functions, (Chapter 4) comprising individuals who do not perform an executive function at the firm but chair its board and/or one or more of its committees (or in the SID's case, appraise the Chairman).

2.8 **Table A** lists all SMFs specified by the PRA.

##### Mandatory number of SMFs

2.9 Every relevant authorised person, except small credit unions, must have an individual approved to perform the Chief Executive, Chief Finance and Chairman functions. Small credit unions must put at least one individual forward for approval as a credit union Senior Executive Manager. In most cases, the PRA expects this individual to be the CEO or equivalent.

(1) At the time of writing, the rules underpinning this draft statement do not apply to non-UK institutions under section 71A(6)(b) of FSMA, including UK branches of overseas firms. HM Treasury plans to consult on extending the scope of the Senior Managers Regime to incoming branches (later in 2014). Subject to the outcome of HM Treasury's consultation, the PRA will consult on how to apply the Senior Managers Regime to incoming non-European Economic Area branches.

(2) <http://fshandbook.info/FS/prerulebook.jsp>.

(3) Defined as credit unions with average gross total assets of less than or equal to £25 million.

(4) All references to specific rules in the PRA Rulebook may be subject to changes in drafting or numbering.

Table A PRA SMFs

Executive	Oversight
Chief Executive	Chairman
Chief Finance	Chair of the Audit Committee
Chief Risk	Chair of the Risk Committee
Head of Internal Audit	Chair of the Remuneration Committee
Head of Key Business Area	Senior Independent Director (SID)
Group Entity Senior Manager <sup>(a)</sup>	

Credit Union Senior Executive Manager (small credit unions only)

(a) Group Entity Senior Managers may perform either an executive or an oversight function depending on the exact nature of their involvement with the firm, which should be made clear in their Statements of Responsibilities and the firm's Management Responsibilities Map.

2.10 However, where existing rules or standards do not require a firm to appoint or establish:

- independent Internal Audit or Risk functions; or
- Audit, Remuneration or Risk Committees; or
- a SID; and
- the firm has elected not to do so, the PRA does not require it to have individuals performing the corresponding SMFs. These firms must allocate Responsibilities 18–20 in Chapter 4 of the rules on Allocation of Responsibilities among their remaining senior managers, as appropriate.

2.11 Table B lists the types of relevant authorised person which are required to have certain SMFs.

Table B

SMF	Firms covered
Chief Risk	<i>Common platform firms</i> where proportionate SYSC 7.1.6R.
Head of Internal Audit	<i>Common platform firms</i> where proportionate SYSC 6.2.1R.
Chair of the Audit Committee	<i>Issuers</i> with securities admitted to trading on a regulated market who have to appoint a statutory auditor DTR 7.1.
Chair of the Risk Committee	Significant firms in scope of the Capital Requirements Regulation <sup>(a)</sup> ( <i>CRR firms</i> ) SYSC 7.1.18R.
Chair of the Remuneration Committee	<i>CRR firms</i> with assets above £15 billion SYSC 19A.3.12R.
SID	<i>Premium-listed companies</i> (comply or explain) <i>Corporate Governance Code Provision A.4.1</i> (comply-or-explain).

(a) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0001:0337:EN:PDF>.

## Independence requirements and banned combinations of SMFs

2.12 Certain rules prevent individuals from performing specific combinations of SMFs at the same firm or require certain SMFs to be performed independently of any other functions or activities of the firm. Table C lists the SMFs subject to such restrictions or independence requirements.

2.13 Where rules do not prevent an individual from performing a combination of SMFs, the PRA may still decide not to approve him to perform the desired combined functions in some circumstances, including but not limited to, where the PRA considers that:

Table C

SMF	Restrictions
Chief Executive	A firm must ensure that an individual who performs the Chairman Function on its behalf does not simultaneously perform the Chief Executive Function within the same firm.
Chairman	<b>Rule 7.2 of the rules on SMFs.</b>
Chief Risk	Must be an <b>independent senior manager with distinct responsibility for the risk management function</b> . Where the nature, scale and complexity of the activities of the CRR firm do not justify a specifically appointed person, another senior person within the firm may fulfil that function, provided there is no conflict of interest SYSC 7.1.22R. See also guidance in SYSC 21.
Head of Internal Audit	Must be <b>separate and independent from the other functions and activities of the firm</b> SYSC 6.2.1R.
Chair of the Risk Committee	Must not perform any executive function in the firm SYSC 7.1.18R and SYSC 19A.3.12R.
Chair of the Remuneration Committee	

- the functions are incapable of being effectively performed together inherently or in practice, such as Chairman and SID; or
- the individual's qualifications, training, competencies and/or personal characteristics render him fit and proper to perform one function but not the other(s).

## Sharing a PRA SMF

2.14 In certain circumstances, including but not limited to job-share arrangements, a firm may be allowed to have more than one individual performing a single SMF.

2.15 However, the PRA expects SMFs to be shared only where appropriate or justified. The norm should be for every firm to have a single individual performing each of the PRA SMFs which the firm is required to have. This individual should be the most senior employee or officer responsible for managing that area (see above for the definition of managing).

2.16 Where two or more individuals share an SMF, each will be individually responsible for all the responsibilities conferred by that function. It follows that, in the event of a firm breaching a relevant requirement (as defined in section 66B(4) of FSMA) relating to that SMF's area(s) of responsibility, every individual approved to perform it will be potentially liable unless they can individually satisfy the PRA that they took reasonable steps to prevent, stop or remedy the breach (hereafter the 'reasonable steps test' as set out in section 66B of FSMA). The particular circumstances regarding the division of tasks between individuals sharing an SMF may, however, have a bearing on whether one or both can satisfy the 'reasonable steps test'.

### 3 Allocation of responsibilities to senior managers

#### Responsibilities inherent in the definition of each PRA SMF

3.1 Every SMF, specified by the PRA in its rules, is defined by reference to the responsibility inherent in that function.

3.2 This inherent responsibility entails managing an aspect of the firm's affairs which the PRA considers involves, or might involve, a risk of serious consequences to the firm, business or other interests in the United Kingdom.

3.3 The definition of each SMF will be used to identify responsibility for an area in the event of a firm breaching a relevant requirement. For example, where a failure with a firm's risk controls causes it to breach a relevant requirement, the individual(s) performing the Chief Risk function is likely to be initially identified as being responsible and asked to satisfy the 'reasonable steps test'.

3.4 In addition to or instead of the senior manager to whom the responsibility was formally allocated, the PRA may require other senior managers to satisfy the 'reasonable steps test' if, on the facts, they were responsible for the area where the contravention occurred.

3.5 The PRA also retains the ability to take enforcement action against employees, other than senior managers, who were 'knowingly concerned' in a contravention of a relevant requirement.

#### Prescribed Responsibilities

3.6 In addition to the responsibilities inherent in the definition of each SMF, Chapter 4 of the rules on Allocation of Responsibilities sets out a number of 'Prescribed Responsibilities', which cover:

- the firm's implementation and operation of the new accountability regimes;
- the culture and standards within the firm;
- a number of areas which the PRA has specific interest in as a prudential regulator; and
- responsibilities which a firm must assign if it does not have a specific senior manager.

3.7 The PRA requires firms (other than small credit unions) to allocate PRA Prescribed Responsibilities to any individual performing an SMF specified by the PRA or by the Financial Conduct Authority (FCA) in SUP 10C of the FCA Handbook (except the FCA's 'Significant Responsibility' SMF).

3.8 Certain Prescribed Responsibilities can only be assigned to individuals performing an 'oversight' PRA SMF or to the following FCA SMFs:

- non-executive director (NED); or
- Chair of the Nominations Committee.

3.9 The rules on Allocation of Responsibilities require all Prescribed Responsibilities to be allocated within all firms other than small credit unions. However, in limited cases, the PRA may waive a requirement to allocate one or more Prescribed Responsibilities to a firm that satisfies the test in section 138A(4) of FSMA, ie a firm that can demonstrate that:

- compliance with the unmodified rules would be unduly burdensome or would not achieve the purpose for which the rules were made; and
- the direction would not adversely affect the advancement of any of the PRA's objectives.

3.10 In practice, the PRA is likely to grant waivers where a firm can demonstrate that it does not carry out an activity relating to a given Prescribed Responsibility.

3.11 The PRA expects firms to allocate many Prescribed Responsibilities to the senior manager they are most closely linked to. A specific example is set out in **Table D**.

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#### Table D

The rules on Allocation of Responsibilities require firms to allocate responsibility for ensuring and overseeing the integrity and independence of the:

- the internal audit function in accordance with SYSC 6.2 (Internal audit);
- the compliance function in accordance with SYSC 6.1 (Compliance); and
- the risk function in accordance with SYSC 7.1.22R (Risk control).

These responsibilities must be allocated to Oversight SMFs. The PRA expects these to be the chairs of the relevant board committees (Audit and Risk).

Moreover, the PRA interprets these Prescribed Responsibilities as encompassing an obligation to ensure that the Chief Risk, Compliance and Head of Internal Audit cannot be dismissed or have any other disciplinary sanction without the agreement of the board, including at least a majority of NEDs.

#### Prescribed Responsibilities for small credit unions

3.12 Small credit unions are subject to the tailored Prescribed Responsibilities listed in Chapter 6 of the Allocation of Responsibilities, which they must allocate to any senior manager approved by either the PRA or FCA (excluding the FCA 'Significant Responsibility' SMF).

#### Additional responsibilities

3.13 Firms are free to assign to a senior manager, and include in his Statements of Responsibilities, additional responsibilities not covered in the PRA's rules.

3.14 Additional responsibilities must not modify or qualify any responsibilities prescribed by the PRA.

3.15 The PRA may also request firms to include specific responsibility for a regulatory outcome in the Statement of Responsibilities of the relevant individuals.

### Responsibilities of the Chairman and SID

3.16 The PRA considers that the responsibility inherent in the definition of the Chairman function in Rule 4.2 of the rules on SMFs encompasses responsibility for the following:

- promoting an open exchange of views, challenge and debate at the board;
- ensuring that NEDs have the tools, resources and information to carry out their roles effectively, particularly their challenge function; and
- providing a genuine check and balance to the executives.

3.17 Moreover, the PRA expects firms to allocate the following Prescribed Responsibilities to the Chairman:

- the induction, training and professional development of all persons performing SMFs on behalf of the firm and all members of the firm's management body;
- leading the development of the firm's culture and standards in relation to the carrying on of its business and the behaviours of its staff; and
- ensuring and overseeing the integrity and independence of the firm's policies and procedures on whistleblowing and for ensuring that staff who raise concerns are protected from detrimental treatment.

3.18 The PRA also expects Chairmen to remain apprised of matters relating to the board and its individual committees and to take steps to facilitate this, for instance by having regular discussions with the Chairs of the Audit, Remuneration and Risk committees outside of board meetings.

3.19 Given the importance and responsibility of the role, Chairmen are expected to commit a significantly larger proportion of their time to their functions than other NEDs. The PRA expects Chairmen, in particular those of major firms, not to have or take on additional commitments which may interfere with the fulfilment of their responsibilities to the firm under the Senior Managers Regime.

3.20 The PRA may consider using its powers to impose conditions on approval to limit a Chairman's ability to take on external commitments where it considers that doing so may advance the PRA's objectives.

### Appraising the Chairman

3.21 The rules on SMFs in the PRA Rulebook specify a SID SMF, which entails 'particular responsibility for leading the assessment of the performance of the person performing the Chairman function'. Where a firm has chosen not to have a SID, it must allocate responsibility for appraising the Chairman to another NED.

3.22 The PRA expects the assessment of the Chairman to include, but not be limited to the:

- extent to which he has fulfilled the responsibilities referred to in this statement; and
- quality and sufficiency of resources allocated to his office (consistent with Rule 7.1 in Allocation of Responsibilities).

## 4 Statements of Responsibilities and Management Responsibilities Maps

### Statements of Responsibilities

4.1 Certain SMFs, notably Heads of Key Business Areas and Group Entity Senior Managers may apply to individuals performing a diverse range of roles and influencing the firm in different ways.

4.2 Consequently, the PRA expects the Statements of Responsibilities of individuals performing these functions to include detailed information of any particular aspects of the firm which they are responsible for managing or overseeing.

4.3 Section 62A of FSMA requires firms to submit a revised Statement of Responsibilities whenever there is a 'significant change in the aspects of the authorised person's affairs which the person is responsible for managing in performing the function'.

4.4 The PRA will determine whether a 'significant change' has taken place on a case-by-case basis. However, the list below sets out non-exhaustive examples of potential significant changes which, in the PRA's view, may require the submission of a revised Statement of Responsibilities:

- A variation of the individual's approval, either at the firm's, the PRA's or FCA's initiative, resulting in the imposition of a condition or time limit.
- Fulfilling or failing to fulfil a condition on approval imposed by the PRA or FCA.
- The addition, re-allocation or removal of a PRA Prescribed Responsibility, an FCA key business function or an additional responsibility.
- The sharing of an SMF originally performed by one individual among two or more individuals.

### Management Responsibilities Maps

4.5 The PRA's and FCA's rules and FCA guidance require firms to develop and maintain a Management Responsibilities Map, which must be a single, up-to-date document setting out their management and governance arrangements. **Table E** lists some of the information which the PRA expects a Management Responsibilities Map to contain. A full list is available in Rule 7.3 of the rules on Allocation of Responsibilities in the PRA Rulebook.

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## Table E

- An up-to-date list of all senior managers approved by the PRA and the FCA.
- A list of each senior manager's responsibilities as set out in their current Statement of Responsibilities.
- A checklist confirming that all PRA Prescribed Responsibilities/Credit Union Prescribed Responsibilities (as applicable) have been allocated.
- Where one or more Prescribed Responsibilities have not been allocated, the reason why.
- A list of all reporting lines from all senior managers to other individuals in the relevant authorised person, the board and any board committees.
- Where the relevant authorised person is a subsidiary or part of a group, details of any reporting lines from senior managers in the relevant authorised person to individuals and decision-making bodies outside it.

## Annex 9.2

### Draft supervisory statement on the PRA's certification regime

#### 1 Introduction

1.1 This supervisory statement sets out the expectations of the Prudential Regulation Authority (PRA) of how firms should act when deciding which roles are 'certification functions' (as defined in the Certification Part of the PRA Rulebook) requiring a certificate to be issued by the firm to the person performing the function. This statement applies to deposit-takers and PRA-authorized investment firms.

1.2 This statement advances the PRA's objectives by providing further clarity on the PRA's expectations of how firms should act in complying with the PRA's rules in the Certification Part and the associated provisions in the Financial Services and Markets Act 2000 (FSMA).

#### 2 Relationship between the certification regime and the PRA's Remuneration rules<sup>(1)</sup>

2.1 The PRA has specified certification functions with reference to the concept of a 'significant risk-taker'.

2.2 For firms subject to the Capital Requirements Regulation (CRR), referred to here as **CRR firms**, both the definition of a 'significant risk-taker' for the purposes of the certification regime and the definition of a 'material risk-taker' in the PRA's rules in the Remuneration Part of the Rulebook ('Remuneration rules') refer to the Material Risk-Takers Regulation,<sup>(2)</sup> which sets out qualitative and quantitative criteria for identifying 'staff whose professional activities have a material impact on an institution's risk profile'.

2.3 However, it should be noted that some individuals classified as material risk-takers under the Remuneration rules will not fall within the certification regime. In particular, anyone who performs a controlled function for a firm will not be treated as performing a certification function for that firm.<sup>(3)</sup>

2.4 This would also be the case where an employee is not sufficiently involved in a regulated activity of the firm to meet the statutory test for a certification function. This may, for example, be the case where the individual is employed by an overseas subsidiary of the UK-authorized firm; such a person may have no involvement in a regulated activity of the UK-authorized firm and in that case would not be performing a certification function, but may be a material risk-taker under the PRA's proposed Remuneration rules as these will apply at group, parent undertaking and subsidiary undertaking levels,

including those subsidiaries established outside the European Economic Area.

2.5 The PRA expects that in a CRR firm only those individuals who are material risk-takers as defined in the PRA's Remuneration rules could be performing a certification function specified by the PRA. However, the Financial Conduct Authority's certification regime is wider and also includes individuals who are not 'material risk-takers'.

2.6 By virtue of Article 4(2)–(5) of the Material Risk-Takers Regulation, a firm may, where certain conditions are satisfied, deem an employee who meets any quantitative criterion in Article 4(1) but no criterion in Article 3 of that Regulation not to be a 'material risk-taker'. In such cases, the firm should not treat that employee as a 'significant risk-taker' for the purposes of the certification regime.

2.7 **Credit unions** are not subject to the CRR or the associated remuneration requirements. Therefore, they will not have an existing obligation to identify material risk-takers for remuneration purposes and the PRA considers that many of the criteria in the Material Risk-Takers Regulation would not, in practice, be relevant to credit unions. Instead, the PRA has created a separate, simplified definition of certification functions for credit unions. This will take the elements of the material risk-taker criteria that the PRA believes could be relevant to a credit union.

#### 3 Identifying functions and describing them in certificates

3.1 The PRA's approach to specifying certification functions has the effect of making any function performed by a significant risk-taker for a firm a certification function (to the extent that the function will require the employee to be involved in a regulated activity of the firm, and provided that the employee is not performing any controlled function for the firm).

3.2 However, this does not mean that the PRA expects firms to issue multiple certificates to each employee that is a 'significant risk-taker'. Rather, in a certificate, a firm may describe the function performed by an employee in broad terms, and without listing all the activities that function may involve. A firm should assess whether the employee is fit and proper to perform all aspects of the function as described by a

(1) This draft supervisory statement refers to Remuneration rules which the PRA is currently consulting on in CP15/14 and assumes that those rules are made as proposed. The final supervisory statement will need to be updated to reflect any changes to Remuneration rules as a result of responses to CP15/14.

(2) Commission Delegated Regulation (EU) No 604/2014, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0604&from=EN>.

(3) It is however possible that an individual may perform roles at more than one regulated firm, in which case it would be possible for that individual to perform a senior management function at one firm and a certification function at another firm.

certificate. The factors the PRA requires a firm to take into account when making this assessment are set out in the Fitness and Propriety Part and the associated supervisory statement.<sup>(1)</sup>

## 4 Moving functions during the certification year

4.1 In cases where a certified employee's role changes to involve a new certification function part way through the twelve-month period for which their certificate is valid, and that new function may have different requirements relating to personal characteristics, the level of competence, knowledge and experience, qualifications or training, the PRA would expect the firm to assess whether the employee is fit and

proper to perform that new function before they start it. A firm should not wait until the point of annual reassessment to determine whether the employee is fit and proper for the new function.

## 5 Associated requirements in FSMA

5.1 In addition to the rules in the Certification Part of the PRA Rulebook, firms should also take account of section 63E (*Certification of employees by relevant authorised persons*) and section 63F (*Issuing of certificates*) of FSMA; for example, in relation to the definition of an 'employee', the content of a certificate, the period for which a certificate is valid, the procedure to be followed in the event of a refusal by a firm to issue a certificate and record keeping.

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(1) The draft Fitness and Propriety Rules and supervisory statement are being consulted on in the same consultation paper as this supervisory statement (CP14/4).

## Annex 9.3

### Draft supervisory statement on assessing fitness and propriety and providing references

#### 1 Introduction

1.1 This supervisory statement is aimed at deposit-takers and investment firms regulated by the Prudential Regulation Authority (PRA), ie at firms which are 'relevant authorised persons' as defined in section 71A of the Financial Services and Markets Act 2000 (FSMA). The purpose of this supervisory statement is to set out the factors that the PRA:

- will take into account when assessing whether an individual is fit and proper to perform a senior management function (SMF); and
- expects firms to take into account when assessing whether an individual is fit and proper to perform:
  - (i) an SMF specified in PRA rules; or
  - (ii) a certification function specified in PRA rules.

1.2 Measures to ensure that the persons who manage firms, or take significant risks on a firm's behalf, are fit and proper should reduce the likelihood of firms failing, and therefore help advance the PRA's safety and soundness objective.

#### 2 Assessing fitness and propriety

2.1 The PRA has made rules in the Fitness and Propriety Part of the Rulebook which state that when deciding whether a person is fit and proper, a firm must be satisfied that the person has appropriate qualifications, training, competence and personal characteristics needed to perform his or her function effectively and in accordance with any relevant requirements, and to enable sound and prudent management of the firm.

2.2 Section 61(2) of FSMA provides that the PRA may have regard to these rules (among other things) when determining an application for approval to perform an SMF.

2.3 In assessing whether an individual is fit and proper to perform an SMF, including whether the person complies with the rules referred to in paragraph 2.1 above, the PRA will also have regard to the European Banking Authority's (EBA's) *Guidelines on the assessment of the suitability of members of the management body and key function holders* and in particular to the Assessment Criteria set out in Chapter IV.<sup>(1)</sup>

2.4 In complying with the rules in the Fitness and Propriety Part, firms should also have regard to the EBA's Guidelines as appropriate.

2.5 The PRA will also have regard in its assessments of fitness and propriety to the person's:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

2.6 Firms should also have regard to the factors in paragraph 2.5 when they are assessing whether an individual is fit and proper to perform an SMF or certification function specified by the PRA.

2.7 In determining a person's honesty, integrity and reputation, the PRA will have regard to *all* relevant matters which may have arisen either in the United Kingdom or elsewhere. The PRA will consider whether a matter is relevant to the requirements and standards of the regulatory system.

2.8 For example, conviction for a criminal offence will not automatically mean an application will be rejected. The PRA will treat each candidate's application on a case-by-case basis, having regard to a range of factors which may include, but are not limited to:

- the seriousness of, and circumstances surrounding, the offence;
- the explanation offered by the convicted person;
- the relevance of the offence to the proposed role;
- the passage of time since the offence was committed; and
- evidence of the individual's rehabilitation.

2.9 When determining a person's financial soundness the PRA will not normally require a candidate for an SMF to supply a statement of assets or liabilities. The PRA would not expect a person being of limited financial means to, in itself, affect his or her suitability to perform a certification function or an SMF.

2.10 The PRA would expect a firm to take a similar approach to that set out in paragraphs 2.7 to 2.9 above when assessing whether a person is fit and proper for an SMF or a certification function.

#### 3 Taking up and providing employer references

3.1 Fitness and Propriety 2.1(4) requires firms to request references from previous employers as part of their assessment of a person's fitness and propriety to perform an SMF or certification function specified by the PRA.

(1) The EBA's Guidelines (EBA/GL/2012/06) are available at [www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06--Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf](http://www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06--Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf).

3.2 Where a firm needs to fill a vacancy which is a certification function and which could not have reasonably been foreseen, the PRA recognises that it may not be reasonable to expect the firm to obtain references prior to issuing a certificate. In such cases, firms should take up the references as soon as reasonably possible and, if the references obtained raise concerns about the person's fitness and propriety, the firm should revisit its decision to issue the person with a certificate.

3.3 Fitness and Propriety 3.1(3) requires a firm ('B') to provide all relevant information about a person ('P') who has previously performed an SMF or certification function for that firm, in cases where the reference is requested by another firm ('A') who is considering appointing P to an SMF or a certification function. In such cases, B should have regard to its existing legal duties to both P and A, including to:

- provide a reference which is true, accurate and fair;
- try to be objective; and
- take reasonable care in preparing the reference.

3.4 The requirement in Fitness and Propriety 3.1(2) — that where a firm has concluded that a person ('P') has breached a PRA conduct rule and has notified the regulators of that breach, the firm should include the facts that led it to come to that conclusion when providing a reference about P — does not apply in cases where the firm has subsequently reached a new determination that the person had not breached a conduct rule and has made a further notification to that effect to the regulators.

3.5 The obligations in Fitness and Propriety 3 to supply information to another firm apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service) 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 the rules in the Fitness and Propriety Part.

3.6 The requirement in Fitness and Propriety 3.1 for a firm ('B') to give information to firm ('A') also applies where firm A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

3.7 A firm should have in place procedures for the retention of records to enable it to comply with Fitness and Propriety 3 when responding to any requests for references.

## 4 Criminal background checks

4.1 In England and Wales, a firm should get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks). There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI). If the candidate is employed by a contractor, the firm may ask the contractor to obtain the certificate. A firm should not send any DBS certificates or copies of such certificates to the PRA.

## Annex 9.4

### Draft supervisory statement on conduct rules and associated notification requirements

#### 1 Introduction

1.1 This supervisory statement sets out the expectations of the Prudential Regulation Authority (PRA) of how individuals who are subject to the Individual Conduct Rules and the Senior Manager Conduct Rules (referred to here as 'the conduct rules') in the Conduct Rules Part of the PRA Rulebook should act in complying with them.<sup>(1)</sup> However, this statement does not provide an exhaustive statement of the standards required to comply with the conduct rules.

1.2 This statement also sets out the PRA's expectations of how deposit-takers and PRA-authorized investment firms will comply with the associated rules in Notifications 11.

1.3 This statement will help persons who can affect a firm's safety and soundness to understand the standards of conduct the PRA requires of them. This should advance the PRA's safety and soundness objective by reducing the risk their conduct will make that firm less safe or sound.

#### 2 Persons and activities to which the Conduct Rules Part apply

2.1 The Conduct Rules Part applies to persons performing a certification function specified by the PRA, or a senior management function (SMF) specified by either regulator. An employee performing such a function is still subject to the rules regardless of whether the firm has issued a certificate or the person has been granted approval.

2.2 Where an employee is performing a function that would have been an SMF but for Senior Management Functions 2.3 (which provides a twelve-week grace period to cover absences which are temporary or reasonably unforeseen), the effect of Conduct Rules 1.1(2)(c) is to apply the Individual Conduct Rules, but not the Senior Manager Conduct Rules, to that employee.

2.3 Where an employee is performing a function which would have been a certification function but for Certification 2.4 (ie it is to cover an absence of a certified employee which is reasonably unforeseen and is for less than two weeks), the performance of that function does not cause any of the conduct rules to apply to that employee.

2.4 The conduct rules apply only to an individual's conduct in relation to the activities of the firm at which they are employed or are approved to perform an SMF.<sup>(2)</sup> These rules do not relate to a person's actions in their private life if those

actions are unrelated to the firm's activities and the PRA would not generally expect to assess such actions against its rules. However, an individual's wider behaviour could affect his or her ability to comply with rules. The way in which a person behaves in their private life may be relevant to any assessment, by the PRA or by the firm itself, of whether that person is or remains fit and proper.<sup>(3)</sup>

#### 3 Compliance with the rules

3.1 In assessing compliance with or a breach of a conduct rule, the PRA will have regard to the context in which a course of conduct was undertaken, including:

- (a) the precise circumstances of the individual case;
- (b) the characteristics of the particular function performed by the individual in question; and
- (c) the behaviour to be expected in that function.

3.2 A person will only be in breach of any of the conduct rules where he is personally culpable. Personal culpability arises where:

- (a) a person's conduct was deliberate; or
- (b) the person's standard of conduct was below that which would be reasonable in all the circumstances.

##### Individual Conduct Rules<sup>(4)</sup>

**Individual Conduct Rule 2:** *'You must act with due skill, care and diligence.'*

##### Acting with due skill, care and diligence as a manager

3.3 It is important for a manager (including, but not limited to, a person performing an SMF) to understand the business for which he is responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

3.4 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, a manager should require explanations from those who report to him or her. Where those explanations are implausible or unsatisfactory, the manager should take steps to test the veracity of those explanations.

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(1) These draft rules are being consulted on in the same consultation package as this draft supervisory statement (CP14/14).

(2) Such actions are referred to in the Financial Services and Markets Act 2000 (FSMA) as the performance of 'qualifying functions' — see section 64A (4)–(5).

(3) Information on the factors the PRA will take into account when making such an assessment can be found in the Fitness and Propriety Part of the PRA Rulebook and the associated supervisory statement which are also being consulted on as part of CP14/14.

(4) Individual Conduct Rule 1 is: 'You must act with integrity'. The PRA does not believe it is necessary to provide guidance on what it means to act with integrity.

**Individual Conduct Rule 3:** *'You must be open and co-operative with the FCA, the PRA and other regulators.'*

3.5 The PRA expects a person would normally report information to the regulators through the firm's mechanisms for reporting information to the regulators. Relevant factors in assessing compliance with Individual Conduct Rule 3 include:

- (a) whether a person has provided information into such mechanisms in an appropriate manner;
- (b) whether the person has taken steps to influence a decision so as not to report to the regulator concerned;
- (c) whether the person has acted in a way intended to obstruct the reporting of information to the regulator concerned;
- (d) where relevant to the person's role, the way in which the person has operated, managed or overseen those mechanisms; and
- (e) the way in which a person has responded to requests from a relevant regulator.

### Senior managers

3.6 The factors the PRA would expect to take into account when assessing whether a person performing an SMF has complied with Senior Manager Conduct Rules 1–4 include:

- (a) whether the person exercised reasonable care when considering the information available;
- (b) whether the person reached a reasonable conclusion upon which to act;
- (c) the nature, scale and complexity of the firm's business;
- (d) the person's role and responsibility; and
- (e) the knowledge the person had, or should have had, of regulatory concerns, if any.

3.7 A person's statement of responsibilities will be important evidence about their roles and responsibilities, but there may be cases where a person is responsible for additional matters which are not included in their statement of responsibilities. This could for instance be the case if the statement of responsibilities has not been kept up to date. Therefore a person's statement of responsibilities will not necessarily exhaust the matters for which the PRA will regard them as being responsible.

**Senior Manager Conduct Rule 1:** *'You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.'*

3.8 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 higher. In organising the business for which

they are responsible, a person performing an SMF should bear this in mind.

3.9 The organisation of the business and the responsibilities of those within it should be clearly defined. 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.

3.10 If an individual's performance is unsatisfactory, then the relevant SMF manager should review carefully whether to allow that individual to continue in his or her position. In particular, if the SMF manager 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 SMF manager should take care not to give any weight to the financial performance of the individual or group concerned when considering whether any action should be taken.

3.11 In organising the business, a person performing an SMF should pay attention to any temporary vacancies which exist. The SMF manager should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The SMF manager 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 which should be taken by the SMF manager 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 controlled functions, they may only be filled by persons approved for that function.

**Senior Manager Conduct Rule 2:** *'You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.'*

3.12 A person performing an SMF should take reasonable steps both to ensure the 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.

3.13 A person performing an SMF need not personally put in place the systems of control in the business. Whether the SMF does this depends on the SMF's role and responsibilities. The SMF should, however, take reasonable steps to ensure that the business 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.

**Senior Manager Conduct Rule 3:** *'You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.'*

3.14 A person performing an SMF will not always personally manage the business on a day-to-day basis. The extent to which this is done by the SMF manager will depend on a number of factors, including the nature, scale and complexity of the business and the SMF manager's position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The appropriate regulator will look to the SMF manager 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 the SMF manager's attention, he or she should deal with them in an appropriate way.

3.15 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 that part of the business exemplifies a failure to comply with Senior Manager Conduct Rule 3.

3.16 Although a person performing an SMF may delegate the resolution of an issue, or authority for dealing with a part of the business, that person cannot delegate responsibility for it. It is that person's responsibility to ensure that they receive reports on these matters and question those reports where appropriate. For instance, if progress appears to be slow or if an issue is not being resolved satisfactorily, then the SMF manager may need to challenge the explanations received and possibly take action personally to resolve the problem. This may include increasing the resource allocated to the issue, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, a person performing an SMF 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.

**Senior Manager Conduct Rule 4:** *'You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.'*

3.17 Senior Manager Conduct Rule 4 applies to a person performing an SMF in addition to Individual Conduct Rule 3.

Individual Conduct Rule 3 relates primarily to responses from individuals to requests from the appropriate regulator and an individual's involvement in a firm's mechanisms for reporting to a regulator. However, Senior Manager Conduct Rule 4 imposes a greater duty on SMF managers to disclose any information the appropriate regulator would reasonably expect. This includes making a disclosure in the absence of any request or enquiry from the appropriate regulator. By virtue of the position, a person performing an SMF is likely both to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the PRA or Financial Conduct Authority (FCA) would reasonably expect notice.

3.18 The PRA would not expect a person performing an SMF to disclose information which the person knows that the firm or another senior manager has already disclosed to the PRA.

3.19 The PRA expects that in disclosing appropriately, the person will need to disclose:

- (a) sufficient information for the regulators to be able to understand the full implications of the matter being disclosed;
- (b) in a timely manner; and
- (c) to an appropriate contact at the PRA or FCA (or both), which may include the firm's usual supervisory contact.

## 4 Notifications by firms to the PRA (Notifications 11)

4.1 The requirement in Notifications 11.3 reflects section 64B(5) of FSMA and requires firms to notify the PRA if they know or suspect that a person subject to the PRA's conduct rules has breached one of those rules. The PRA expects that firms will only conclude that it is necessary to report a 'suspected breach' where it has reasonable grounds for such a suspicion. The PRA does not expect firms to report every instance where there is some possibility that a breach has been committed if there are no reasonable grounds on which to believe that a breach has occurred.

4.2 Where a firm has reported a suspected or actual breach of a conduct rule, it should notify the PRA of any different determination it subsequently makes in relation to that matter. For example, if the firm reports a suspected breach and as a result of subsequent investigation determines that the person had not breached the rules, it should notify the PRA of that determination.

4.3 Where a firm has reported a breach of a conduct rule, and subsequently takes disciplinary action against the person for matters relating to the breach, the firm should make a separate notification of the disciplinary action.

4.4 The PRA expects that firms will report to the PRA and the FCA details of known or suspected breaches, including those which do not come to the firm's attention until after the person concerned has left the firm. Firms should consider whether the person was an employee or performing an SMF for the firm at the time the breach is thought to have occurred (rather than at the point at which it came to the firm's attention).

4.5 The obligations to make a notification under section 64B or section 64C of FSMA apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service) 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 these sections.

4.6 The provision of information to a regulator which is false or misleading may be a criminal offence under section 398 of FSMA.

4.7 The notification requirements in Notifications 11 complement and do not override existing requirements which firms have to report information to the PRA, for example under PRA Fundamental Rule 7 or other Notifications rules.<sup>(1)</sup>

4.8 Where a notification under Notifications 11.3 relates to a person performing an SMF, a firm should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the PRA by telephone or by other prompt means of communication, before submitting a written notification. Oral notifications should be given directly to the relevant authorised person's usual supervisory contact at the PRA. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

4.9 The PRA is entitled to rely on any information it receives from a firm and to consider any notification received under Notifications 11 as being made by a person authorised by the firm to do so. A firm should therefore consider whether it needs to put procedures in place to ensure that only appropriate employees make notifications under Notifications 11 on its behalf to the PRA.

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(1) Fundamental Rule 7 states: 'A *firm* must deal with its regulators in an open and co-operative way and must disclose to the PRA appropriately anything relating to the *firm* of which the PRA would reasonably expect notice'.

# Annex 10

## Europe Economics Individual Accountability Cost Benefit Analysis



Europe Economics

# Cost Benefit Analysis of the New Regime for Individual Accountability and Remuneration

## Final Report

28 July 2014

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# Contents

Report Summary .....	1
Introduction .....	1
Compliance cost model.....	1
Indirect costs and wider impacts .....	3
Benefits.....	4
Conclusions.....	5
1 Our Approach.....	7
1.1 Introduction .....	7
1.2 Understanding and measuring compliance cost .....	7
1.3 Assessment of indirect costs and wider impacts .....	9
1.4 Assessment of benefits.....	9
1.5 Data gathering process.....	10
1.6 Counterfactual.....	12
1.7 Structure of the report .....	13
2 Overview of Policy Proposals .....	14
2.1 Introduction .....	14
2.2 Individual accountability proposals .....	14
2.3 Remuneration proposals.....	17
3 Compliance Costs.....	19
3.1 Introduction .....	19
3.2 Modelling approach adopted for each policy proposal.....	19
3.3 Banks and investment firms.....	25
3.4 Building societies.....	31
3.5 Credit unions .....	35
4 Indirect Costs and Wider Impacts.....	40
4.1 Introduction .....	40
4.2 Operational efficiencies.....	40
4.3 Labour market effects.....	47
4.4 Product innovation .....	51
4.5 Regulatory badging .....	55
4.6 Consumers .....	55
4.7 Competition.....	56
4.8 Summary of main findings .....	57
5 Benefits .....	59
5.1 Introduction .....	59
5.2 Summary of the underlying causes of failures and detriment .....	60

5.3	Reduced reward for non-compliance and excessive risk taking.....	62
5.4	Increased likelihood of incurring a sanction if misconduct identified.....	64
5.5	Increasing the likelihood of instances of misconduct being identified.....	68
5.6	Increased costs of sanction .....	70
5.7	Benefits to firms .....	72
5.8	Quantitative analysis of benefits to consumers.....	73
5.9	Quantification of benefits to firms.....	84
6	Summary and Conclusions.....	86
6.1	Introduction .....	86
6.2	Direct costs to firms of complying with the policies .....	86
6.3	Indirect costs to firms and wider impacts .....	87
6.4	Benefits of the policies.....	88
	Appendices .....	91
7	Key Business Functions and Conduct Rules.....	92
7.1	Indicative list of key business functions .....	92
7.2	Draft conduct rules .....	93
8	Overview of the Main Failures.....	94
8.1	Introduction .....	94
8.2	Misconduct .....	94
8.3	Excessive risk-taking.....	96
8.4	Poor practice .....	99
9	Approach to Extrapolating Compliance Costs.....	102
9.1	Banks.....	102
9.2	Building societies.....	105
9.3	Credit unions .....	106

# Report Summary

## Introduction

This is Europe Economics' final report to the Financial Conduct Authority (FCA) for the cost benefit analysis of the policies to implement the new Individual Accountability regime and the policies for changes to the Remuneration Code.

The policies apply to banks, building societies, credit unions and the dual FCA/PRA regulated investment firms (although credit unions are not subject to the Remuneration Code policies). In order to conduct the cost benefit analysis the FCA provided us with a number of draft policy proposals, which have formed the basis of our cost modelling and analysis. In some areas the final proposals differ from the draft policies.

This study covers:

- Quantification of the direct costs to firms of complying with the individual accountability and remuneration policies.
- A qualitative assessment of the indirect costs and wider impacts that may arise.
- A qualitative assessment and indicative quantification of the likely benefits arising from the policies.

Our modelling and analysis draws on desk research and a structured in-depth interview programme of 20 firms covering large and small banks and investment firms, building societies and credit unions.

## Compliance cost model

In modelling the compliance cost we have estimated both one-off and ongoing costs, defined as follows:

- One-off costs are those incurred once off in complying with the policy. Examples include developing guidance; setting up IT systems; or providing training on the migration.
- Ongoing costs are those incurred annually as a result of the policies, for example ongoing training obligations; or annual reviews of responsibilities.

This approach formed the basis of the cost questions included in our structured interviews.

The relative scale of the compliance costs vary across the different types of firms affected and are influenced by the extent to which firms already have similar processes in place to those required by the policies. In relation to the individual accountability policies, one-off set up costs are in general significantly greater than ongoing costs, driven by the costs involved in setting up the new accountability regime and training individuals, and by the fact that, for some firms at least, the ongoing processes required by the policies are often in line with current procedures which require limited adaptation.

Among smaller firms the impacts associated with the SMF policies account for the largest share of the costs; among large firms, whilst these costs are still substantial, they are outweighed by the costs associated with implementing the Rules of Conduct and Notifying of Breaches in misconduct, as the latter policies are driven to a large extent by employee numbers. Smaller firms are also more likely to be able to adapt flexibly to these policies (i.e. by simple updates or extensions to current procedures) compared with large firms which foresee significant investments in IT and training to implement the policies across their more complex organisational structures and systems.

The direct costs of the regime are relatively larger share for small firms compared to large.

## Banks and investment firms

The direct costs across the sector are presented in the table below. These are shown for the three different options of Relevant Person to whom the policies around the Rules of Conduct and Notifying Breaches of Misconduct would apply. Option 1 (SMF + CP) includes only individuals in senior management function (SMF) and certified person (CP) roles; Option 2 (SMF+CP+MM) includes these and 'middle management' and above; and Option 3 ('everyone') includes all employees except ancillary staff.

**Table 1: Total compliance cost impact on banks and investment firms across the three relevant person options (£ millions)**

	Large	Small	Sector total
<b>Individual accountability policies, one-off</b>			
Option 1 (SMF + CP)	76.9	63.2	140.1
Option 2 (SMF + CP + MM)	123.7	64.5	188.2
Option 3 (everyone)	169.9	66.7	236.6
<b>Remuneration policies, one-off</b>	11.5	17.5	29.0
<b>Individual accountability policies, ongoing</b>			
Option 1 (SMF + CP)	7.6	11.8	19.4
Option 2 (SMF + CP + MM)	8.2	12.2	20.4
Option 3 (everyone)	9.8	12.8	22.6
<b>Remuneration policies, ongoing</b>	0.6	0.9	1.5

Source: Europe Economics.

The direct compliance cost of the individual accountability policies imply a sector-wide one-off cost of between 0.14 per cent and 0.23 per cent of sector income, and an ongoing costs of around 0.02 per cent of sector income. The remuneration policies will have a far smaller one-off impact of around 0.003 per cent of sector income and negligible ongoing direct costs. However, indirect costs and wider impacts of the policies are likely to be much greater.

## Building societies

The direct costs across building societies are shown in the table below across the three options for Relevant Persons.

**Table 2: Total compliance cost impact on building societies across the three relevant person options (£ millions)**

	Large	Small	Sector total
<b>Individual accountability policies, one-off</b>			
Option 1 (SMF + CP)	5.65	1.60	7.25
Option 2 (SMF + CP + MM)	6.62	1.78	8.40
Option 3 (everyone)	17.14	2.11	19.25
<b>Remuneration policies, one-off</b>	0.13	Negligible	0.13
<b>Individual accountability policies, ongoing</b>			
Option 1 (SMF + CP)	0.30	0.29	0.59
Option 2 (SMF + CP + MM)	0.37	0.29	0.65
Option 3 (everyone)	2.62	0.29	2.91
<b>Remuneration policies, ongoing</b>	0.02	Negligible	0.02

Source: Europe Economics.

The direct compliance cost of the individual accountability policies imply a sector-wide one-off cost of between 0.2 per cent and 0.4 per cent of sector income, and an ongoing costs of between 0.01 percent and 0.07 per cent of sector income. The remuneration policies will have a far smaller one-off impact of 0.003 per cent of sector income and negligible ongoing costs. This is driven by the fact that building societies, in particular smaller ones, do not have extensive variable remuneration packages and thus are not greatly impacted by the policies.

## Credit unions

The table below presents the costs to credit unions. Credit unions are not affected by the remuneration policies.

**Table 3: Total compliance cost impact on credit unions across the three relevant person options (£ millions)**

	<b>Sector total</b>
<b>Individual accountability policies, one-off</b>	
Option 1 (SMF + CP)	4.38
Option 2 (SMF + CP + MM)	4.67
Option 3 (everyone)	4.77
<b>Individual accountability policies, ongoing</b>	
Option 1 (SMF + CP)	1.03
Option 2 (SMF + CP + MM)	1.03
Option 3 (everyone)	1.24

Note: due to their small size and similar nature our model does not distinguish between small/large credit unions.  
Source: Europe Economics.

The direct compliance cost of the individual accountability policies imply a sector-wide one-off cost of between 2.6 and 2.9 per cent of sector income, and an ongoing costs of between 0.6 per cent and 0.7 per cent of sector income. Compared with the other sectors the compliance costs represent a far greater share of sector income.

## Indirect costs and wider impacts

The policies will also result in indirect costs to firms. Operational inefficiencies are likely to increase under the new regulatory regime, as firms, in particular large ones, increase internal monitoring and control procedures which could result in duplicated resources and increased costs. There may also be a move toward more collective decision making, with the decision process becoming more formalised and lengthy. This will increase operational inefficiencies and may cause delays to innovation and wider business development. These impacts would be driven by senior managers seeking to protect themselves against greater individual accountability, in particular the presumption of senior responsibility.

Most firms, credit unions aside, are likely to make adjustments to their wage structure to compensate individuals for the increased accountability and/or reduced present value of rewards under the new individual accountability and remuneration policies. Changes to wage structure could, to some extent, reduce the beneficial behavioural impacts of the remuneration policies by reducing the proportion of variable income subject to increased risk.

Labour market effects, i.e. the impact on firms' ability to hire and retain staff, are a key concern for firms. Credit unions, with largely voluntary boards used to taking collective responsibility, feel particularly

vulnerable to retention issues given the significant increase in personal accountability for these individuals and the fact that they cannot compensate for this effect with more generous remuneration.

Large banks and investment firms, who are more exposed to international labour markets, are likely to be at a significant competitive disadvantage *vis-a-vis* non-UK based firms. This may further affect the competitive position of the City as a global financial centre in the long term. They may also suffer from an increasingly unlevel playing field *vis-a-vis* other UK sectors such as retail and industry and lose out on much-valued diversity among board members if candidates from non-financial sectors are deterred from taking up senior positions in the financial services sector. This is likely to be driven primarily by the remuneration policies, although the accountability policies would reinforce this. Detrimental impacts on staff hiring and retention could be most visible among non-executive directors and individuals in operational roles, as their skills are more readily applicable to other sectors.

There is also concern that increased accountability could mean that the regulatory changes have the perverse effect of attracting individuals more prepared to take risks, which would, to some degree, counteract the behavioural benefits.

Views on the impacts on product innovation are mixed. There is some evidence that firms may concentrate on less complex products, which could reduce consumer welfare through reduced choice, but a widespread increase in foregone innovation is not considered to be likely. However, delays to innovation are likely, due to regulatory uncertainty, more internal controls and a lengthier decision-making process. Whether such delay would benefit consumers (through more developed products) or reduce welfare (due to inefficiencies) is unclear.

Costs to consumers will depend on the degree of pass through, which will be determined by the relative price sensitivity of consumers and firms, the structure of the market, the degree of competition and the extent of product differentiation across firms.

Competition between firms subject to the regulation may be affected if the policies disadvantage smaller firms through a greater emphasis on fixed remuneration and/or a proportionately higher burden of complying with the policies being placed on them. Equally, firms that are subject to the policies may lose out to those that are not (e.g. international competitors) if it becomes more difficult for the former to attract and retain staff, and/or if the policies create delays to the delivery of new products. These factors may also affect new firms' decisions to enter the market.

## Benefits

The individual accountability and remuneration policies are likely to bring about beneficial changes in behaviour and reduce non-compliance, misconduct and excessive risk taking, working through the following mechanisms:

- Reducing rewards for non-compliance and excessive risk taking.
- Increasing the likelihood of individuals being sanctioned in the event misconduct is identified.
- Increasing the likelihood of instances of misconduct being identified.
- Increasing the burden of sanctions imposed.

The remuneration policies, in particular the extension of the deferral period, will have the effect of reducing the present value of deferred remuneration, which will reduce the potential upside of a given variable remuneration package and, therefore, may reduce the incentives for excessive risk-taking behaviour (all else being equal – an increase in the amount of variable remuneration would dull this impact). The deferral policies also extend the period of time over which an individual's variable remuneration is subject to malus and clawback. This would increase the uncertainty of receiving the deferred remuneration and may increase the perceived likelihood that misconduct would be identified and the individual

sanctioned. These effects may therefore lead to increased consideration of the longer-term consequences of potentially risky decisions, which is an aim of the policies.

These effects would be felt predominately by firms with extensive variable remuneration packages. A potential move by firms towards increased fixed pay as a proportion of total remuneration (which was cited in our fieldwork as a way of compensating individuals for an effectively lower value of deferred remuneration) would undermine these effects however. Further, evidence from our fieldwork suggests that individuals' *perceived* link between behaviour (particularly that related to risk-taking) and reward is limited, such that there would be few instances whereby behaviour would significantly alter in response to more uncertain variable remuneration.

The main mechanism through which the accountability policies may secure benefits is through increasing the likelihood that misconduct would be identified and attributed to individuals. This is driven by the statement of responsibilities and the presumption of senior responsibility. These policies also reinforce the impact of the remuneration policies on deferral, in that an individual's deferred remuneration is more likely to be subject to malus or clawback if they are more easily implicated in misconduct. Firms, in particular large firms, are likely to undertake additional monitoring and sign-off procedures among employees such that both intentional and unintentional misconduct and regulatory breaches can be identified and prevented. It is unclear the extent to which the policies will have a *direct* impact on individuals' actions and decisions, i.e. whether these will change significantly or whether simply the monitoring of them will increase.

Quantifying the benefits of the policies is not straightforward, given the uncertainty around the extent to which the policies will in fact change behaviour and the lack of clear evidence of the results of other, similar policy changes. We present an illustrative quantification whereby we estimate the harm caused by a series of mis-selling scandals and apply a percentage reduction in similar, future harm as a result of the policies. Benefits in the form of reduced harm range from £0.04 billion to £0.6 billion per year. We note that this illustration considers only harm which has been identified; there will be additional benefits of reducing unidentified harm, including structural harm.

Firms would benefit from the new individual accountability regime in that the processes around applications for Approved Persons would be limited to those in SMF roles. We estimate that this could save the affected firms just over £2 million each year. This would be limited to the larger firms which currently have substantial numbers of Approved Persons who would not be included in the SMF regime.

## Conclusions

The individual accountability and remuneration policies are likely to result in beneficial behaviour changes as they effectively reduce the rewards of intentional and unintentional misconduct and regulatory breaches and increase the costs, through increasing the likelihood that non-compliance will be identified and attributed to an individual and increasing the cost of sanction. Behavioural changes are likely to be mainly in the form of more considered decision making processes and increased monitoring within firms. Direct changes in risk-taking behaviour are unclear, particularly as firms consider it difficult to identify all risks inherent in activities before these are undertaken given the often complex evolution of events. The remuneration policies are likely to have a more limited contribution to the benefits than the accountability policies. In particular, there may be risks around the implementation of the clawback policy, whereby firms are unable in practice to effectively apply clawback to deferred remuneration over the length of time implied by the policies (or at least the costs of doing so may far outweigh the amounts clawed back). The policies will provide the regulator with greater scope for discipline and enforcement which should improve how harm is dealt with, although the deterrent effect is less clear.

Firms will incur costs in complying with the policies; credit unions will be disproportionately affected with one-off costs at nearly three per cent of sector income. Indirect costs to firms may be significant, in

particular negative labour market effects as firms are hindered in their ability to attract and retain employees. The application of the policies to some types of firm is unlikely to materially contribute to the benefits, i.e. to those firms less likely to be involved in in the types of misconduct and risk-taking identified as the justification for the new regimes.

# 1 Our Approach

## 1.1 Introduction

The banking industry in the UK has faced increasing public concerns on the corporate standards of conduct and the competency of individual following the financial crisis and the recent scandals of mis-selling and LIBOR manipulation. The widespread product mis-selling and loss to retail customers and shareholders has undermined trust in the industry and raised questions on the motivations and impact of the behaviour of banking professionals on the effective functioning of the industry.

The Parliamentary Commission on Banking Standards (PCBS)<sup>1</sup> conducted a fundamental review of the industry. In its report it identified a number of failures of the Approved Persons Regime which is the key framework for FCA to regulate individuals. The Financial Services (Banking Reform) Act 2013 (henceforth “the Act”) sets out a new individual accountability regime to address these failings. The FCA has developed a number of proposals to implement this regime.

The proposed new individual accountability regime extends the scope of enforcement to cover a larger pool of relevant individuals, introduces a process to enable the FCA to effectively assess the fitness and propriety of the individuals covered by the regime on an ongoing basis, provides a clearer allocation of responsibility to senior managers, and provides the FCA with stronger powers to sanction senior managers if a firm fails. These features aim to improve the FCA regulatory framework and strengthen its enforcement power.

The PCBS report also identified a number of ways in which firms’ provision of variable remuneration can contribute to excessive risk taking and misconduct. The FCA has therefore also developed proposals for changes to the current Remuneration Code to address these failings. The policy proposals include a longer deferral time period for variable remuneration combined with later vesting, a longer clawback period, and extensions to the applicability of the Remuneration Code to all forms of discretionary award in times of exceptional government intervention. These policies aim to align more closely the upside and downside risks of decision-making.

Europe Economics was commissioned by the FCA to assess the costs and benefits of the proposed new accountability and remuneration regimes. In this section we present our approach to conducting this assessment.

## 1.2 Understanding and measuring compliance cost

Compliance costs are “the costs to firms and individuals of those activities required by regulators that would not have been undertaken in the absence of regulation”. Compliance costs would not therefore refer to those costs incurred by firms in activities which do contribute to meeting the requirements set out by the FCA and would have also been undertaken in the absence of regulation. This can also work the other way: for example, being FCA regulated can give firms a “badge” they may be able to use to reassure customers of the quality of their internal procedures. In the absence of regulation firms might have to engage in additional expenditure on quality systems or brand positioning advertising to sustain the same portfolio of products, or to hold additional capital.

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<sup>1</sup> House of Lords, House of Commons, “Changing banking for good”, Report of the parliamentary Commission on banking standards, 2013.

It is important to recognise that relevant changes are not simply incurred by compliance staff or what might be considered directly as compliance activity. Rather the costs of compliance also include those costs arising from the distortion of business practices not directly involved in compliance. A blunt example would be if certain products cease to be provided altogether then the profits from them are lost. More subtly, it may be that in order to comply with a certain regulation then more highly skilled non-compliance employees are required, increasing staff costs.

The objectives of this part of the study are to analyse, understand and describe:

- how firms expect to respond to the proposals;
- the incremental compliance cost arising from proposed regulatory changes; and
- how these incremental costs are derived and the main cost drivers for different types of firms.

We developed an analytical framework for our compliance cost model. This framework links the provisions of the proposed regimes with expected outcomes. In this way we identified the relevant costs to include in our model, and used this to create a data map linking specific questions in our data-gathering survey to the cost model.

The scale of incremental compliance costs of financial regulation is largely associated with firms having to address the challenges of ensuring any of the following:

- Any change or increase of regulations — forms, accounts to report, business plans to submit, training required — that firms now have to comply with.
- Any changes in the quality of the compliance expected or recorded by local regulators. The higher the expected compliance quality is, the higher the cost.
- A change in perception by firms as to the effectiveness of the monitoring of compliance.

All of these factors are likely to be relevant to the switch to the new regime.

There are two approaches that can be used to assess compliance costs: “bottom-up and “top-down.”

### 1.2.1 “Bottom up”

There are two major components to estimating the compliance cost: the volume of the change and the unit cost.

In a bottom up approach, the volume effect is likely to be heterogeneous because the impact on particular business might be very business-specific. Moreover, the cost impact will be affected by the systems already in place within the organisation; some firms outperform against existing regulatory requirements (possibly as a result of synergies across business streams or possibly due to them being subject to stricter regulatory requirements in other jurisdictions which have been applied across the board).

The unit costs for most relevant inputs for our study (e.g. staff, IT system, marketing or informational publications, training, etc.) may vary less (on the one hand, (approximately) competitive supply of these inputs in the market should drive towards homogeneity. However, the specification of particular inputs — in particular, people — may be driven by firm-specific requirements). Our desk research is designed to check unit costs separately to any survey of firms.

Our main approach to our cost modelling is a bottom up approach.

### 1.2.2 “Top-down”

An alternative to the “bottom-up” approach is the “top-down” approach. This approach models the impact directly on the relevant population in aggregate. As such, it does not consider differences in the

types of firms affected, merely the population of individuals affected and the average cost of compliance per proposal. This approach offers a useful tool for sense checking our bottom-up estimates.

### 1.3 Assessment of indirect costs and wider impacts

Several indirect costs and wider impacts must also be considered as part of the cost-benefit analysis. These may arise as a result of changes in behaviour at both the individual and firm level in response to the regulation, and may also include unintended consequences of the regulatory changes.

A reduction in risk-taking behaviour as a result of the policies may be seen as desirable in many cases, but there is a risk that individuals may reduce their level of risk taking to an inefficient level. This may have knock-on effects for profitability in financial institutions and could result in a reallocation of resources to areas where there is a greater scope to undertake risk in order to minimise the impact on profitability.

Changes in behaviour may also lead to negative impacts on innovation, as decision-making processes are slowed and individuals become reluctant to take decisions necessary for development.

Increased individual accountability may lead to changes in the structure of organisations to ensure that the correct checks are made before any significant decision is signed off. This may result in additional layers of management or duplication of individuals in similar roles, leading to inefficiencies, with decisions being required to be signed off by multiple individuals. An overly-conservative product sign-off could also have a negative impact on innovation.

The increased level of individual responsibility for senior managers may also have impacts on the labour market if individuals are reluctant to take on these new roles. Labour market effects would be exacerbated by the effective reductions in variable remuneration implied by the remuneration policies.

Equally, any mismatch between the personal risks being borne by senior managers (due to new regime and the presumption of senior responsibility) and the method and/or scale of remuneration may perversely deter more risk-averse people from seeking management responsibility. Demands for higher compensation to account for the additional responsibility to the regulator would not only increase the costs to the banks for senior managers, but also may undermine the value of the regulation itself (if the compensation is sufficient to offset the additional risk of punishment in the event that a breach occurs, the deterrent value of the enforcement regime and sanctions available is undermined).

To explore these effects we relied on a combination of desk research and feedback from firms gathered as part of the structured interviews.

### 1.4 Assessment of benefits

We now turn to our approach to assessing the benefits of the proposed regime. There are two elements of the assessment of the benefits:

- the extent to which any new policies will minimise instances of **misconduct or poor performance** and the associated impacts for consumers, the market, competition and the integrity of the financial system; and
- the potential for the new regime to bring about **new benefits**, rather than just minimising existing detriment. For example, increased trust in the banking sector or other benefits to firms.

We describe the mechanisms through which the benefits might arise from the policy proposals, as well as the interaction between the accountability proposals and remuneration proposals. The analysis of these “transmission mechanisms” enables us to clearly set out how the new regime would result in benefits. We then support this analysis with evidence from our fieldwork to form a judgement on the extent to which the benefits can be realised in practice.

### 1.4.1 Reduction in incidents of misconduct, poor practice or excessive risk taking

The aim of regulating individuals is to reduce incidences of failures in banking standards, creating a mechanism for identifying such failures when they do occur and addressing them promptly, and for holding those responsible for such failures to account. The ability to impose sanctions on individuals in such instances reinforces the system and creates incentives for good conduct.

Under the current Approved Person regime (APR) the regulators' ability to achieve the above is undermined primarily by:

- The limited scope of the regime.
- Difficulties in identifying the senior personnel accountable for failures in standards.
- Limited powers to monitor an individual's continued fitness and propriety.

In addressing these weaknesses of the current system the benefits of the new regime would focus on reducing the likelihood of failures occurring. Such failures can take numerous forms (as evidenced by recent scandals). These can be grouped into two overarching categories:

- Consumer focussed – behaviour that directly affects customers, primarily mis-selling, examples would include the recent PPI and IRHP incidents.
- Institutional or systems misconduct – behaviour that does not directly impact on consumers but rather indirectly through failures at a systems or institutional level, such as the recent LIBOR case and bank failures.

In assessing the benefits we consider the extent to which the new regime would effectively disincentivise such behaviours and (in so far as possible) quantify the value of reducing such incidents. Where quantification is not possible, we provide a detailed qualitative description of the benefits and a discussion of what evidence there is that might enable us to place some parameters on the likely scale of these benefits.

In a similar manner, the remuneration policies aim to better align the risks and rewards of decision making. Variable remuneration can distort incentives for risk-taking by providing short-term rewards that are not aligned with potential longer-term losses. Extending the time period over which malus and clawback applied would provide more time for misconduct and losses to be identified. The remuneration policies also reinforce the individual accountability regime by reducing the perceived rewards for non-compliance while the accountability policies increase the likelihood of non-compliance being discovered and sanctions being applied.

### 1.4.2 New benefits

Estimating the 'new' benefits arising from the new regime is less straightforward, and these benefits are discussed qualitatively, drawing on feedback from our fieldwork. We also estimate other benefits to firms of a slimmed-down individual accountability regime, for example savings from the reduced scope of pre-approval.

## 1.5 Data gathering process

Our analysis is based on two main sources of information:

- structured interviews with a sample of firms; and
- existing literature/research.

These are described briefly below.

### 1.5.1 Structured interviews

Our primary source of information and data for the compliance cost model is a series of structured interviews with a sample of firms from across the affected areas. The interviews also provided us with feedback as to the likelihood and nature of any wider effects of the policies, both in terms of indirect costs and benefits.

We have conducted 20 structured interviews for this final report. The new regime will apply primarily to deposit-accepting banks, building societies, credit unions and the nine dual PRA/FCA-regulated investment firms.

To ensure a balanced sample when selecting the firms to include in the sample we considered:

- The different types of companies affected (primarily banks, building societies, credit union, investment firms) — as this will affect the nature of risks that exist and the way in which harm may manifest.
- The range in size of affected companies (principally large versus small) — this will affect their ability to front load additional costs, benefit from scale economies and the nature of existing schemes in place. Size will also affect the complexity of management and feasibility of implementing the changes.
- The number of Approved Persons that currently exists within the organisation — this will impact the number of individuals likely to be affected and the existing structures in place (e.g. for fit and proper checks and conduct rules).

Our final interview sample was structured as follows:

**Table 1.1: Interview sample**

Type of institution	Small	Large	Total
Banks and investment firms	5	7	12
Building societies	2	2	4
Credit unions		4	4
<b>Total</b>			<b>20</b>

Note: Credit unions are not disaggregated into small/large.

We circulated a description of the policy proposals and the questions to be covered in the interview to interviewees in advance of the meeting. This allowed them time to confer with relevant colleagues where necessary and ensure that the appropriate people attended the interview. Alongside the questions we provided interviewees with an introduction to the study including, who we are, the aims of the study, and how the research is to be used.

### 1.5.2 Existing literature/research

To supplement the information gathered via the structured interviews, we conducted desk research to examine existing literature and data. This played a particularly important role in developing the mechanisms of effect for the indirect costs and benefits.

It also provided useful information to support the development of the compliance cost model. In particular using existing data on the costs of compliance to benchmark can play an important role in over-coming any bias in data collected via structured interviews. Specifically, we used:

- Price information — for example IT costs from IT vendors (with appropriate adjustment to offset potential bulk discount for big buyers) where there is a ready-made market place; and training cost from training providers (with appropriate adjustment to offset potential bulk discount for big buyers).

- Comparison to prior work — compliance costs have been considered by a number of consultants in various fields of financial services regulation — where relevant to the envisaged study we use these to compare the analysis of the survey responses to. We also use prior estimates of industry-standard salaries and other meta assumptions.

## 1.6 Counterfactual

Cost-benefit analysis needs to be conducted against an appropriate counterfactual. This is to avoid the potential for under or overestimating both the costs and benefits of any regulatory change. Normally the counterfactual takes the form of a structured tale of how the “market” would evolve in the absence of the intervention. In this case, careful consideration needs to be given to how developments in the market, regulatory changes and other factors may affect incentives and the behaviour of staff in the absence of the introduction of the new regime.

Of course, substantial change is ongoing at present in the light of the credit crunch and the associated economic slowdown and subsequent recovery as well as the more normal factors for consideration such as technological change (in the context of regulating individuals this might include streamlining processes for notifications and applications). Equally policy changes in other related areas may affect behaviour in the industry which would be relevant for the specific policy proposal under consideration here. In particular, regulation capping the ratio of bonuses to salary at one to one (or two to one with shareholder agreement) should reduce incentives for risk taking.<sup>2</sup> Separating out the effects of such policies from the new accountability regime for individuals and remuneration proposals would be difficult. This makes the task of identifying long-term trends away from short-term noise more challenging, but also potentially makes the benefit of considering a dynamic rather than static counterfactual all the greater.

There are a number of fundamental types of uncertainty here: uncertainty about how the market would develop, with unchanged practices; uncertainty about how practices are changing (i.e. what the response of market participants is to current market conditions — and also to past and current regulatory interventions); and uncertainty about how long current market conditions are likely to continue. There may also be additional factors which may affect the level of risk taking such as enforcement action taken against misconduct and failures.

Ultimately, since there is no clear direction in which risk taking is likely to progress and given the time constraints of the project, we have employed a static counterfactual. In this case we focus mainly on the current nature and scope of market participants and their relevant activities rather than on expected future developments. As such the baseline for our analysis is what firms currently do under the Approved Persons regime and the current Remuneration Code.

We do, however, need to account for any activities that have been undertaken in anticipation of the new regime being introduced. These should not be counted in the baseline since they have arisen in anticipation of the new policies being introduced and would not have occurred in the absence of the proposed policy changes.

Another consideration in developing the counterfactual was separating the impacts of the FCA proposals from the impact of the Act itself. The focus of this cost benefit analysis is the impact that the policies introduced by the FCA will have on firms. However, since the Act will only be implemented through the FCA’s policies and, without these policies would effectively not be in place, we have taken the current status quo (i.e. the current Approved Person regime) as the counterfactual.

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<sup>2</sup> Committees Committee on Economic and Monetary Affairs (2013), “MEPs cap bankers’ bonuses and step up bank capital requirements”, *European Parliament Press Release*.

## 1.7 Structure of the report

The remainder of the report is structured as follows:

- Section 2: Overview of policy proposals. This section presents the draft policy proposals upon which the study was conducted.
- Section 3: Compliance costs. This section provides our estimates of the incremental cost of complying with the proposed policies for the affected firms.
- Section 4: Indirect costs. This section sets out the main indirect costs and wider impacts that could arise as a result of the policy proposals.
- Section 5: Benefits. The final section provides our assessment of the benefits that could be associated with the policy proposals.
- Section 6 concludes.

Also attached are a number of appendices, these contain additional detail to support our analysis. This includes:

- Section 7: Key business functions and Conduct Rules. This provides a list of the key business functions and Conduct Rules that formed part of the material firms based their interview responses on.
- Section 8: Overview of the Main Failures. This provides more detail on the main failures identified in the PCBS.
- Section 9: Details about our cost extrapolation methodology.

## 2 Overview of Policy Proposals

### 2.1 Introduction

In order to conduct the cost benefit analysis the FCA provided us with a number of draft policy proposals. These were shared with the companies we interviewed in order to ascertain the implications of policy changes in this area on the affected firms. Our analysis has been used to inform the FCA's thinking on the most appropriate formulation of the policies, and as such the final policy proposals differ in some areas from the draft proposals. The draft proposals form the basis of the interviews and therefore our cost modelling and analysis.

### 2.2 Individual accountability proposals

The Act has introduced a new Individual Accountability regime. The relevant policy areas and proposals that we used for the basis of our analysis are summarised below.

#### 2.2.1 Scope of the new individual accountability regime

The scope of the new regime covers potentially three groups of individuals. There are provisions and policies covering to each group. The FCA's proposed scope for each is as follows.

##### Senior management function (SMF)

The Act defines the SMF individual as:

- are responsible for managing aspects of a firm's affairs; and
- those aspects involve a risk of serious consequences for the firm or business or other interests in the UK.

This would cover all key decision makers i.e. board members and executive committee members (or equivalents).

In addition it could include individuals below this level where they have final responsibility (reporting only to the board) and oversight of 'key business functions'. A detailed list of example Key Business Functions is included in the Appendix at section 7.

The provisions in the Act that would apply to this group are:

- Criminal offence of reckless misconduct leading to bank failure.
- Presumption of senior management responsibility.
- Statement of responsibility.
- Pre-approval.
- Conditional approvals.
- Continuing fit and proper.
- Rules of conduct.
- Reporting suspected conduct rule breaches.

##### Certified persons (CP)

This would cover functions that involve or might involve a risk of significant harm to the firm itself or to any of its customers. The Act defines these functions as:

- a function requires the person performing it to be involved in one or more aspects of a firm's affairs; and
- those aspects involve, or might involve, a risk of significant harm to the firm or any of its customers.

The FCA proposes to include in this group:

- Those Significant Influence Function roles not captured in SMFs.
- CF30 and non-approved persons roles where there is a corresponding examination qualification standard (i.e. financial advisors, mortgage advisors).
- Line managers of the above (who are not themselves SMFs).
- Material Risk Takers (MRTs) as defined by the FCA/PRA Remuneration Code.
- Potentially others as identified by a firm itself – depending in the nature of its business.

The provisions set out in the Act that would apply to this group are:

- Continuing fit and proper.
- Annual certification of fitness and propriety.
- Rules of conduct.
- Reporting suspected conduct rule breaches.

### Relevant persons

Other relevant individuals would be subject to the following provisions:

- Rules of conduct.
- Reporting suspected conduct rule breaches.

The FCA is considering three options for the scope of this group:

- Option 1 – only those functions under the SMF and CP groups.
- Option 2 – all employees of the firm engaged in the financial services aspects of the firm, i.e. everyone except ancillary staff such as cleaners.
- Option 3 – The SMF and CP groups plus a narrower tier focussed around middle management, as defined by each firm.

We recognise that Option 3 is difficult to define because there will be different views as to what firms consider middle management; and furthermore, whether this be defined by remuneration, spans of control or by some other criteria.

## 2.2.2 Criminal offence and presumption of senior management responsibility

A new criminal offence, applicable to those in **SMF** roles, has been created by the Act. It applies where a senior manager is involved in taking a decision by the firm when he or she is aware that the decision may cause the failure of the firm. The senior manager may be prosecuted if the decision causes the firm to fail, and if his or her conduct fell far below what could reasonably be expected of a person in that position.

The Act also includes a separate provision for presumption of senior management responsibility in regulatory cases (sometimes referred to as the “reversed burden of proof”). SMFs would be held responsible for the firm's breaches of regulations in their area of responsibility, if they are unable to prove that they took such steps as they could reasonably have been expected to take to avoid such a breach.

### 2.2.3 Statement of responsibility (SoR)

This would apply to the **SMF** roles. The purpose of the SoRs is to ensure clear allocation of responsibilities, and that all key responsibilities will be assigned to individuals with Senior Management Functions. Individuals in the SMF roles can be held accountable for failures in areas of their responsibility.

The FCA proposes to issue guidance that there will be an expectation that *all* key responsibilities are assigned to individuals on the board or executive committees (or their equivalent) within a firm; and that SoRs should set out an individual's' responsibilities in full.

The exception would be those responsibilities which are, by their nature, the responsibility of a committee. For example, the board's ultimate collective responsibility for the business of the firm as whole; and the responsibilities of the various board sub-committees e.g. on audit, risk and remuneration.

The FCA proposes to require SMF holders to prepare handover certificates when changing roles.

The FCA proposes that firms must maintain a 'responsibilities map' in order to check that collectively the SoRs map to the financial services activities of that firm, i.e. there should be no accountability gaps between the individual SoRs when viewed as a whole.

### 2.2.4 Pre-approval

Individuals appointed to **SMF** roles must be pre-approved by the FCA. This process is likely to be similar to the current pre-approval process, with some additional requirements for example:

- Supplementary information provided by the firms including the SoR, job descriptions, organisational charts, responsibilities map.
- Confirmation by the firm that the individual is suitable for the role in the broader context of the skills mix of other board members.

### 2.2.5 Conditional approval

As a result of changes in the Act, the FCA will be able to grant approval of applicants for **SMF** roles subject to conditions or time limitations. The FCA's proposed conditions include:

- Time limited approvals – the approval of a candidate on an interim basis whilst the firm seek to appoint a permanent candidate.
- Competency related condition – approval granted on the condition that the applicant is required to undertake training or receive mentoring to compensate for a relative deficiency in a competency area.
- Role scale limited – approval so long as the role does not expand (e.g. after a planned merger).
- Enforcement action time limited – approval awaiting the outcome of an ongoing investigation

### 2.2.6 Continuing fit and proper

The Act puts a statutory duty on firms to satisfy themselves that all **SMFs** and **CPs** are fit and proper to perform the roles they are to be employed in. This must be done on appointment and also continuously (e.g. issuing a certificate of fitness and propriety on an annual basis).

The FCA is proposing to make rules on how it expects firms to apply the fitness and propriety requirements of the Act (i.e. in carrying out their own checks). It proposes that the provisions in the current FIT sourcebook would largely apply, with the following amendments:

- For board members the firm should carry out a broader assessment of how the candidate is fit and proper in the broader context of the skills mix of the board.

- Regular Disclosure and Barring Services ('DBS', previously the Criminal Record Bureau) checks on individuals in SMF roles.
- Mandatory 'regulatory references' obtained from previous FCA regulated employers when hiring all SMF and CP candidates. These should cover a period of five years and include information deemed necessary to assess fitness and propriety (e.g. instances of breaches of Conduct Rules or when a certificate of Fitness and Propriety could not be issued).

### 2.2.7 Rules of conduct

A new set of Conduct Rules will be applicable to individuals in the roles of **SMF, CP and Relevant Persons**.

The FCA proposes that the new Conduct Rules are similar in content, style and length to the existing Code of Practice for Approved Persons (APER). There are a small number of high level rules, generally applicable across the three groups, covering areas such as integrity, competence and diligence, and personal responsibility and judgement. A draft of the Conduct Rules is included in the Appendix at section 7. Note that the Act includes a requirement, at section 30, that firms ensure that persons subject to rules know that these rules apply to them, and that they take all reasonable steps to ensure that these staff understand the rules.

The FCA proposes that an additional set of more challenging rules only apply to SMFs. The rules are designed to be a short, clear statement of the standards expected of individuals covered by them. Where necessary the FCA proposes that the Conduct Rules will be supplemented by guidance.

### 2.2.8 Notifying breaches of misconduct

The Act provides for two obligations on firms to report misconduct by their employees, namely (a) if the firm suspects an individual has failed to comply with the Conduct Rules, and (b) if the firm takes formal disciplinary action for a particular reason specified by the FCA.

The FCA proposes that it would only require notification of disciplinary action under (b) where it leads the firm to know or suspect that the relevant person has failed to comply with any Conduct Rules.

The FCA also proposes that firms should have to notify it immediately of suspected breaches/disciplinary action by individuals in **SMF** roles, but on a periodic (i.e. quarterly) consolidated basis for **certified persons and other relevant employees**.

## 2.3 Remuneration proposals

The Parliamentary Committee on Banking Standards (PCBS) report recommended a number of changes to the Remuneration Code. The scope of the policies would apply to banks, building societies and the PRA regulated investment firms. It is assumed that many Material Risk Takers (MRTs) will be SMFs. The FCA is proposing that the remaining MRTs will become CPs. To note these would not be applicable to credit unions.

### 2.3.1 Deferral of variable remuneration

The FCA proposes to extend the period of time over which the pay-out of variable remuneration must be spread. During this time 'malus' may be applied by the firm. FCA proposes a two-tier approach. Its draft proposals included:

- SMF role: minimum 5 – 7 years deferral; awards vesting no faster than on a pro rata basis no earlier than year five.<sup>3 4</sup>
- Other material risk takers (including CPs): minimum 3 - 5 years deferral; awards vesting no faster than on a pro rata basis no earlier than year three.

### 2.3.2 Clawback

The FCA proposes that the minimum clawback period for deferred awards should be calculated from award, rather than vesting, and this should depend on level of seniority:

- SMF roles: malus and clawback would apply for no less than ten years from award. Under the final proposals this means clawback of seven years from actual vesting.
- Other CPs/material risk-takers: malus and clawback would apply for no less than eight years from award. Under the final proposals this means clawback of eight years from vesting.

For non-deferred awards, six year clawback would apply.

Clawback should be allowed in a wider range of circumstances including employee material error; where the firm or relevant business unit suffers a material downturn in its financial performance; or where the firm or relevant business unit suffers a material failure of risk management. Clawback should also not be limited to employees directly culpable of malfeasance.

### 2.3.3 Exceptional government intervention

The draft FCA proposals state that the revised Remuneration Code should explicitly extend the current Code requirements on the payment of variable awards by firms in receipt of official support payments to all forms of discretionary award. This does not include unvested pension rights.<sup>5</sup>

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<sup>3</sup> We note that the final remuneration proposals align with the PRA's definition of senior manager, which is likely to be narrower in scope than the SMF role (described in the individual accountability proposals) which formed the basis of the draft remuneration proposals. This may mean that the results of our cost modelling and analysis, which are based on the draft proposals, may slightly overstate the cost of the policies. That said, the majority of those costs are not variable, i.e. not significantly influenced by the number of people affected by the policies.

<sup>4</sup> The final proposals also change the minimum deferral period to 7 and 5 years for the SMF and other roles respectively (i.e. no range in the deferral period), with vesting from years 3 and 1 respectively.

<sup>5</sup> In the final policy proposals the FCA proposes that the Regulators would have an explicit power to render void or cancel all deferred compensation, in respect of all Senior Persons and other licensed staff. This does not include unvested pension rights. This change between the draft and final proposals is unlikely to materially affect our analysis.

## 3 Compliance Costs

### 3.1 Introduction

In this section we consider the impact of the policies described previously upon those banks and investment firms, building societies, and credit unions that would be affected by the policy changes.

For each group we quantify the incremental compliance cost impacts by proposal and in aggregate, and also show separately how these divide between one-off and ongoing costs. We describe the underlying assumptions of our analysis, and identify the key cost drivers. We present aggregate results for our sample as well as costs extrapolated to the sectors as a whole.

### 3.2 Modelling approach adopted for each policy proposal

In modelling the compliance cost we have estimated both one-off and ongoing costs, defined as follows:

- One-off costs are those incurred once off in complying with the policy. Examples include developing guidance; setting up IT systems; or providing training on the migration.
- Ongoing costs are those incurred annually as a result of the policies, for example ongoing training obligations; or annual reviews of responsibilities.

This approach formed the basis of the cost questions included in our structured interviews. Below we present the key cost drivers for both ongoing and one-off costs associated with the individual policy proposals. In each case, to construct the monetary value of the cost estimate we have multiplied the expected time involved in complying with the average remuneration of the individuals that would be involved (including overheads).<sup>6</sup> Where the cost is for a new system or infrastructure, or relates to outsourced activities, we have used the estimated cost of purchasing such inputs.

#### 3.2.1 Migration to the Senior Management Function regime

The one-off costs to firms of migrating to the SMF regime may be incurred either internally and/or through third party costs (e.g. legal advice) and include:

- Understanding the regulation.
- Deciding, and developing guidance on, the definition of the SMF and who would be captured.
- Guidance for persons who will become SMF's to ensure they understand their duties and responsibilities under the new regime.
- Revision of the organisational structure of the firm.

#### 3.2.2 Criminal offence and presumption of senior management responsibility

The costs associated with complying with this element of the SMF regime cover the costs of recording and retaining additional evidence to support the presumption of senior management responsibility (i.e. in the event that an individual in an SMF role is required to demonstrate proof that he/she took all reasonable steps to avoid a regulatory breach). We do not consider there to be any direct compliance costs of the new criminal offence.

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<sup>6</sup> Remuneration figures are uplifted to include the total labour cost to the firm, for example property taxes and insurance payments.

The one-off costs here could include:

- Setting up systems to record additional information.
- Legal advice associated with recording and retaining evidence.

Ongoing costs could include:

- Annual costs of recording and storing additional information.

### 3.2.3 Statement of responsibility (SoR)

The one-off costs associated with this policy include:

- Developing an SoR for each individual in a SMF role.
- Developing a 'responsibilities matrix' including all important functions set out by the FCA.
- Developing guidance relating to handover certificates.

The days required would both be per SMF individual (i.e. training) or in aggregate (e.g. a project team).

In addition, ongoing costs would include:

- Maintaining the responsibilities matrix. This would be either a general annual review or a revision each time an individual left a role, in which case it is linked to the turnover of SMFs individuals.<sup>7</sup>
- Developing and retaining handover certificates.

### 3.2.4 Pre-approval

The one-off costs associated with this policy would include updating any policies or processes to provide additional information as part of the SMF pre-approval application. The ongoing costs would include additional time required for firms to submit an application for SMF pre-approval given the need for additional information.

### 3.2.5 Migration to the Certified Persons regime

The one-off costs associated with migrating individuals to the CP regime might include:

- Developing guidance/documentation on who is a CP.
- Changes to organisational structure.
- Migrating people/ functions to the new regime.

There may be some on-going costs associated with updating documentation if the CP population changes although these are likely to be limited.

### 3.2.6 Continuing fit and proper

If firms require a new system to ensure continual 'fitness and propriety checks', possibly through amendments to current appraisal processes this would represent a one-off cost.

Ongoing costs could include undertaking additional checks (e.g. request declarations from staff that there has been no change to their fitness and propriety).

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<sup>7</sup> Based on our fieldwork SMF responsibilities are likely to be largely role based and therefore would not change when individuals left; therefore we adopted the former modelling approach.

These policies also propose DBS<sup>8</sup> checks for senior managers (either on an annual or periodic basis), which would impose ongoing costs of an update check (we assume that DBS checks are already conducted for senior managers upon hiring and therefore this implies no one-off costs).

Requesting regulatory references that go back five years could have one-off costs of setting up processes to request and provide this information, and ongoing costs of additional time spent in requesting and (more relevant) providing the information.

### 3.2.7 Rules of conduct

The costs of this policy will depend on the population included within the scope of 'relevant persons' and the extent to which firms already have a Code in place across some/all employees.

The one-off costs associated with this policy include:

- Developing or updating documentation/ guidance on conduct rules.
- Developing or updating any ongoing training material.
- Switching current staff over to new rules (both staff currently familiar with an existing code, and staff who are not currently subject to any code).

The ongoing costs would include:

- Where a firm does not currently have any Code in practice, time required to train staff in the new Code upon hiring. This cost would be related to staff turnover.
- Where a firm does not currently have any Code in place, annual revision training for all affected staff.
- Where a firm does currently have a Code in place, any additional time implied by adopting the new Code.

### 3.2.8 Notifying breaches of misconduct

The costs of this policy will also depend on the scope of 'relevant persons' and the extent to which firms already monitor and report conduct breaches. The one-off costs could include:

- Setting up / amending systems to record and report conduct breaches. This would include internal resources and external or IT costs.

Ongoing costs could include:

- New or additional reporting processes.

### 3.2.9 Deferral of variable remuneration

One-off costs could include changes to employment contracts and the development of guidance and rules, including legal advice. Ongoing costs would include the monitoring of deferred payments to ensure payment at the correct time.<sup>9</sup>

### 3.2.10 Clawback

The likely one-off costs of this policy are:

- Revision of contracts.

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<sup>8</sup> Disclosure and Barring Service.

<sup>9</sup> The differences in the draft and final policy proposals are unlikely to result in a notable change in the direct costs as these are driven by the fact of a change in the Code rather than the exact metrics.

- Development of guidance and rules, including legal advice.

Ongoing costs of implementing clawback proceedings would be incurred if the new policies resulted in an increase in the occasions where clawback was implemented.

### 3.2.11 Exceptional government intervention

The costs related to this policy could include one-off costs of revising policies and the implications of applying the Code in the case of exceptional government intervention.

### 3.2.12 Summary of modelling approach

The table below summarises the above discussion of the modelling approach for each policy proposal.

**Table 3.1: Summary of policies and modelling approach**

Policy	One-off costs	Ongoing costs
Migration to the SMF regime	Understanding the regulation and defining SMF scope. Guidance for SMF roles. Revision of the organizational structure of the firm. External costs (e.g. legal).	N/A
Presumption of senior responsibility	Setting up systems to record additional information. Legal advice associated with recording and retaining evidence.	Annual costs of recording and storing additional information.
Statement of responsibilities	Developing an SoR for each individual in a SMF role. Developing a 'responsibilities matrix'. Developing guidance relating to handover certificates.	Maintaining the responsibilities matrix. Developing and retaining handover certificates.
Pre-approval	Updating any policies or processes to provide additional information.	Additional time required for firms to submit an application for SMF pre-approval.
Migration to Certified Persons regime	Developing guidance / documentation on who is a CP. Changes to organisational structure. Migrating people / functions to the new regime.	Updating documentation if the CP population changes.
Continuing fitness and propriety	Setting up systems and processes to annually assess fitness and propriety.	Undertaking annual checks and assessment. Time spent by individuals on declarations.
Regulatory references	Setting up processes to request and provide additional information.	Time spent providing additional information.
DBS checks	N/A	Costs of ongoing annual checks
Rules of conduct	Developing or updating documentation / guidance on conduct rules. Developing or updating ongoing training material. Switching current staff over to new rules.	Time required to train staff in the new Code upon hiring, related to staff turnover. Annual refresher training for all affected staff. Additional time implied by adopting the new Code.
Notifying breaches of conduct	Setting up / amending systems to record and report conduct breaches.	New or additional reporting processes.
Deferral of remuneration	Revisions to policies and guidance, including legal advice.	Monitoring of deferred payments.
Clawback	Revision of contracts. Development of guidance and rules, including legal advice.	Implementation of clawback proceedings.
Exceptional government intervention	Developing / revising policy and guidance.	N/A

Note: the results of all the SMF policies (migration to the regime; statement of responsibilities etc) are modelling together as firms often considered these costs together.

### 3.2.13 Modelling the costs across the sector

We have taken a bottom up modelling approach, using the quantitative results of our structured interviews to estimate the total costs per firm in our sample, and then extrapolating up across the industry. Where individual firm data were not provided, for example on salaries or legal fees, we have used benchmark data from previous compliance cost research. Where firms have identified a cost but have not been able to provide quantitative estimates we have imputed costs based on the other firms in the sample, adjusting for scale differences.

The costs gathered from our sample firms are then extrapolated to construct a cost estimate for the industry as a whole. In order to account for differences in size among the firms in each sector, we separate the one-off and ongoing costs into fixed and variable costs. We separate out fixed and variable costs based on the compliance cost questions asked in the interviews, and define them as follows:

- Fixed costs relate to activities that would be undertaken largely regardless of firm size.<sup>10</sup> These include, for example, understanding the regulatory requirements; developing internal policies, guidance and other documentation; and setting up systems to record and report data.
- Variable costs are linked to the size of the firm (in particular the number of employees) and include time spent by individuals on training, reviewing documents, monitoring and reporting.

Fixed costs are multiplied up by the number of firms in the sector (with a distinction between large and small); variable costs are multiplied up as a proportion of turnover. As the extrapolation of fixed costs in particular is influenced by the number of firms classified as large or small, we conduct sensitivity tests using different thresholds.<sup>11</sup>

In some cases there is an element of uncertainty as to the extent to which a cost item is fixed or variable. For consistency and transparency (and to avoid making subjective judgements on the relative split) our approach is to consider cost items that are mainly fixed as 'fixed', and mainly variable as 'variable'.

That said, there is a small number of cost items where there is a definite combination of fixed and variable elements. An example is the development of the Responsibilities Matrix. As a documentation activity this is largely a fixed cost, but it does depend on the size and complexity of the organisation which may vary even within the large or small categories. Another example is the development of training for the new Conduct Rules — again a largely fixed cost but depending on whether the training material needs to be differentiated across types of business unit there will be a variable element. For these cost items we apply an indicative 30:70 split across variable and fixed.

The classification of fixed and variable costs is largely similar across banks and investment firms and building societies. The classification of 'variable' is different for credit unions where costs are driven by the number of SMFs. This is due to the fact that the number of SMFs is not as linked to firm size as it is in the other sectors. All the credit unions in our sample stated that the senior management regime would apply almost exclusively to the board, and the firms all have a similar number of board members regardless of their turnover or number of employees (between 9 and 14). Therefore for those cost items relating to the number of SMFs and classified as wholly variable for the other sectors, we have applied a 50:50 split between fixed and variable.

Where firms' responses *combined* a number of cost items (this was specifically the case for the SMF policies, where firms combined costs relating to migrating to the regime, developing the statement of responsibilities and accounting for the increased burden of proof) we used the responses from other firms to impute a

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<sup>10</sup> Some fixed costs are influenced by the complexity of the organisation (for example the number of different business units) which is arguably associated with size. However, for these cost items we assume that the level of complexity is adequately accounted for in the large / small divide, i.e. large firms are all assumed to have the same level of complexity, such that these costs remain fixed across large firms; and similarly for the small firms.

<sup>11</sup> More details about our extrapolation are included in the Appendix, Section 9.

representative fixed/variable proportion. This was only necessary for three out of the eight banks, and one of the four building societies.

The average fixed costs across the large and small categories in our sample were then multiplied up by the total number of large and small firms in each sector. The variable costs were expressed as a percentage of turnover and then multiplied up by the total turnover across large and small firms in each sector. We present the data used in each sector when reporting the sector-wide compliance costs. More details on this process are included in the Appendix, Section 9.

### 3.3 Banks and investment firms

In this section we present the results of our compliance cost model for banks and investment firms. We first present the costs across the sample and describe the main cost drivers. We then present the costs for the sector as a whole.

#### 3.3.1 Costs across the sample and summary of cost drivers

The tables below present the aggregated costs across our sample of banks and investment firms, which covers five large and five small firms.<sup>12,13</sup> We present the average costs per large and small firm across the various policy proposals in absolute values and as a proportion of annual income. We then present the total costs across the policy regimes. The total cost is provided for each of the three options for the Relevant Persons regime (relevant to the application of the Rules of Conduct and the Notifying of breaches).

**Table 3.2: Average one-off per-policy compliance costs across banks and investment firms in sample (£000s)**

<b>One-off costs</b>	<b>Large</b>	<b>Small</b>
<b>Individual accountability policies</b>		
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	1,312.6	193.6
Certified persons regime - set up	37.8	30.5
Continuing fitness and propriety	512.5	7.7
Regulatory references	Negligible	0.9
Rules of conduct (SMF+CP)	3,559.0	15.4
Rules of conduct (SMF+CP+MM)	9,425.2	18.2
Rules of conduct (everyone)	13,468.7	22.7
Reporting breaches (SMF + CP)	812.5	4.3
Reporting breaches (SMF + CP + MM)	1,062.5	4.3
Reporting breaches (everyone)	2,612.5	4.3
<b>Remuneration policies</b>		
Deferral of remuneration	301.4	26.9
Clawback	759.2	37.0
Exceptional government intervention	Negligible	Negligible

Source: Europe Economics survey.

<sup>12</sup> Large firms have annual incomes greater than £1 billion.

<sup>13</sup> Two large banks respondents were unable to provide adequate quantitative responses for inclusion in the model, but their responses have been incorporated into the qualitative analysis.

**Table 3.3: Average ongoing per-policy compliance costs across banks and investment firms in sample (£000s)**

Ongoing costs	Large	Small
<b>Individual accountability policies</b>		
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	311.4	24.3
Certified persons regime - on-going	Negligible	Negligible
Continuing fitness and propriety	176.3	11.7
Regulatory references	Negligible	10.0
Triennial DBS Checks	0.3	0.1
Annual DBS Checks	1.0	0.2
Rules of conduct (SMF + CP)	4.5	Negligible
Rules of conduct (SMF + CP + MM)	4.5	Negligible
Rules of conduct (everyone)	32.0	Negligible
Reporting breaches (SMF + CP)	75.0	3.6
Reporting breaches (SMF + CP + MM)	225.0	5.0
Reporting breaches (everyone)	350.0	6.9
<b>Remuneration policies</b>		
Deferral of remuneration	33.1	11.9
Exceptional government intervention	Negligible	Negligible

Source: Europe Economics survey.

The tables below present the total costs across the three options for Relevant Persons definition (only SMFs and CPs; SMFs, CPs and middle management; all employees except ancillary staff).

**Table 3.4: Average total compliance costs across banks and investment firms in sample (£000s)**

	Large	Small
<b>Individual accountability policies, one-off</b>		
Option 1 (SMF + CP)	6,234.4	252.4
Option 2 (SMF + CP + MM)	12,350.6	255.1
Option 3 (everyone)	17,944.1	259.6
<b>Remuneration policies, one-off</b>	1,060.6	63.9
<b>Individual accountability policies, ongoing</b>		
Option 1 (SMF + CP)	567.5	49.8
Option 2 (SMF + CP + MM)	717.5	51.1
Option 3 (everyone)	870.0	53.0
<b>Remuneration policies, ongoing</b>	33.1	11.9

Source: Europe Economics survey.

**Table 3.5: Average total compliance costs across banks and investment firms in sample (percentage of annual income)**

	Large	Small
<b>Individual accountability policies, one-off</b>		
Option 1 (SMF + CP)	0.110%	0.471%
Option 2 (SMF + CP + MM)	0.155%	0.477%
Option 3 (everyone)	0.205%	0.488%
<b>Remuneration policies, one-off</b>	0.007%	0.077%
<b>Individual accountability policies, ongoing</b>		
Option 1 (SMF + CP)	0.015%	0.083%
Option 2 (SMF + CP + MM)	0.016%	0.085%
Option 3 (everyone)	0.018%	0.088%
<b>Remuneration policies, ongoing</b>	0.001%	0.004%

Source: Europe Economics survey.

### SMF policies

The responses to our structured interviews identified the number of individuals who would be assigned SMF roles under the new regime in each firm. This was generally considered to include the current board and executive committees (ExCo). There was some variation in this across large and small respondents which appears to be linked to complexity of the firms' organisational structure, as reflected by its size. Larger firms considered it necessary to include a further layer of senior managers below the ExCo to cover multiple divisions, whilst smaller firms considered that ultimate responsibility for key business functions would remain with the board and the ExCo. It was highlighted that extending the scope of the SMF regime to include more individuals would not simply be a linear increase in associated costs. The further down the firm the regime goes the more complex the process of assigning responsibilities becomes, with an exponential increase in required resources.

The costs of migrating to the SMF regime combine the costs of reviewing the regulation and those associated with developing the statement of responsibilities and responsibilities map, as most firms considered these costs in a combined way. One-off costs include costs per SMF (agreeing their defined responsibilities, undertaking training etc.) as well as project team costs. Based on our responses we have assumed that significant changes to banks' organisational structure would not be necessary. However, respondents did raise a concern about the feasibility of assigning all key business functions to individuals (i.e. where there are currently a number of departments that feed into an overall function) and advocated a flexible approach to defining 'key business functions'.

A notable driver of the costs of migrating to the SMF regime is the involvement of employees beyond merely HR and compliance and the senior managers themselves. Each senior manager would have an associated business unit which would be involved in the deliberations around the allocations of responsibilities and ensuring that all affected individuals are adequately engaged in the process. Even seemingly straightforward exercises such as updating the responsibilities matrix could involve a number of different individuals and would be more than a documentation update.

This level of complexity is therefore also a driver of the ongoing costs of the new SMF regime. Large firms in particular would want to undertake an annual review of the allocation of responsibilities to ensure all areas continued to be covered, as well as undertaking quality assurance processes to ensure that senior managers are managing their responsibilities adequately, which may include requesting documented evidence from business units.

The one-off and ongoing direct costs associated with the presumption of senior management responsibility are considered to be relatively small, an increase in the level of detail of recorded decisions and a more formal decision-making process. The indirect costs of additional monitoring and sign-off are considered to be far more significant, and are discussed in our section on indirect impacts.

There was not considered to be any additional burden stemming from the extra requirements on pre-approval for SMFs.

### Certified persons regime

The expected costs to banks and investment firms of implementing a certified persons (CP) regime include migration costs of updating IT systems (e.g. management software), developing guidance and policy documents and, to a more limited extent, engaging with individuals in the new CP roles. These set-up costs are largely fixed and there is not a great deal of variation across the large and small firms in the sample. The ongoing costs of applying the regulation are negligible.

The responses provided the potential number of CPs that would be captured by the policy. These generally included the management layer below the SMF roles as well as mortgage advisors, other customer advisors, material risk takers, and other roles considered to have the potential to cause harm to consumers. It was noted that the scope for the CP regime could be very wide if various back-office functions were included, and firms highlighted some regulatory risk associated with the definition.

### Continuing fit and proper

The requirement for continuous checks of fitness and propriety for SMFs and CPs are likely to have a moderate cost impact on firms. Whilst all firms in the sample already have a system of annual appraisal in place, many (particularly the large firms) felt that a more formal procedure would need to be added to this to incorporate a formal declaration of fitness and propriety from staff and sign off from designated managers. Smaller firms were more likely to adapt their existing processes.

The one-off costs include additional IT systems and some staff training, whilst the ongoing costs cover the additional resources spent on declaring and reviewing statements of fitness and propriety. As large firms are more likely to implement IT solutions, their one-off costs compared to ongoing are relatively greater than smaller firms'.

Firms highlighted that one-off and ongoing costs would be greater if a more rigorous approach was deemed necessary by the FCA (for example, the auditing of a greater proportion of self-declarations of fitness and propriety), or the collection and storage of evidence pertaining to individuals' fitness and propriety.

### Regulatory references

The requirement to seek and provide regulatory references going back five years is not notably different to what banks currently do, in particular large banks, and any additional one-off and ongoing costs are considered to be negligible. Smaller banks did envisage some cost entailed in setting up processes to request and provide more detailed references.

### DBS checks for SMFs

Banks in our sample all carried out DBS checks on potential SMF individuals, and thus the policy options would only imply an update check for all SMFs either every year or every three years (the periodic frequency agreed to by most firms in our sample), at £13 a check.

### Rules of conduct

The responses to our quantitative questions provided the number of employees that would be captured under the three options, namely SMFs and CPs; SMFs, CPs and a concept of 'middle management'; and all employees except ancillary staff. In most cases the 'all employees' figure was aligned with the total number of employees reported by the firms, which is suggestive of the fact that many ancillary services are

outsourced. We note that this figure as reported by firms does not include temporary employees or contractors as firms in general were unable to accurately predict these numbers. The costs associated with the 'all employee' option is therefore likely to be greater in reality if outsourced staff are included, although this is likely to vary significantly across firms.

All banks in the sample currently apply a Code of Conduct across all employees, with some initial and ongoing training. The additional one-off costs include updating documentation and guidance to include the new code (which is considered to be broadly similar in content to existing codes) and providing one-off training to all involved to familiarise them with the new code. One-off costs for the large banks are particularly significant as these represent a far larger number of employees captured under each option. Banks also highlighted the need to ensure that all employees understand and engage with the Rules to a sufficient extent, which would entail developing a number of different training programmes relevant to different types of employee. The IT costs of updating existing systems are particularly high among large firms; smaller firms relying relatively less on extensive IT systems.

The costs increase with the number of employees captured in the definition of 'Relevant Persons'. Given this, most firms would prefer the application of the Conduct Rules to the narrower definition of SMF, CP and middle management. A few firms, however, noted that defining a concept of 'middle management' could entail regulatory risk if certain groups of employees were missed out.

As the firms already have ongoing training in place, the additional ongoing costs of the policy are minimal, particularly for small firms with low employee numbers. These costs for small banks are considered to be negligible.

#### Reporting breaches in the rules of conduct

The policy for recording and reporting breaches in the rules of conduct will potentially incur significant costs for firms. Although firms already have in place systems for monitoring and recording general conduct breaches and disciplinary actions, these are generally not considered sufficient to record and report conduct breaches to the level implied by the policy (i.e. all suspected breaches in the conduct rules). This is more so the case for large firms than smaller firms, the latter being more flexible in terms of how they are able to implement this given small employee numbers.

One-off costs include setting up or updating systems to record breaches. Among large firms these are mainly IT systems; smaller firms suggest a mix of IT and manual processes. One-off costs also include training of individuals (e.g. HR, compliance and line managers) with respect to what would be considered a suspected breach.

Ongoing costs include monitoring and decision-making around whether an action constitutes a breach. The costs are increasing with the number of employees captured by the requirement — this is particularly the case for the large firms as there are significant differences in the size of the populations captured by the options.

#### Deferral policy

The costs of complying with the deferral policy largely consist of one-off costs of reviewing and updating guidance around the firms' deferral policy, including legal advice. There would also be one-off costs involved in communicating the changes to affected staff and dealing with queries etc. Nearly all banks said that they would not need to change individual contracts as variable remuneration was communicated to staff by means of an annual statement which could easily be altered.

Ongoing costs would also be incurred as a result of additional monitoring of deferred payments to ensure they are paid on time and to account for an increase in the complexity of deferral arrangements covering a wider population of employees.

The cost impacts of the remuneration policies in general were not felt to be significant by the small banks given the limited scope of variable remuneration payouts.

### Clawback

The one-off costs here would most likely include a revision of contracts otherwise the enforcement of extended clawback would be very difficult. This cost varies across the firms according to the number of individuals likely to be relevant, but imply greater costs than the deferral policy. Again the small banks did not see this as a significant cost given the low scale of variable remuneration paid.

No specific ongoing costs of the clawback policies were quantified. A general comment was raised among firms that the legal costs associated with clawback could be significant, although these would vary on a case by case basis and it is unclear the extent to which these might increase as a direct result of the policies.

### Exceptional government intervention

The banks in our sample did not foresee any notable costs in complying with this policy, with possibly negligible costs of documentation changes.

## 3.3.2 Costs across the sector

According to FCA data there are approximately 160 banks and investment firms subject to the new individual accountability regime and 240 subject to the Remuneration Code changes (the latter includes branches of non-EEA firms). Total sector income for these two populations is around £103 billion and £115 billion respectively.<sup>14</sup> In order to arrive at a large/small split we drew the threshold for large at 80 per cent of sector income, representing around the top 10 per cent of firms.<sup>15</sup> This equates to between 15 and 18 firms across the two populations.<sup>16</sup> Our compliance cost model reports an average cost per large and small firm across our sample of five large and five small banks, which are then extrapolated up to the sector.

The table below presents the total costs across the three options for Relevant Persons definition (only SMFs and CPs; SMFs, CPs and middle management; all employees except ancillary staff).

**Table 3.6: Total compliance cost impact on banks and investment firms across the three relevant person options (£ millions)**

	Large	Small	Sector total
<b>Individual accountability policies, one-off</b>			
Option 1 (SMF + CP)	76.9	63.2	140.1
Option 2 (SMF + CP + MM)	123.7	64.5	188.2
Option 3 (everyone)	169.9	66.7	236.6
<b>Remuneration policies, one-off</b>	11.5	17.5	29.0
<b>Individual accountability policies, ongoing</b>			
Option 1 (SMF + CP)	7.6	11.8	19.4
Option 2 (SMF + CP + MM)	8.2	12.2	20.4
Option 3 (everyone)	9.8	12.8	22.6
<b>Remuneration policies, ongoing</b>	0.6	0.9	1.5

Source: Europe Economics survey.

<sup>14</sup> Source: Bank of England Statistics Table B3.2 'Monetary financial institutions' annual profit and loss' [http://www.bankofengland.co.uk/statistics/Pages/iadb/notesiadb/income\\_expenditure.aspx](http://www.bankofengland.co.uk/statistics/Pages/iadb/notesiadb/income_expenditure.aspx)

<sup>15</sup> This threshold is based on a natural split in the distribution of income. See Appendix at Section 9.

<sup>16</sup> More detail on this is included in the Appendix at Section 9.

The direct compliance cost of the individual accountability policies imply a sector-wide one-off cost of between 0.14 per cent and 0.23 per cent of sector income, and an ongoing costs of around 0.02 per cent of sector income. The remuneration policies will have a far smaller one-off impact of around 0.003 per cent of sector income and negligible ongoing costs.

## 3.4 Building societies

### 3.4.1 Costs across the sample and summary of cost drivers

The tables below present the aggregated compliance costs across our sample, which covers two large and two small building societies.<sup>17</sup> The cost drivers for large and small building societies are similar to those of the banks in a number of areas. We discuss the key differences that would influence the costs.

**Table 3.7: Average one-off per-policy compliance costs across building societies in sample (£000s)**

<b>One-off costs</b>	<b>Large</b>	<b>Small</b>
<b>Individual accountability policies</b>		
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	334.1	22.5
Certified persons regime - set up	182.3	1.4
Continuing fitness and propriety	112.1	Negligible
Regulatory references	Negligible	0.5
Rules of conduct (SMF+CP)	322.4	2.0
Rules of conduct (SMF+CP+MM)	606.0	4.5
Rules of conduct (everyone)	5,181.9	11.6
Reporting breaches (SMF + CP)	100.0	Negligible
Reporting breaches (SMF + CP + MM)	100.0	Negligible
Reporting breaches (everyone)	100.0	Negligible
<b>Remuneration policies</b>		
Deferral of remuneration	18.2	Negligible
Clawback	3.2	Negligible
Exceptional government intervention	Negligible	Negligible

Source: Europe Economics survey.

<sup>17</sup> Large firms have annual income greater than £50 million.

**Table 3.8: Average ongoing per-policy compliance costs across building societies in sample (£000s)**

Ongoing costs	Large	Small
<b>Individual accountability policies</b>		
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	4.6	Negligible
Certified persons regime - on-going	Negligible	Negligible
Continuing fitness and propriety	15.5	2.1
Regulatory references	4.2	0.2
Triennial DBS Checks	0.1	0.0
Annual DBS Checks	0.2	0.1
Rules of conduct (SMF + CP)	17.2	Negligible
Rules of conduct (SMF + CP + MM)	37.2	Negligible
Rules of conduct (everyone)	358.8	Negligible
Reporting breaches (SMF + CP)	75.0	Negligible
Reporting breaches (SMF + CP + MM)	75.0	Negligible
Reporting breaches (everyone)	1,118.6	Negligible
<b>Remuneration policies</b>		
Deferral of remuneration	15.0	Negligible
Exceptional government intervention	Negligible	Negligible

Source: Europe Economics survey.

The tables below presents the total costs across the three options for Relevant Persons definition (only SMFs and CPs; SMFs, CPs and middle management; all employees except ancillary staff). Costs form a greater percentage of annual income for small firms compared to large, most notably for one-off costs. We also note that one-off costs form a greater percentage of income for small building societies compared with small banks. This is most likely driven by similar set-up costs, including those relating to the number of SMFs, but significantly higher incomes among small banks compared to small building societies.

**Table 3.9: Average total compliance costs across building societies in sample (£000s)**

	Large	Small
<b>Individual accountability policies, one-off</b>		
Option 1 (SMF + CP)	1,050.8	26.4
Option 2 (SMF + CP + MM)	1,334.4	28.9
Option 3 (everyone)	5,910.3	35.9
<b>Remuneration policies, one-off</b>	21.3	Negligible
<b>Individual accountability policies, ongoing</b>		
Option 1 (SMF + CP)	116.5	2.3
Option 2 (SMF + CP + MM)	136.5	2.3
Option 3 (everyone)	1,501.8	2.3
<b>Remuneration policies, ongoing</b>	15.0	Negligible

Note: the costs of the individual accountability proposals do not vary by the options for the scope the Relevant Persons as small building societies reported negligible ongoing costs for the Rules of Conduct and Notifying of Breaches policies; the ongoing costs are therefore driven by the costs of the SMF and CP regimes which do not vary across the options.

Source: Europe Economics survey.

**Table 3.10: Average total compliance costs across building societies in sample (percentage of annual income)**

	Large	Small
<b>Individual accountability policies, one-off</b>		
Option 1 (SMF + CP)	0.139%	0.677%
Option 2 (SMF + CP + MM)	0.162%	0.720%
Option 3 (everyone)	0.420%	0.798%
<b>Remuneration policies, one-off</b>	0.001%	Negligible
<b>Individual accountability policies, ongoing</b>		
Option 1 (SMF + CP)	0.007%	0.068%
Option 2 (SMF + CP + MM)	0.009%	0.068%
Option 3 (everyone)	0.064%	0.068%
<b>Remuneration policies, ongoing</b>	0.001%	Negligible

Source: Europe Economics survey.

### SMF policies

The work required to migrate to the new SMF regime is more limited given the less complex organisational structure of many building societies and the more limited range of activities and functions compared to banks and investment firms; this is particularly the case for small building societies. This is likely to result in a relatively lower number of SMFs (largely consisting of the board and ExCo and not extending much beyond that). This influences the costs associated with individual SMFs (i.e. training and role familiarisation), as well as the costs of setting up the new regime. There would also be fewer people involved in the set-up of the new regime as, unlike banks and investment firms, building societies did not identify the need for business unit teams to be involved in the processes.

Ongoing costs of the SMF policies, including updating the responsibilities matrix and statements of responsibility, were also not considered to be large. Firms noted that as responsibilities would be assigned to roles rather than individuals, and given the relatively straightforward nature of these responsibilities, ongoing maintenance of responsibilities would be minimal.

In contrast to the bank sample the building societies in our sample did not foresee notable costs related to increased record keeping as a result of the presumption of senior management responsibility, compared to the recording keeping practices already in place. However, indirect costs of more collective decision making (involving sub-committees, more bureaucracy etc.) were highlighted as a risk of this element of the policy.

### Certified persons policies

Large building societies are likely to have a large number of certified persons relative to the current number of approved persons and total employee population, given the large number of mortgage advisors. The one-off costs of migrating to the CP regime included IT costs and training. The firms in our sample generally all have a system for checking fitness and propriety for approved persons or mortgage advisors (as a result of MMR) (rather than, say, a fit for purpose appraisal system across all employees), and they would seek to update and extend this to the rest of the CP population. This should incur pro rata costs according to the size of the population unless it was deemed necessary to significantly increase the rigor of the systems. The smaller building societies envisaged using existing appraisal schemes which may incur small ongoing costs in terms of additional time spent on the process but negligible set-up costs.

### Rules of conduct

The large building societies in our sample do not have a universal code of conduct which is applied to all staff. The closest thing is the application of the APER to approved persons. Whilst the content of the rules is not considered to differ greatly, applying them over a much larger population could incur significant one-off costs of introducing everyone to the rules and ongoing annual training and refreshing. The likely CP population would cover significantly more employees than are currently approved persons; a middle management population even more; and more so with the entire employee base (excluding ancillary staff). In addition to the pro rata costs, in order to ensure that all employees properly engaged with the rules, different training programmes would need to be developed to cater for the different sectors (i.e. mortgage advisors would need different training to back-office staff).

The large building societies in our sample felt that given the significant costs of rolling out Conduct Rules to all staff, and the potentially limited additional benefits, it would be far preferable to limit the application of these policies to CPs and SMFs, or a middle management option.

Smaller building societies with small numbers of employees would not incur this extent of cost and would most likely be able to communicate the conduct rules in a more flexible and less costly way. The flexibility of smaller firms with regards to implementing the Rules of Conduct is a feature that is notable across sectors.

### Breaches of conduct

Similar to extending the rule of conduct to wider populations, the requirement to record and report breaches of misconduct would also incur significant costs among large building societies. The firms in our sample already have systems to monitor and record errors and disciplinary actions (applicable to all employees) but these are not designed to flag *particular* breaches and operate at a higher level than what is implied by the policies. Set-up costs include additions to current compliance software, as well as revisions to policies.

Ongoing recording and monitoring of breaches could be significant among the larger firms. One firm's current system was largely manual (disciplinary events entered into the system by an HR team in each division) and for many groups of employees this only happens once a year at appraisal. To increase this to, say quarterly recording and reporting implies a drastic increase in human resources; given the current structures automating this was not thought to be feasible.

### Remuneration policies

The building societies in our sample had a relatively small number of Material Risk takers currently (indeed, the two small firms had none). The cost drivers for the large firms associated with the remuneration policies were broadly in line with those of the banks, although on a much smaller scale — updating scheme rules rather than amending contracts for the deferral policy; having some contract changes for the changes in clawback rules. External legal costs would be incurred as well. The remuneration policies would have no impact on the small firms in our sample as no variable remuneration is paid — we have assumed similarly low costs across all small building societies.

## 3.4.2 Costs across the sector

Data from the Building Society Association (BSA) indicates that 45 building societies would be subject to the new regime, with a sector income of around £4.5 billion in 2013. We apply a threshold of £100 million annual income, below which firms are considered small and above which they are considered large. This threshold is in line with a natural break in the size distribution of firms, and results in a split of six large firms (accounting for 90 per cent of sector income) and 39 small firms. We scale up the fixed costs by the

number of firms in the small and large categories, and the variable costs as a proportion of annual income. The tables below show the results per policy and across the regimes as a whole.

The table below presents the total costs across the three options for Relevant Persons definition (only SMFs and CPs; SMFs, CPs and middle management; all employees except ancillary staff).

**Table 3.11: Total compliance costs impact for building societies (£ millions)**

	Large	Small	Sector total
<b>Individual accountability policies, one-off</b>			
Option 1 (SMF + CP)	5.65	1.60	7.25
Option 2 (SMF + CP + MM)	6.62	1.78	8.40
Option 3 (everyone)	17.14	2.11	19.25
<b>Remuneration policies, one-off</b>	0.13	Negligible	0.13
<b>Individual accountability policies, ongoing</b>			
Option 1 (SMF + CP)	0.30	0.29	0.59
Option 2 (SMF + CP + MM)	0.37	0.29	0.65
Option 3 (everyone)	2.62	0.29	2.91
<b>Remuneration policies, ongoing</b>	0.02	Negligible	0.02

Source: Europe Economics survey.

The direct compliance cost of the individual accountability policies imply a sector-wide one-off cost of between 0.2 per cent and 0.4 per cent of sector income, and an ongoing costs of between 0.01 per cent and 0.07 per cent of sector income. The remuneration policies will have a far smaller one-off impact of 0.003 per cent of sector income and negligible ongoing costs.

## 3.5 Credit unions

### 3.5.1 Costs across the sample and summary of cost drivers

The tables below present the aggregated compliance costs across our sample of four credit unions. Given the small nature of credit unions, we have treated our sample firms as being indicative of the sector as a whole, and therefore have not made the small/large divide.

Our interviews highlighted a number of key features of credit unions that would affect the costs of complying with the individual accountability policies (they are not subject to the Remuneration Code).

**Table 3.12: Average one-off per-policy compliance costs across credit unions in sample (£000s)**

<b>One-off costs</b>	<b>All firms</b>
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	6.2
Certified persons regime - set up	0.3
Continuing fitness and propriety	0.2
Regulatory references	Negligible
Rules of conduct (SMF+CP)	1.6
Rules of conduct (SMF+CP+MM)	2.1
Rules of conduct (everyone)	3.4
Reporting breaches (SMF + CP)	0.3
Reporting breaches (SMF + CP + MM)	0.3
Reporting breaches (everyone)	0.3

Source: Europe Economics survey.

**Table 3.13: Average ongoing per-policy compliance costs across credit unions in sample (£000s)**

<b>Ongoing costs</b>	<b>All firms</b>
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	0.2
Certified persons regime - on-going	Negligible
Continuing fitness and propriety	0.7
Regulatory references	0.1
Triennial DBS Checks	0.1
Annual DBS Checks	0.2
Rules of conduct (SMF + CP)	1.4
Rules of conduct (SMF + CP + MM)	1.4
Rules of conduct (everyone)	2.3
Reporting breaches (SMF + CP)	Negligible
Reporting breaches (SMF + CP + MM)	Negligible
Reporting breaches (everyone)	Negligible

Source: Europe Economics survey.

The tables below presents the total costs across the three options for Relevant Persons definition (only SMFs and CPs; SMFs, CPs and middle management; all employees except ancillary staff).

**Table 3.14: Average total compliance costs across credit unions in sample (£000s)**

	<b>All firms</b>
<b>Individual accountability policies, one-off</b>	
Option 1 (SMF + CP)	8.6
Option 2 (SMF + CP + MM)	9.2
Option 3 (everyone)	10.4
<b>Individual accountability policies, ongoing</b>	
Option 1 (SMF + CP)	2.4
Option 2 (SMF + CP + MM)	2.4
Option 3 (everyone)	3.3

Source: Europe Economics survey.

**Table 3.15: Average total compliance costs across credit unions in sample (percentage of annual turnover)**

	<b>All firms</b>
<b>Individual accountability policies, one-off</b>	
Option 1 (SMF + CP)	0.601%
Option 2 (SMF + CP + MM)	0.659%
Option 3 (everyone)	0.751%
<b>Individual accountability policies, ongoing</b>	
Option 1 (SMF + CP)	0.217%
Option 2 (SMF + CP + MM)	0.217%
Option 3 (everyone)	0.298%

Source: Europe Economics survey.

### SMF policies

Credit unions are generally small, and many very small, with low numbers of approved persons who tend to be all board members. Based on our interviews we have assumed that no one below board level would be captured within the SMF role. Given the simple firm structure the costs of migrating to the SMF regime are low, although the time spent reviewing the legislation and deciding on the allocation of responsibilities etc. will most likely be done by the board themselves and thus the relative costs compared to the use of more junior staff in larger organisations would be greater. Board members currently hold responsibility for all the main functions of the firm, and thus applying the new regime could be done flexibly. Credit unions would most likely look to trade associations for any training or understanding of the policies required.

Despite this, a key potential risk of the SMF regime, in particular assigning individual responsibilities, is that this may significantly undermine the principles of credit unions whereby all members are able to be voted onto the board and board members are often volunteers. Although the board holds all responsibility for the firm, this is generally held *collectively*, with all board members taking responsibility for all decisions. On the one hand, this does generate individual accountability and responsibility as each member would be held responsible in the event of a failure; on the other, separating out responsibilities to individuals for the purposes of the policies may not be feasible and would contravene the principle of a credit union, and there is a risk that individuals would be deterred from taking a place on the board. This would be particularly the case for volunteers who would not be remunerated for any increased personal accountability.

The costs associated with additional record keeping in relation to the presumption of senior management are considered to be low given that decisions are already recorded.

The relatively low compliance costs do however represent a non-trivial percentage of income in our sample.

#### Certified persons policies

The number of CPs in credit unions is likely to be very small. Given that most in our sample already have a system for annual appraisals, firms envisage that the fitness and propriety check could be included in this with little extra cost. Extrapolating this across the sector assumes a similar process across all firms which may have the risk of underestimating the costs.

#### Rules of conduct

Based on our sample we have assumed that credit unions are likely to apply some form of conduct code to their employees, and updating this to incorporate the new rules is unlikely to incur notable costs. That said, if the policies implied a more rigorous approach than envisaged by the firms in our sample (for example, dedicated training rather than reading through the Code manual) then this would imply greater costs. Given the small number of employees across most credit unions any pro rata costs would in aggregate be small. The differences between the options for Relevant Persons would have a small impact on the costs, with the greatest difference being the 'all employees' option; this stems from the fact that a concept of 'middle management' does not differ greatly from the population of SMFs and CPs.

#### Reporting of breaches of misconduct

Recording and reporting breaches incurred by the board members would not represent a diversion from current practice. Setting up systems to record and report breaches among staff is likely to require one-off costs — judging from our responses we have assumed this process would be done manually rather than investing in IT, and would build on existing recording processes. The existence of similar processes implies that ongoing costs would be negligible. Some firms in our sample noted that if they were to be obliged to record every small error or complaint involving a staff member then this could be very impractical and costly — the cost estimates reflect the reporting of more notable breaches in conduct rules.

### 3.5.2 Costs across the sector

Data from the FCA show that there are 523 credit unions that would be subject the policies, with a sector income of around £167 million in 2013.

Given the small, similar nature of credit unions, we have treated our sample of firms as being indicative of the sector as a whole. Differences in variable costs across firm size are captured as these are extrapolated up as a proportion of firm income. As the fixed costs are extrapolated across the number of credit unions with no adjustment for size this may overstate the costs to the very small credit unions. However, as explained in Section 3.2.13 many of the fixed cost drivers are related to the number of SMFs; this number is likely to be limited to the board and we consider it reasonable that the size of the board is relatively invariant to the size of the firm (this is certainly the case with our sample). Therefore the extent of the over-statement of costs may not be great.

**Table 3.16: Total compliance costs impact for credit unions across the three relevant person options (£ millions)**

	<b>Sector total</b>
<b>Individual accountability policies, one-off</b>	
Option 1 (SMF + CP)	4.38
Option 2 (SMF + CP + MM)	4.67
Option 3 (everyone)	4.77
<b>Individual accountability policies, ongoing</b>	
Option 1 (SMF + CP)	1.03
Option 2 (SMF + CP + MM)	1.03
Option 3 (everyone)	1.24

Source: Europe Economics survey.

The direct compliance cost of the individual accountability policies imply a sector-wide one-off cost of between 2.6 and 2.9 per cent of sector income, and an ongoing costs of between 0.6 per cent and 0.7 per cent of sector income. Compared with the other sectors the compliance costs represent a far greater share of sector income.

## 4 Indirect Costs and Wider Impacts

### 4.1 Introduction

In this section we consider the potential indirect cost of the FCA proposals on firms and the wider market. The indirect impacts discussed in this section are as follows:

- Operational efficiencies.
- Labour market effects.
- Product innovation.
- Regulatory badging.

We discuss why a change in regulatory regime could affect these areas, and how well (or not) the available evidence speaks to this. We consider the individual accountability and remuneration policies each as whole policy packages, but where relevant identify individual policies that are likely to have a particular impact. We also identify where we expect there to be significant interaction between the policy proposals and where this could have multiplicative effects on the indirect impacts.

A quantitative analysis of the indirect costs and wider impacts has not been undertaken as part of this exercise as it is not considered to be reasonably practicable to do so given the high degree of complexity and uncertainty surrounding the nature of such impacts.

### 4.2 Operational efficiencies

Operational efficiency is concerned with maximising the level of output for a given level of input. In other words, operational efficiency is achieved when resources are allocated such that, collectively, they are utilised in the most productive way possible. Regulatory proposals may change operational efficiencies by inducing firm and individual behavioural changes.

#### 4.2.1 Monitoring costs

The individual accountability and remuneration policies could be perceived by firms to place an increased level of risk on individuals (indeed that is the aim), in particular on those in SMF roles. One of the benefits of this could be increased monitoring of staff and business activities. However, this also has the potential to increase operational inefficiencies.

Higher levels of internal staff monitoring could be characterised by increased reporting and sign-off processes, implemented by those in SMF roles to ensure they are more fully aware of – and approve – the actions of those for whom they are responsible. Additional monitoring could be beneficial if it improves the links between senior managers and the areas they are responsible for, and improves the behaviour of more junior staff. However, inefficiencies could arise if SMFs' incentives to monitor are over and above what is collectively rational at the firm level. Monitoring would exceed the optimal level if the costs of an additional unit of monitoring outweigh the benefits.

Internal controls can be detective or preventative in nature. Detective controls are designed to identify errors that may have occurred, while preventative controls are designed to keep the possibility of errors arising to a minimum. Increased employee monitoring could improve both forms of control. For example, more records of key decisions and actions taken by employees, and storing these records for a longer period, should increase employees' perceived accountability and, therefore, help to prevent deliberate

errors from arising. The requirement for more senior employees to check and sign-off on key actions of junior staff should allow senior employees to detect both deliberate and non-deliberate errors at an earlier stage. Such monitoring measures may be more important where actions involve a greater element of uncertainty or risk, or are more directly customer-facing. Extra monitoring procedures like this are likely to increase the operational costs of firms, both in terms of the direct costs of monitoring and the opportunity cost of the time foregone on carrying out other (more productive) business functions.

In assessing the optimality of this increased monitoring, the additional costs of monitoring should be considered alongside the potential benefits and disbenefits of this extra monitoring. Martin and Freeman (2003) discuss what the potential impacts of increased monitoring could be.<sup>18</sup> The key impacts discussed are the impact of monitoring on employee productivity, employee creativity, organisational security, and employer liability. The impact of monitoring on employee productivity is widely debated. On the one hand, increased monitoring could make employees more focused and compliant, but increased monitoring could also lower employee morale (e.g. through increased anxiety) which would have the opposite effect. Optimality of monitoring (and operational efficiency) will depend on the extent to which these benefits and disbenefits arise and whether, or not, they outweigh the costs of additional monitoring.

### Evidence from survey

Evidence from the survey highlights two elements of increased monitoring: internal monitoring of employees with increased reporting and sign-off processes; and more detailed documentation of decisions made by senior staff combined with more lengthy decision making processes.

Larger firms, in particular large banks and investment firms, foresee a greater need for the former type of monitoring than smaller firms. Some of the large firms surveyed believe that the impact on monitoring is likely to be the biggest behavioural impact of the regulatory changes, and in some cases it was said that this would reinforce the wider, top-down driven cultural changes that are already taking place or are expected to take place. Most of these firms also made specific reference to the presumption of senior management responsibility in accounting for the expected increase in internal monitoring.

Large firms often cited their complex organisational structure, and the inherent difficulty in unpicking the details of responsibility, as a key rationale for this increase in monitoring. In these large firms it is expected that the clear lines of responsibility would need to extend a significant way down the hierarchy in order to establish clearer lines of command for individual SMFs, and may even need to extend horizontally as well.<sup>19</sup> Thus any increase in monitoring would also need to be far-reaching. It is also clear from our fieldwork that it is not always possible to identify activities that may give rise to more risk ahead of time; increased monitoring would help in this identification process. In turn, the more risk averse senior individuals become as a result of the policies, the more likely increased monitoring will take place.

The indirect costs of increased monitoring could be substantial. Evidence from large firms suggests that a number of individuals from each business unit aligned with a senior manager would be involved in an ongoing process of developing and testing quality assurance and monitoring procedures; overseeing other supervisory arrangements within the units; evidencing due diligence of risks more robustly; and generally supporting the senior manager in complying with the processes deemed necessary in light of the increased level of individual accountability and the presumption of senior responsibility. To illustrate the possible scale, costs estimates received from a few large banks, with a range of between 20 and 30 SMFs, reach between £3million and £5million per year, covering ad hoc senior manager time and dedicated time of around two employees per business unit (including overheads).

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<sup>18</sup> Martin, K. and Freeman, E. (2003), 'Some Problems with Employee Monitoring', *Journal of Business Ethics*, vol. 43, pp. 353-361.

<sup>19</sup> This is particularly the case for large firms with many business divisions, such as investment firms, where an individual with overall responsibility for a function (e.g. product development) is exposed across all divisions in which this function takes place.

Many of the smaller firms, in particular credit unions and building societies, do not perceive a significant change to internal monitoring, as board members are already accountable and take the necessary monitoring steps. In smaller, simpler organisations the oversight of employees is likely to be greater, and would not necessitate significant changes or new processes.

The second type of monitoring identified in the survey entails greater effort to collect and retain evidence of decision making to ensure that, should they need to, senior managers would be able to prove they took all necessary steps to prevent a breach from arising. Particular reference is made to higher frequency and elongation of sign-off procedures and increased documenting of decision-making, both in volume and the detail.<sup>20</sup> This could include recording greater detail of minutes and formalising all decision making processes. (An example of the latter would be the documenting of an informal discussion between two senior colleagues that may result in a decision being taken). There is a concern among firms that the presumption of senior management responsibility could create “no end” to the evidence SMFs might have to collect in order to prove they took all necessary steps to prevent a breach. Given this uncertainty it is likely that firms will overcompensate with inefficient levels of monitoring.

Indeed, many firms highlighted the danger that decision making would become very bureaucratic and slow as all individuals seek to document all processes as thoroughly as possible. Particular reference was made to the increase in collective decision making with referrals to ad hoc sub-committees, as individuals would be less willing to make independent judgements under the new regime.

There is general agreement amongst those firms who consider the implications of increased monitoring and bureaucracy that such changes are likely to increase operational inefficiencies. Responses have indicated that while there would be more awareness and focus on documenting decisions, the quality of decision-making itself would be unlikely to change. This suggests that additional monitoring would be suboptimal. Other firms simply note that sufficient monitoring was already in place, such that any additional delays imposed on decision-making would be inefficient. As well as delays to decision making, there is also a danger of more formulaic decision-making process, which could make firms less responsive to market challenges.

The impacts of more protracted decision making were felt by most firms in the sample, small and large alike. Several responses from small firms suggest that more lengthy decision-making processes would significantly reduce their competitive advantage against large firms which is dependent on their agility to react to changing market conditions and their ability to make quick decisions.

Overall, the survey responses suggest that increases in monitoring would be undertaken largely as a means of gathering sufficient evidence to protect senior managers, rather than as a way of identifying and pre-empting behaviour among staff that could lead to regulatory breaches. It is widely thought that such changes could increase operational inefficiencies by adding unnecessary delays to decision-making processes and using (often significant) additional resources to provide assurance to those in SMF roles.

#### 4.2.2 Staff motivation/effort

The relationship between staff pay and staff motivation and effort has received much attention in the academic literature. Pepper, Gore and Crossman (2013)<sup>21</sup> conduct a two-part survey of senior executives

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<sup>20</sup> Whilst the costs of additional record keeping have been included in the compliance cost model, it is not possible to quantify all the costs associated with the greater documentation of decisions and the increased length of decision-making processes.

<sup>21</sup> Pepper, A., Gore, J. and Crossman, A. (2013) ‘Are Long-Term Incentive Plans an Effective and Efficient Way of Motivating Senior Executives?’, *Human Resource Management Journal*, vol. 23, No. 1, pp. 36-51.

to analyse the relative importance of intrinsic and extrinsic motivation.<sup>22</sup> Their survey finds strong evidence of uncertainty aversion with regard to pay, as well as high discount rates on future earnings, among senior executives. As a result, they conclude that the perceived value of long-term incentive plans to senior executives is likely to be less than the financial cost to the firm of providing those plans.

Impacts on staff motivation should primarily stem from the proposed changes to remuneration policies. The key policies in this regard are:

- Deferral.
- Clawback.

A longer **deferral** period will mean that variable remuneration will be subject to greater time discounting and hence have a lower net present value, while tougher rules on **clawback** are likely to increase the uncertainty associated with the variable remuneration package. As Pepper *et. al.* find strong evidence of uncertainty aversion and high discount rates then, assuming there is no commensurate increase in the monetary reward to compensate for these changes, the extrinsic motivation of senior executives is likely to decrease significantly. This could be harmful for firms. Firms may decide to compensate for the policy changes by raising the basic monetary reward, in order to limit the impact on extrinsic motivation. However, this will impose additional variable costs on the firm, which could be passed on to consumers. Even if firms choose not to compensate for these policy changes, then consumers could still lose out, to some degree, as they may now be interacting with, on average, less motivated staff.

As these policies are likely to reduce extrinsic reward, executives of firms subject to these policies will see their returns fall relative to the executives of firms in other jurisdictions. In Pepper *et. al.*'s survey, the issue of fairness was brought up by a large proportion of executives. A key way in which executives assess the value of their remuneration packages is by comparing their value relative to other executives. If these compare unfavourably then this could negatively impact intrinsic motivations – what the article refers to as demoralisation costs. Because of the way in which lower extrinsic motivation can, in turn, reduce intrinsic motivation, Pepper *et. al.* predict a threshold below which motivation and effort fall off sharply for marginal decreases in pay. The key concern, therefore, is the likelihood that the remuneration proposals push individuals beyond this inflection point on the pay-effort curve. This could have further detrimental impacts in terms of firms' ability to attract and retain high quality staff, as well as for firm productivity and competitiveness. Lower productivity and competitiveness are likely to decrease profit margins to the detriment of the firm, which could also be of detriment to the consumer if firms respond by raising prices.

A less motivated workforce could potentially be of detriment to firm efficiency and productivity. If the decrease in motivation is sufficiently large it could increase staff turnover which, in turn, may incur additional costs of staff hiring and increase the exposure of firms to the labour market difficulties. The decrease in motivation could also reduce worker and, therefore, firm productivity, and higher staff turnover could reinforce this effect on firm productivity. However, given the impact on staff motivation is unlikely to be very large, these potential impacts should remain fairly minor.

Any adverse consequences for staff motivation and effort may be, to some extent, counteracted by adjustments to the firm's wage structure, as discussed in below.

#### Evidence from survey

Most firms do not anticipate a significant impact of the policies on staff motivation. This may suggest that individuals in these firms are unlikely to fall below the point of inflection on the pay-effort curve (after which effort drops off significantly for incremental decreases in pay) as a result of the remuneration policies. If individuals are significantly above this inflection point, then it may be intrinsic motivation that is

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<sup>22</sup> Pepper *et. al.*'s study conducts a program of interviews of senior executives to establish key motivational factors. Intrinsic motivation is driven principally by achievement but also such factors as teamwork, power and status, while extrinsic motivation is driven by remuneration.

more important to staff effort than extrinsic reward. This would rationalise the limited impact of deferral and clawback policies on worker motivation and effort.

That said, a small number of firms did raise concerns that the ability to motivate staff would become increasingly difficult as the link between performance and pay diminished and/or became less transparent. This was primarily attributed to the longer deferral period and longer period before which vesting can begin, rather than the changes to clawback. In particular, some firms stressed that the longer period before vesting would be an influential change, as it would significantly disengage any link between pay and performance, with one firm saying that it would render the bonus scheme effectively pointless.<sup>23</sup> Respondents also said that the potentially detrimental effects to motivation (and staff hiring and retention, discussed in Section 4.3. may cause them to revise the current remuneration structure, both in terms of the absolute level of pay and in terms of the balance between fixed and variable pay.

Overall, in spite of a few firms raising this concern, the prevailing view from the survey is that the impact on staff motivation would be limited.

### 4.2.3 Wage structure

Firms may make adjustments to their remuneration packages in order to mitigate some of the effects of the proposed policies. In particular, firms may increase fixed pay in order to compensate for the perceived reduction in the value of variable pay. A PwC report<sup>24</sup> found that most executives would choose fixed pay over a high value bonus. Given the option between a certain sum of \$41,250 and a 50 per cent chance of receiving a \$90,000 bonus, only 15 per cent of executives in the UK opted for the latter. As the changes to remuneration policies are likely to introduce further uncertainty to variable remuneration packages, an even higher proportion of executives may prefer the lower sum with certainty.

The FCA's proposed changes to remuneration policies are likely to have a considerable impact on how individuals view variable remuneration packages, primarily through the following proposals;

- Deferral.
- Clawback.
- Exceptional government intervention.

The extended **deferral** period will lower the net present value of a given variable remuneration package, while the reforms to **clawback** and, to a lesser extent, the **state aid impact on deferral**, will place increased uncertainty on the reward being fully realised. The net effect is likely to be a significant reduction in the perceived value of variable remuneration. Therefore, in order to continue to attract the best possible staff and maintain the motivation and productivity of existing staff, regulated firms may choose to increase the fixed component of employees' remuneration packages. A higher fixed remuneration would, in part, compensate for the lower net present value of variable pay, while also acting, to some extent, as a certainty equivalent, i.e. a higher guaranteed pay to compensate for the increased riskiness of variable pay. In essence, a higher fixed rate of pay is likely to be the natural response of firms who are looking to add to and retain the quality of their workforce, and limit the risk of losing quality staff to other jurisdictions.

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<sup>23</sup> I.e. the time between when the individual performed well and when he/she actually received the bonus would be so long so as to remove any positive reinforcing effect. This argument is undermined somewhat by the fact that, after the first years after the policy change, individuals would begin to receive a rolling stream of income as bonuses from different time periods vest each year. Although linking particular payments to particular performances would be difficult, so long as their good performance remains steady and they continue to receive deferred remuneration, the length of time before vesting should eventually have little impact on their stream of income in this regard (although the concerns about greater discounting would remain). Further, the updated policy proposal of vesting after 3 years for SMF roles and 1 year for other roles would reduce this negative effect.

<sup>24</sup> PwC (2012) 'Making Executive Pay Work – the Psychology of Incentives'.

However, this change in wage structure could be of detriment to firms because of the rigidities it imposes. Firms which place a larger emphasis on variable remuneration have greater flexibility to adjust their wage bill during an economic downturn. Rather than lay off employees, firms are able to make downward adjustments to variable remuneration to lower their total wage bill and, therefore, maintain profitability through a period of slow economic growth. Firms that offer a higher proportion of fixed pay, in response to the regulatory changes, would not have as much flexibility in adjusting to economic shocks. For these firms, downward adjustments to variable remuneration may not sufficiently reduce the wage bill, and so firms may also need to rely on worker layoffs during periods of slow economic growth. This would be a much less efficient process than simply making downward adjustments to variable remuneration packages. It also imposes the additional costs of staff turnover.

Furthermore, Burke and Terry (2004)<sup>25</sup> find that the potential shift in emphasis to fixed remuneration schemes could increase a firm's breakeven point, which they define as the ratio between total fixed cost, and price less variable cost. An increase in the breakeven point means that there will be an increase in the time taken for a firm to reach profitability, which could, in extremis, increase barriers to entry.

Burke and Terry also find that a greater use of variable remuneration should increase staff motivation (discussed in 4.2.2) and that firms using variable compensation tools should have more predictable and consistent monetary returns, which should lower investors' perceptions of risk and thereby improve investor financing. A shift towards a greater emphasis on fixed pay would undermine this.

A follow up study by Burke and Hsieh (2005)<sup>26</sup>, finds evidence of an inverted-U relationship between firm value and the proportion of total pay that is variable. This is because firms placing too much emphasis on variable pay may find it difficult to attract or retain high quality staff who prefer a larger element of fixed pay. Therefore, the likely impact of the increase in fixed pay remuneration on firm value would depend on the firm's current position on this inverted-U (i.e. the existing balance between fixed and variable remuneration).

A higher proportion of fixed pay may also have the undesired consequence of increasing risk-taking, the very problem the proposals sought to address. Wiseman and Gomez-Mejia (1998)<sup>27</sup> develop a model of internal corporate governance and find that risk bearing is a function of future base pay and anticipated changes to that base pay. Therefore, an increase in future base pay means that a greater proportion of future pay is protected from the threat of loss. This reduces the risk borne by agents, such that agents are more prepared to pursue additional variable pay through riskier strategic decision-making.

Aside from the impact on the relative proportions of variable and fixed remuneration, the **individual accountability policies** may influence the total remuneration firms offer to their employees. In order to compensate individuals for their increased accountability under the new regime, firms may feel that an increase in total remuneration is necessary, or else they run the risk of staff relocating overseas or to other sectors domestically (as discussed in 4.3). The relevant policies in this regard are those discussed in 5.4 to 5.6, as these are the mechanisms which are likely to contribute to a perceived increase in individual accountability.

The extent to which firms may adjust remuneration packages, both in terms of total remuneration and the split between fixed and variable remuneration, is likely to depend on staff type, i.e. SMF, Certified Persons and other relevant persons.

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<sup>25</sup> Burke, L. A. and Terry, B. (2004), 'At the Intersection of Economics and HRM: an Argument for Variable Pay Schemes', *American Business Review*, vol. XXII, pp. 88-92.

<sup>26</sup> Burke, L. A. and Hsieh, C. (2005), 'Optimizing Fixed and Variable Compensation Costs for Employee Productivity', *International Journal of Productivity and Performance Management*, vol. 55(2), pp. 155-162.

<sup>27</sup> Wiseman, R. M. and Gomez-Mejia, L. R. (1998), 'A Behavioural Agency Model of Managerial Risk Taking', *Academy of Management Review*, vol. 23(1), pp. 133-153.

### Evidence from survey

There is a general consensus among firms that individuals would need to be compensated for the policy changes. This excludes credit unions for whom most of the board members are voluntary and, therefore, do not receive a remuneration package. That aside, most other firms attribute the additional need to compensate individuals to the extra accountability and liability these individuals are likely to face under the new policies. The increase in individual accountability is largely attributed to the presumption of senior management responsibility and the statement of responsibilities, as discussed in more detail in 5.4. A large building society also said that the Certified Persons regime could significantly increase remuneration expectations for those individuals who are now subject to a more formal (and annual) certification process.

A smaller portion of firms, emphasised the reduced value of deferred remuneration packages as the rationale for increased compensation. These firms attribute this reduced value of deferred compensation to the proposed changes to deferral or clawback, or a combination of the two, as discussed in more detail in 5.3.

So, whether firms accredit it to the increased accountability under the individual accountability policies or the reduced value of deferred pay under the remuneration policies, there is general agreement that changes to the wage structure would be necessary. One firm pointed out that changes to compensation could be either in the form of higher absolute levels of pay, either variable or fixed, or in the form of a higher proportion of fixed pay. Most firms make reference to increasing the levels of fixed pay, which would be a combination of these two possibilities.

Firm responses also raise the issue that the importance of increased compensation may vary across staff type. A common concern is that individuals in back office roles, such as operational risk, can more readily relocate and apply their skills in other non-financial sectors and, therefore, may have greater bargaining power to increase fixed pay. Another issue emerging from the survey is that if regulatory accountability cascades further down the firm than under the current regime, then less senior individuals may have to be remunerated accordingly. One small firm estimates that a mid-senior manager currently earning between £50,000 and £100,000 per annum would expect at least a £20,000 rise in pay to compensate for the increase in responsibility.

Of particular concern to the large banks and investment firms is their competitiveness in international labour markets, especially as the more senior staff at these firms tend to be very internationally mobile. To remain competitive, one of the large banks surveyed said that an increase in overall levels of remuneration or fixed pay remuneration is a necessity.

Some firms also mentioned that such a shift towards fixed remuneration would increase fixed costs to the industry and, therefore, could increase operational inefficiencies. One respondent said that this change would be beneficial to the extent that it reduces the administrative complexity and regulation associated with variable remuneration, but it would also be of detriment to the firm by making them far less flexible and introducing significant prudential risk. Evidence from our fieldwork suggests that this detriment is likely to outweigh any administrative benefits.

Of all the potential effects on operational efficiencies discussed in 4.2, wage structure received the most attention in the firm-level survey. Most firms, credit unions aside, see a shift towards higher fixed remuneration as a necessary response to the regulation, and there is cause to believe that the required magnitude of such increases may in fact be quite large. Several responses also recognised the trade-off between changes to staff remuneration packages and firms' ability to attract and retain staff. The latter is discussed in more details in 4.3.

#### 4.2.4 Potential impacts of operational inefficiencies

The evidence suggests that operational inefficiencies are most likely to arise because of changes to firms' wage structure and due to more lengthy decision-making processes and, more specifically for large firms, increases in internal monitoring. Significant impacts on staff motivation are perceived as unlikely.

While the majority of small and large firms see a shift towards higher fixed remuneration as being necessary, large firms may be better placed to meet the demands for higher fixed wages. That said, large firms are also likely to be more exposed to the competitive pressures of international labour markets, as their employees are likely to be more mobile internationally. Credit unions could be particularly worse off as, by their very nature, their boards are made up largely of volunteers and so these firms cannot compensate the board for their increased accountability. This should make it harder for credit unions to attract and retain staff, as discussed in 4.3.

The shift to a more fixed wage structure should increase the operating leverage of the firm and, therefore, could make these firms more susceptible to macroeconomic shocks. This may be of particular concern for small firms, as they are less able to benefit from retained earnings and economies of scope, such as cross-subsidisation of product areas, in order to smooth out the impact of economic shocks. As a result, and depending on the extent to which fixed wages rise in response to the FCA's policies, there is a slight possibility that smaller regulated firms will find it more difficult to compete both with the larger firms and the firms not subject to FCA-regulation.

Survey responses suggest that more protracted decision-making processes, increased internal monitoring and other internal control costs are likely in large complex organisations, as individuals look to protect themselves in light of the higher individual accountability. Most firms believe that this would be suboptimal and, therefore, would increase operational inefficiencies. There is a very small possibility that these increased costs could be of detriment to the consumer if passed on as higher prices. It is also widely suggested that delays to the decision-making process could have impacts on innovation, as discussed in 4.4. Increased internal monitoring could, however, increase the likelihood of excessive risk-taking and other misconduct being identified and, in that way, reinforce the intended policy benefits discussed in 5.5.

### 4.3 Labour market effects

The individual accountability and remuneration policies may have undesirable labour market effects for FCA-regulated firms. We have already discussed the potential detriment to the motivation and effort of existing staff in 4.2.2, but the proposals could also limit the ability of firms to attract and retain staff.

When analysing an individual's decision to leave (or to forego applying to) a role, the costs and benefits of this role must be considered. In this context, we focus on the benefits of the role as the remuneration received, and the costs of the role as the risks to which the employee becomes exposed.

#### 4.3.1 Individual accountability policies

Individual accountability policies may reduce the ability of regulated firms to attract and retain staff because individuals may not want to bear the increased likelihood and costs of sanction under the new regime. The key policies in this regard are:

- Criminal offence.
- Presumption of senior management responsibility Statement of responsibilities.

Under the new proposals, individuals in SMF roles would be subject to **criminal offence** proceedings for reckless misconduct in the event of firm failure. Most individuals are likely to perceive the threat of imprisonment as a significantly more severe sanction than existing pecuniary sanctions, such as clawback

and malus. For some individuals the risk of this sanction may not be sufficiently compensated for by their remuneration package and, therefore, it would not be rational for them to remain in (or apply for) SMF roles.

The **presumption of senior management responsibility** and the **statement of responsibilities** may have a similar impact, though it is likely to be to a lesser degree. The presumption of senior management responsibility means that SMFs are effectively ‘guilty until proven innocent’, as the onus is on these individuals to demonstrate that they took the necessary steps to prevent such misconduct arising. Individuals may, therefore, be concerned about their ability to absolve themselves of responsibility and escape the sanctions of the regulator. The statement of responsibilities directly relates to this, as it sets out the responsibilities for which the individual will be subject to this ‘reverse burden of proof’.

### 4.3.2 Remuneration policies

Remuneration policies could also influence firms ability to hire, by reducing the attractiveness of a given variable remuneration package.

- Deferral.
- Clawback.

The reforms to **deferral** policy specify both a delay in vesting of at least three years and a longer deferral period once vesting has begun. This will decrease the net present value of variable remuneration. This is likely to have quite a substantial effect on the perceived value of a variable remuneration package, as a PwC report<sup>28</sup> found that individuals discount future earnings at a very high rate (20 per cent in the UK).

Proposals to extend the period over which **clawback** can be applied and to allow clawback to be applied to the individuals responsible for overseeing junior staff who have caused conduct failures, are likely to increase the uncertainty of the variable remuneration package. This too could have a significant impact on attracting staff, as the PwC report also found a high degree of risk aversion amongst executives (as discussed in 5.3). As the clawback proposals increase the risk of pay, individuals are likely to find the remuneration contracts on offer less attractive.

If we now revisit the idea at the start of 4.3 that a rational individual’s employment decisions are based on that individual weighing up the perceived benefits and costs of the specific role, we can see that the proposed individual accountability and remuneration policies are likely to reinforce one another in making existing employment positions less attractive. The individual accountability policies influence the cost side, by increasing the exposure of employees in the event of misconduct, while the remuneration policies influence the benefit side, by limiting the perceived value of the remuneration package offered.

The potential loss of competitiveness for FCA-regulated firms in labour markets may be particularly problematic in the labour market for SMFs, as these individuals are more internationally mobile, such that FCA-regulated firms may struggle to compete with foreign firms in the financial services sector. Regulated firms may also be susceptible to losing staff in operational roles, e.g. legal and IT, whose skills are transferable to a wide range of other domestic sectors, such as retail and industry. There may also be a loss of competitiveness *vis a vis* branches of EEA firms operating in the UK which are not subject to the remuneration policy proposals. The un-level playing field created by the direct compliance costs is not likely to be significant, but the indirect costs in terms of potential changes to fixed and variable pay and difficulties in retaining staff may exacerbate these. Firms in our sample did not identify a loss of competition with EEA branches as a particular issue — though competitiveness in general with firms not under the scope of the proposals (including international firms and firms in other sectors) was noted.

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<sup>28</sup> PwC (2012) ‘Making Executive Pay Work – the Psychology of Incentives’.

If firms perceive that such effects on staff hiring are likely then they may try to compensate by increasing the basic rate of pay to staff. In this regard, large firms may be better placed to cope than smaller firms, as they will have greater flexibility to adjust the basic rate of pay upwards.

The mechanisms to this point have assumed homogeneity of individuals. However, as well as influencing the ability of firms to hire staff, the policies could also potentially influence the type of staff who are attracted to the roles. The increased regulatory risk could mean that, perversely, less risk-averse individuals are attracted to the roles. This is because less risk-averse individuals would be more willing to take on the increased accountability and uncertainty of reward that prevail under the new regime. If this did occur, it could somewhat blunt the intended effects of the regulatory changes.

### 4.3.3 Evidence from survey

Of the indirect impacts considered, the survey responses suggest that labour market effects are likely to impose the greatest indirect impacts on firms. Firms believe that they will find it more difficult to hire and retain staff under the new regulations. Indeed, one firm recalled that such an effect already occurred with the shift to regulate mortgage advisors, as some individuals were unprepared to take on the additional responsibility and so left the industry. Several of the survey responses emphasise how these labour market effects are dependent on the extent to which firms compensate with adjustments to their wage structures, (discussed in 4.2.3).

Some firms attribute this difficulty to hire and retain staff to the higher individual responsibility and accountability faced, while other firms emphasise the reduced value of deferred income due changes to deferral and clawback policy. Credit unions' primary concern is that the additional individual responsibility and accountability may deter board members, who are mostly unremunerated. Although board members take on responsibility for all business areas, this is done collectively. Due to the voluntary nature of the board, these firms cannot compensate for the additional responsibilities through higher pay, and therefore credit unions believe that volunteers will be fearful of accepting additional, personal responsibility. One credit union said that the new regime does not accommodate for board members who are there because of their local connections, rather than their financial skills or knowledge.

Large banks and investment firms, with international pools of potential employees, believe that they could be particularly vulnerable to the regulatory changes. The commonly held view amongst these firms is that retention and hiring would be hindered as the perceived value and certainty of their remuneration packages falls, given the tougher rules on clawback and the longer deferral period, and the combined 8-10 year period over which deferral and clawback could apply. Some firms also stressed that the individual accountability policies, and in particular the presumption of senior management responsibility, could hinder their ability to attract high calibre candidates to senior roles. One respondent said that their SMFs tend to have control over very large areas such that they cannot prevent all risks and, therefore, the threat of higher individual accountability could deter them from the role. These firms, therefore, believe that the regulatory changes will create an un-level playing field in international labour markets.

Several firms also note the importance of high international labour mobility in underpinning this mechanism. In addition, while firms admit that there could potentially be a reduced quantity of individuals applying to roles, a small number of respondents emphasise that this would not detract from the quality of hires due to the robust internal screening and selection processes.

As well as discussing the overall impact on staff hiring, many responses also cast light on which types of employees the above impacts may be most relevant to. Some firms are concerned about the retention of those employees who tend to be more risk averse (perhaps those in back office operations), because they would be less willing to take on the additional responsibility and, therefore, less attracted to the position. Furthermore, these individuals are often in professional support roles not specific to the finance sector, e.g.

accounting, legal and human resources and, therefore, may find it easier and more attractive to relocate to other UK sectors. This is a concern raised by several firms.

Some respondents also noted that it would be particularly difficult to retain existing non-executive directors, who are not remunerated in the same way as executive directors. As a result, they may not be sufficiently compensated for the additional responsibility, and so may choose to look for management roles, with similar skill requirements, outside the financial services sector. A small number of respondents raised the concern that employees in roles which inherently carry more risk (i.e. where a large proportion of risk is outside employee control) may be unwilling to accept the additional liability in light of their risk exposure and thus start to find the tenure less attractive. The more risk averse the individual, the more likely this is to be the case. Therefore, this could lead to the unintended consequence that positions are taken, on average, by less risk-averse individuals, as they are prepared to take on the additional responsibility. This evidence supports the hypothesis that there could be a potentially perverse impact on the type of individuals attracted.

Aside from staff hiring and retention, our fieldwork also shows a concern that individuals may rationally choose to forego internal promotion (e.g. from a Certified Person function to a Senior Management Function). Policies are expected to reduce the net present value of employee bonuses and increase individual accountability, with the net effect that the improved remuneration package on offer for promotion is unlikely to compensate for the increase in individual accountability in this role. So, not only may firms lose competitiveness in 'external' labour markets, but their 'internal' labour market may operate less efficiently too.

Overall, the survey evidence suggests that the detrimental labour market effects are a key indirect impact of the regulatory proposals. The increased accountability and/or reduced attractiveness of variable remuneration packages are likely to make it harder for firms to attract and retain staff, especially for those firms who are more internationally exposed. Of course, the magnitude of these labour market effects should be intimately linked to changes in the firm's wage structure (discussed in 4.2.3), as this could, to some degree, compensate for the policy impacts of increased accountability and reduced reward.

#### 4.3.4 Potential impacts of decreased ability to attract and retain staff:

The decreased ability to attract and retain staff could create a more uneven playing field between FCA regulated firms and firms in other jurisdictions, both domestically and internationally. It seems that firms may find it particularly difficult to attract and retain staff who occupy professional support roles, non-executive director positions and roles with high-risk exposure. Individuals in these areas may be unprepared to accept the additional accountability and, therefore, may look for roles with similar skill requirements in other sectors domestically. There is also an increased possibility that those in executive Senior Management functions, who are more internationally mobile, may look to relocate to the financial services sector overseas. Therefore, to the extent that firms may find it harder to attract the best talent in these areas, it may affect firms' competitiveness with domestic non-regulated firms and international firms. Failure to attract and retain this talent, and the potential detriment to competitiveness that could arise, may, in the extreme case, hinder innovation.

Another possibility is that, due to the increased accountability, the average individual applying to the role is less risk-averse than under the old regime. This could, to some extent, blunt the intended behavioural benefits of the new regime, as discussed in section 5. This could be of particular concern if individuals with customer exposure are deterred by the extra accountability they must bear and are, therefore, replaced by individuals with lower risk aversion. If this effect is significant then it might subject customers to greater risk and greater likelihood of mis-selling, which would weaken the intended policy effects. That said, the extent to which this occurs should be very limited, as several firms said that, in spite of the potentially reduced pool of applicants, they have systems in place to ensure that the quality of staff hires is maintained.

## 4.4 Product innovation

There are two key dimensions to the impact on product innovation. Firstly, there is the potential for delays in innovation, both in the short-term due to increased regulatory risk associated with a regime change and in the long-term due to behavioural changes stemming from increased individual accountability. Secondly, there is the possibility of innovations being foregone entirely, due to impacts on individual incentives and behaviour. For example, Rothwell (1980)<sup>29</sup> finds evidence of both delays to and foregone innovation as a consequence of changes to regulation in US manufacturing and industry.

The proposals which are likely to have the most significant impacts on product innovation are:

- Statement of responsibilities (reinforced by the provision for the presumption of senior responsibility).
- Rules of conduct.
- Deferral.

The impacts of specific proposals will be referred to in the discussion of delays to and foregone innovation.

### 4.4.1 Delays to innovation

Delays to innovation occur when there is a time delay between when it is rational for a firm to bring an innovation to market and when the firm actually brings the innovation to market. Stewart (1981) argued that, in order to reduce the impact of regulatory change on market innovation, regulators should keep compliance costs and the associated delays as low as possible.<sup>30</sup>

Delays should be particularly common when the FCA proposals are first introduced due to the inherent **regulatory risk**.

In the short-term, delays may be characterised by risk-averse firms performing extra due diligence checks to minimise their risk of misconduct in the face of regulatory uncertainty. Specific examples of uncertainty under the new regime include the lack of case law precedence with regard to the criminal offence for reckless misconduct; uncertainty over how the regulator will treat reported breaches of the rules of conduct; uncertainty over the extent to which SMFs will be held accountable for failures of junior staff and the severity of sanction that will be applied; and uncertainty as to the level of evidence that is required to prove that senior managers took all reasonable steps to avoid a regulatory breach.

Under the current regime, firms have an idea of which due diligence checks would need to be performed in order to comply with the regulation. However, in the early stages of the new regime, additional due diligence checks may be undertaken in order to comply with several possible interpretations of the new proposals. Other firms, either those which are more risk averse and/or those who deem the extra due diligence costs too high, may instead postpone bringing new innovations to market, as they wait for greater regulatory certainty in the future. Ashford, Ayers and Stone (1985) found that the uncertainty associated with regulatory change was responsible for retarding product innovation, and the diffusion of these products, in a number of industries.<sup>31</sup> They argued that regulatory uncertainty can deter innovation, as there are risks that the technology may not ultimately be needed or may be too costly, and therefore firms will continue to rely on existing, low-risk technologies.

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<sup>29</sup> Rothwell, R. (1980), 'The Impact of Regulation on Innovation: some US Data', *Technological Forecasting and Social Change*, vol. 17(1), pp. 7-34.

<sup>30</sup> Stewart, R. B. (1981), 'Regulation, Innovation, and Administrative Law: a Conceptual Framework', *California Law Review*, vol. 69(5), pp. 1256-1377.

<sup>31</sup> Ashford, N. A., Ayers, C., and Stone, R. F. (1985), 'Using Regulation to Change the Market for Innovation', *Harvard Environmental Law Review*, vol. 9(2), pp. 419-466.

Although delays to innovation should fall with time, as a result of legislative and regulatory precedent, delays may nevertheless persist at a higher long-run level than under the old regime (irrespective of regulatory risk). This may be attributable to both the SMF regime policies and the remuneration policies.

SMF regime policies may impose extra delays on innovation because of the greater accountability they place on individuals in SMF roles, both in terms of an increase in the perceived likelihood of sanction and an increase in the perceived cost of sanction. The key policies underpinning these mechanisms are the statement of responsibilities, presumption of senior management responsibility and criminal offence for reckless misconduct, and the interaction between these policies. The impact of these policies on perceived likelihood and costs of sanction is discussed further in 5.4 and 5.6. Greater accountability should give individuals in SMF roles greater incentives to perform additional, and/or more thorough due diligence checks.

The proposed remuneration policies could increase delays to innovation in the long-run, by more closely aligning individual reward with the long-run risks of a given innovation. The increased **deferral** period could be particularly significant in this regard. A delay in the vesting period until at least year three, and a longer deferral period thereafter, allows both the firm and the regulator a longer time period over which to assess the performance of innovations, and impose malus or clawback on variable remuneration if necessary. By extending the deferral period, the regulator can investigate a new product or service's performance over a longer portion of the financial cycle (although it will still fall short of the 16 year, or more, financial cycle estimated by Drehmann *et. al.* (2012)<sup>32</sup>).

As a result, SMFs will be more exposed to the potential downside risks of a given innovation, and should, in turn, be more cautious about which products they endorse. SMFs, therefore, may rationally incur additional costs and time delays before bringing innovations to market, in order to undertake a more thorough assessment of the long-term risks associated with the product. This could include additional and/or more thorough due diligence checks, referral to sub-committees and increased sign-off at various stages along the innovation process (as discussed in 4.2.1). In this sense, it is the impact on individual economic incentives that could delay innovations coming to market.

The **clawback** policy is also likely to work via a similar mechanism to deferral. If clawback is extended beyond the six years after initial vesting then individuals will, once again, be more exposed to the long-run implications of their innovations. As the deferral policy delays the start of the vesting period, and clawback could be applied for a longer period after the initial point of vesting, these policies should complement each other in increasing senior staffs' exposure to the potential downside risks of their innovations. Furthermore, as the tougher clawback rules may include not only those directly responsible for malfeasance, but also those in more senior roles who could be judged indirectly responsible, senior staff should be incentivised to conduct more thorough checks of new product risk assessments carried out by junior staff. This could also increase delays to innovation.

#### 4.4.2 Foregone innovation

While delays to innovation can reduce consumer welfare temporarily, a more significant concern is the possibility of innovation being foregone entirely, provided that the innovation is considered to be beneficial to consumers.

If the behavioural changes induced by the increased likelihood and cost of sanctions and reduced reward for non-compliance under the new regulatory proposals are sufficiently large then there could be reason to believe that some innovations may be foregone entirely. These mechanisms of effect on individual

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<sup>32</sup> Drehmann, M., Borio, C. E. V., and Tsatsaronis, K. (2012), 'Characterising the Financial Cycle: Don't Lose Sight of the Medium Term!', *BIS Working Paper No. 380*.

behaviour and the significance of specific policies in underpinning these mechanisms are discussed in greater detail in the Benefits section.

The FCA's individual accountability and remuneration proposals will reinforce one another in discouraging risky and potentially innovation-inducing behaviour, by increasing both the likelihood and cost of sanction and by decreasing the reward for non-compliance. Under these proposals, individuals, when assessing possible innovative opportunities, will be more concerned with the long-run profitability of such innovations, which are inherently more uncertain. Individuals may, therefore, believe that the increased risk exposure is not sufficiently compensated for by the expected reward, especially as the reward for such behaviour is now lower. As a result, they may no longer be incentivised to take risks that would have been rational to take under the old regime. This should be particularly true for product types where there is greater inherent uncertainty in the forecasts of future profitability. In this way, the policies may influence innovation in certain product areas, or activities, more so than others.

Foregone innovation may also be attributable to a reluctance for collaboration between different departments. Tsai (2001)<sup>33</sup> finds that a business unit's innovative capacity is dependent on the opportunities for shared learning, information exchange and knowledge transfer in intra-organisational networks. However, the greater individual accountability under the new regime may incentivise individuals to focus more on their own personal performance and the performance of their team, and show less interest in areas over which they do not have direct control. This concern is raised in the PCBS report<sup>34</sup>, which says that individuals have often felt more loyalty to their small team than to the wider firm.

The [statement of responsibilities](#) could be particularly detrimental to collaboration as it sets out specific responsibilities for each SMF, against which sanctions can then be imposed. Therefore, the primary concern of SMFs is likely to be ensuring they meet their commitments as defined by the responsibilities map, so as to reduce their exposure to regulatory sanctions. Intra-organisational collaboration, networking and knowledge sharing are likely to suffer as a result.

In a follow up study<sup>35</sup> Tsai also finds that hierarchical structures, where the locus of decision-making is towards the top, has a significant negative effect on knowledge sharing, and by extension, although not explicitly stated, on innovation.

#### 4.4.3 Evidence from the survey

There is some evidence from the survey to suggest that foregone product innovation could occur, although this is the view of a limited number of firms. Most responses do not foresee particular products or activities being more affected than others by the regime change, and that the impacts of increased accountability would be felt across the firm. This is true across the different types of firm, and for both small and large firms. However, a small number of firms suggested that the effect of the increased accountability (under the individual accountability proposals) and reduced reward (under the remuneration proposals) on SMFs could encourage a move towards more 'vanilla' product development and a more 'heads down, don't make mistakes' culture that may inhibit innovation. A similar concern raised was that the changes to remuneration policy may cause individuals to put personal interest ahead of firm interest, which could cause them to hold back on beneficial decision-making and so reduce innovation. In addition, a small firm noted that the changes may undermine their ability to develop bespoke products that allow them to compete against larger firms. However, this would only be the case if there was sufficient uncertainty within the firm about the nature of these products that would cause it to hold back on the development.

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<sup>33</sup> Tsai, W. (2001), 'Knowledge Transfer in Intraorganizational Networks: Effects of Network Position and Absorptive Capacity on Business Unit Innovation and Performance', *Academy of Management Journal*, vol. 44, pp. 996-1004.

<sup>34</sup> 'Changing banking for good', Report of the Parliamentary Commission on Banking Standards, Vol.1, p.49.

<sup>35</sup> Tsai, W. (2002), 'Social Structure of 'Coopetition' Within a Multiunit Organization: Coordination, Competition, and Intraorganizational Knowledge Sharing', *Organization Science*, vol. 13, pp. 179-190.

An important point emerging from the survey is that some firms are undertaking a positive reduction in innovation anyway, independent of the FCA proposals. A large bank mentioned that it is already carrying out such a process in order to provide less complex products and avoid mis-selling to consumers. Therefore, decreases in product innovation, or in certain types of product coming to market, appears to be more dependent on firm's own initiative, rather than the regulatory policy changes.

As discussed in relation to operational inefficiencies, the increased length and detail of decision-making processes may delay and hinder innovation and business development more widely. This was considered to be a risk among the majority of firms in the sample. In this sense, operational inefficiencies and delays to innovation are closely linked.

#### 4.4.4 Potential impacts of reduced product innovation

The survey evidence suggests that the policies could have some detrimental impact on innovation. Delays to innovation will probably incur additional costs for firms and, more importantly, may make it harder for them to capture temporary monopoly profits from first mover advantage in new products (as firms in other jurisdictions can act more quickly). This may be felt disproportionately by smaller firms whose agility has been a competitive advantage against larger firms. That said, increased delays may improve the quality of innovations that come to market, as more testing and product refinement are likely to have been carried out to help reduce potential product risks. As a result, consumers may benefit from safer, less complex products which reduces their exposure to risk, i.e. there is less probability of mis-selling. However, if delays are to some degree unnecessary (say, because a firm has excessive regulatory risk aversion), then this could create temporary losses in consumer welfare by delaying the arrival of beneficial products to market.

With regard to foregone innovation, the general view is that the impact of the FCA's policies will be limited, with some firms suggesting that there is already a trend towards focusing on less complex and safer products, irrespective of regulatory changes. However, some firms anticipate a product narrowing and move towards more vanilla products under the regime. This is because the increased internal monitoring and sign-off processes discussed in 4.2.1 may help those in senior roles to better understand new products and activities, and thereby identify those that may hold unacceptable levels of risk. Like delays to innovation, this too could reduce the probability of consumer harm which, in the past, often resulted from the sale of complex products for which customers did not fully appreciate the risks involved. A focus on less complex products should be beneficial to a large portion of consumers, who do not have the financial skills or knowledge, or simply the time, to evaluate the underlying risks of different products. However, for those customers who are better placed to assess such risks and try to shop around the market for the best deals, foregone innovation could be somewhat detrimental by narrowing the products on offer and so reducing consumer choice. Excessive product homogenisation can be undesirable, because consumers have different characteristics and different risk profiles and, therefore, are likely to desire different products to best suit their needs. Nevertheless, there is a general consensus in the survey that the policy changes are unlikely to affect certain product areas more than others and, hence, it seems unlikely that homogenisation will go so far as to be significantly detrimental to consumer choice. Therefore, the benefits to consumers of reduced product complexity and reduced mis-selling are likely to far outweigh any costs of homogenisation.

A broader concern is the impact of innovation on firm's ability to compete, both domestically and internationally. It is important to appreciate that causality can run in both directions and could be mutually reinforcing, i.e. lower innovation could reduce international competitiveness, which leads to lower retained profits and, therefore, a lack of resources with which to invest in further innovation. However, as the intended expected impacts on innovation are only marginal, such a self-reinforcing cycle is an unrealistic concern.

## 4.5 Regulatory badging

Firms subject to a new regime may benefit from the connotations this has in the eyes of consumers. While the regulatory badge effect is beneficial from a firm's viewpoint, it may paradoxically be detrimental to consumers as firms look to 'hide' behind the beneficial connotations that the badge provides. The extent to which firms can benefit from regulatory badging is dependent on the credibility and robustness of the new regulatory regime.

The new regulatory regime principally addresses issues of individual accountability and remuneration. These are issues which have been at the forefront of debate surrounding the banking crisis, and the subject of much public grievance. Therefore, the change in regulatory framework to address these key issues might significantly increase the value of the regulatory badge.

If the new regime is highly credible and robust, consumers can benefit from the regulatory badge, as they can forego the search costs of assessing firm quality independently. Furthermore, Atkeson, Hellwig and Ordoñez (2012)<sup>36</sup> find that if regulation is visible to consumers, then firms can benefit from regulatory compliance by increased long-run output. This may perhaps reflect the anti-competitive effects of the regulatory badge, whereby firms not included in the new regime could suffer at the expense of firms that are. Of particular importance in this regard are the continuing **certificates of fitness and propriety** that regulated firms must produce. This verifies that appropriate persons have the necessary qualifications, training, competence and personal characteristics to perform their functions to a required regulatory standard. Therefore, individuals in customer facing roles, such as investment and mortgage advisors, who are covered by the certificate of fitness and propriety policy, should be perceived as more credible than individuals who undertake similar roles either independently or in firms not subject to the regulation.

However, the regulatory badge effect can be risky if it significantly reduces consumer due diligence. This problem is exacerbated by the fact that firms are incentivised to 'hide' behind the status of the regulatory badge. Although the regulation solves an existing asymmetric information problem between consumers and firms, it creates a new problem of asymmetric information as the FCA-regulated firms can 'hide' behind the badge. As a result, regulated firms may be more lax about, and/or have less incentive to promote, high standards of conduct internally, as the very fact that they comply with FCA regulation could be what many consumers base their decision on.

### 4.5.1 Evidence from the survey

The consensus among firms is that a beneficial regulatory badge effect is unlikely. When asked to respond on the ways in which the policies may impact the sector more widely (e.g. the impacts on innovation and competitiveness), almost no firm identified the regulatory badge effect. This may be because firms do not see the changes to the existing regulatory regime as sufficient enough to have a large incremental impact on the benefits of being regulated. This may, in turn, give them little extra competitive advantage over non-regulated firms and independent advisors. However, although firms do not expect such benefits, this is not to say that such benefits will not arise, as consumers may now perceive those firms subject to the new regulation as more reliable and thus be more willing to use them. Indeed, some firms do expect public trust to improve as a result of the regime, although they expect this to materialise over a long time frame.

## 4.6 Consumers

The costs to consumers will depend on the extent to which the compliance costs firms incur are passed on to consumers as higher prices. The compliance costs encompass both fixed and variable cost elements.

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<sup>36</sup> Atkeson, A., Hellwig, C., and Ordoñez, G. (2012), 'Optimal Regulation in the Presence of Reputation Concerns', NBER Working Paper No 17898.

Since, in theory, in a competitive market firms must set price equal to the marginal cost of providing the service, this implies that variable compliance costs can be passed on to consumers. Higher fixed compliance costs, on the other hand, must be absorbed by the firm in a competitive market setting.<sup>37</sup>

The pass through rate of variable compliance costs will be determined by the relative price sensitivity of consumers and firms. If consumers are very price sensitive (relative to firms), then a small increase in price could induce a significant reduction in demand. This reduction in demand is likely to offset any gain per unit from the price increase and, therefore, firms are likely to pass through a lower proportion of the variable cost increase. By the same logic, if consumers are less price sensitive than firms then it would be rational for firms to pass through a higher proportion of the variable compliance costs.

The literature in this area suggests that the degree of pass through is likely to increase with the intensity of competition in a market. However, the extent of pass-through may vary by firm, particularly where product markets are more differentiated.<sup>38</sup>

## 4.7 Competition

Competition in the sector may also be affected by policy proposals. In particular, there may be aspects of the regulation that impose disproportionately large costs on small firms relative to large firms (or vice versa), or that will be of detriment to the firms subject to the regulations relative to firms that are not.

As discussed in section 4.2, the survey evidence suggests that firms are likely to respond to the proposed remuneration policies by increasing individuals' fixed remuneration packages. However, such a change is likely to be harder for small firms to undertake, because a higher fixed wage will increase a firm's operating leverage and, therefore, increase susceptibility to macroeconomic shocks. A large firm may be better placed to withstand these shocks through the use of retained earnings or the benefits of economies of scope. Therefore, the higher operating leverage and susceptibility to shocks that are an inherent feature of a larger fixed remuneration structure could disadvantage small firms and potentially act as a barrier to entry for small firms. These effects may be, to some extent, offset by the additional internal monitoring and other internal control costs that will predominantly fall on large firms helping to 'level the playing-field' among the firms subject to the regulation.

The results of the compliance cost chapter, specifically sections 3.3 to 3.5, show that compliance costs as a proportion of annual income are larger for small firms. Therefore, if a high proportion of these compliance costs are passed through to consumers (as discussed in 4.6), then small firms are likely to see a larger reduction in their price competitiveness relative to large firms.<sup>39</sup> Equally, if firms must bear the burden of these additional costs, and not pass them on to consumers, this could also disadvantage small firms compared to their larger competitors.

Section 4.3 discussed the labour market effects of the proposed regulatory changes. The higher individual accountability and lower certainty equivalent, net present value of variable remuneration are likely to make

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<sup>37</sup> While this is true in general, the distinction between costs and the extent to which they are passed on to consumers may vary. For example, the period of time frame over which pricing is considered will affect the categories of costs which would be passed through; the longer the relevant timeframe, the greater the proportion of costs which should be regarded as variable. Where prices refer to a long term contract, all costs that are associated with fulfilment of the contract will be variable costs and can be expected to affect contract pricing decisions, even if those costs will not subsequently vary with the units of output actually delivered under the contract. RBB Economics (2014), "Cost pass-through: theory, measurement, and potential policy implications", A Report prepared for the Office of Fair Trading, February 2014, p. 29.

<sup>38</sup> For a review of the literature in this area see RBB Economics (2014), "Cost pass-through: theory, measurement, and potential policy implications", A Report prepared for the Office of Fair Trading, February 2014.

<sup>39</sup> The extent to which such a loss of competitiveness occurs will depend on the rate of cost pass through, which in turn will depend on the type of compliance costs incurred. If a high proportion of the compliance costs are fixed, then the impact on consumer prices will be limited and, therefore, the competitive effects limited.

it more difficult for firms to attract and retain staff. The survey evidence suggests that this would be particularly true of certain types of employee, namely those who have more cross-transferable skills and those who are more internationally mobile. As a result, the regulatory changes are likely to reduce the labour market competitiveness of the firms subject to the regulations relative to firms that are not (including those in other sectors or overseas). This may be of particular concern for small firms, for whom adjustments to the fixed remuneration structure to help counteract this effect may be more difficult, and even more so for credit unions whose boards are predominantly voluntary.

This loss of competitiveness in labour markets may, to a limited extent, feed through into a loss of competitiveness in product markets, if the former limits firms' ability to attract an appropriate level of talent, or a particular type of employee (such as those who rationally prefer employment in other related sectors or overseas).

Delays to innovation, detailed in 4.4, could also be of detriment to the regulated firms relative to non-regulated firms. A more protracted decision-making process concerning possible innovative products would disadvantage regulated firms wishing to enter new product markets. This effect could be of particular detriment to small firms, who are more reliant on their agility in developing new products/services in order to achieve a competitive advantage.

## 4.8 Summary of main findings

We summarise below the key findings from our analysis of the indirect costs of the proposed new Individual Accountability and Remuneration regimes. This summary highlights the main likely impacts on individual and firm behaviour and provides a basis for the assessment of the benefits of the proposals.

- Operational inefficiencies are likely to increase under the new regulatory regime:
  - Large firms, with complex organisational structures, may increase internal monitoring and control procedures, which could duplicate resources and increase costs. This impact is unlikely to occur across all firms, in particular smaller and simpler organisations. Improvements to internal control procedures could increase the likelihood of risks and misconduct being identified by the firm.
  - Most firms are likely to increase the volume and detail of the records of decisions, and there may be a move towards more collective decision making. This will result in decision-making becoming more formalised, protracted and lengthy. This will increase operational inefficiencies and may cause delays to innovation and wider business development.
  - Detrimental impacts on staff motivation are unlikely.
  - Most firms, credit unions aside, are likely to make adjustments to their wage structure to compensate individuals for the increased accountability and/or reduced reward under the new regime. Changes to wage structure could, to some extent, reduce the beneficial behavioural impacts of the remuneration policies.
- Labour market effects, i.e. the impact on firms' ability to hire and retain staff, are a key concern for firms:
  - Credit unions, with largely voluntary boards used to taking collective responsibility, feel particularly vulnerable to retention issues given the significant increase in personal accountability for these individuals and the fact that they cannot compensate for this effect with more generous remuneration.
  - Large banks and investment firms, who are more exposed to international labour markets, are likely to be at a significant competitive disadvantage *vis a vis* non-UK firms. They may also suffer from an increasingly unlevel playing field *vis a vis* other UK sectors such as retail and industry and lose out on much-valued diversity among board members.

- Detrimental impacts on staff hiring and retention could be most visible among non-executive directors and individuals in operational roles, as their skills are more readily applicable to other sectors.
- There is also concern that increased accountability could mean that the regulatory changes have the perverse effect of attracting individuals more prepared to take risks, which would, to some degree, counteract the behavioural benefits discussed in section 5 below.
- Views on the impacts on product innovation are mixed:
  - There is some evidence that firms may concentrate on less complex products, which could reduce consumer welfare through reduced choice, but a widespread increase in foregone innovation is not considered to be likely.
  - However, there may already be a process of product narrowing and a movement away from complex products in some retail firms, irrespective of regulatory change
  - Delays to innovation are likely, due to regulatory uncertainty, more internal controls and a lengthier decision-making process. This could benefit consumers if this results in a better understanding of the products, but reduce consumer welfare if such delays become excessive and product innovation becomes inefficient.
- A beneficial regulatory badge effect for firms subject to the new regime is unlikely (in the short to medium term at least).
- Costs to consumers will depend on the degree of pass through, which will be determined by the relative price sensitivity of consumers and firms, the structure of the market, the degree of competition and the extent of product differentiation across firms.
- There may also be an impact on firms' competitive position, both between large and small companies, and between firms affected by the regulation and those that are not:
  - Any shift to a greater emphasis on fixed remuneration resulting from the policies would be likely to disadvantage smaller firms, though this may be, to some extent, offset by the additional internal monitoring and other internal control costs that will predominantly fall on large firms.
  - The proportionately higher burden of complying with the policies for small firms may also place them at a disadvantage vis-à-vis their larger competitors.
  - Firms that are subject to the policies may also lose out to those that are not (e.g. international competitors) if it becomes more difficult for the former to attract and retain staff, in particular those who have more cross-transferable skills and are more internationally mobile.
  - Any delays to the delivery of new products that arise from the policies would also place firms subject to the regulations at a competitive disadvantage to those that are not. This is potentially of particular relevance to small firms, who are more reliant on their agility in developing new products/services in order to achieve a competitive advantage.

# 5 Benefits

## 5.1 Introduction

Firm-level non-compliance can be difficult to deter if the sanctions given are not sufficient to deter such behaviour. Evidence presented in the PCBS report shows that firms can include regulatory fines as a cost of business. Even total failure may not be a sufficient deterrent if the losses are diluted through public bailouts. More importantly, the sanctions are not often directed at those responsible for making the non-compliant decisions in the first place. Isolating individual responsibility ensures that those directly responsible for problems are sanctioned. It also provides for a wider range of possible sanctions (such as criminal convictions).

In this section we analyse how the FCA policies on individual accountability and remuneration might address the underlying failures identified in the PCBS to benefit consumers and the market as a whole. We discuss these benefits and the mechanisms through which they would be expected to arise. In each case we outline our hypothesis for each mechanism of effect then discuss the extent to which each mechanism is likely to function in reality based on feedback from our fieldwork.

### 5.1.1 Benefits for consumers

Benefits should arise both from reduced risk-taking behaviour and misconduct of employees in the FCA-regulated firms and by enabling the swifter identification and management of conduct breaches and failures.

Specifically, the FCA's policies are aimed at changing the behaviour of individuals and firms to reduce misconduct and excessive risk-taking by:

- Reducing rewards for non-compliance and excessive risk taking — through stronger provisions on deferrals and clawback.
- Increasing the likelihood of individuals being sanctioned in the event misconduct is identified — achieved by applying the rules of conduct across a wider range of individuals, identifying clear lines of responsibility for business activities, introducing a presumption of senior responsibility, increasing the reporting requirements on firms to the FCA in the event of any misconduct, and increasing the length of time on deferrals.
- Increasing the likelihood of instances of misconduct being identified — through increased accountability at senior level increasing monitoring of more junior staff, applying the rules of conduct to a broader set of staff, requirements to report regularly on instances of misconduct to the FCA (which increases the emphasis on monitoring), continued monitoring of fitness and propriety, and extended periods for deferrals, clawbacks and malus (which allow more time for misconduct to be identified).
- Increasing the burden of sanctions imposed — through longer periods for clawback to occur and malus, introducing a possible criminal offence for SMFs in the event of the failure of the institution, and applying the rules of conduct across a wider range of individuals (which allows the firm and the FCA to sanction these individuals).

The policies may also improve the performance of staff more generally by increasing knowledge about good standards.

We assume that the FCA would be able to implement and monitor the new provisions to the full extent envisaged in their design.

The scale of any benefits in each case will be influenced by the scope of the various provisions, which is dictated by the definition of SMFs, CPs and other relevant persons.

### 5.1.2 Benefits for firms

Aside from the benefits to consumers, firms may also benefit from the introduction of the conditional approval process which should help to facilitate the recruitment process of SMFs, and the restriction of the pre-approval process to the SMF regime which will result in cost savings on current Approved Person applications. Firms may also be expected to benefit more broadly from greater consumer trust in the industry that the new regime could create.

## 5.2 Summary of the underlying causes of failures and detriment

The evidence presented to the Parliamentary Committee on Banking Standards (PCBS) provides a detailed account of the main problems and market failures that the individual accountability and remuneration policies attempt to address. The table below summarises the main failures and problems identified in the report by the PCBS.<sup>40</sup>

**Table 5.1: Summary of key failures and problems**

Conduct failures in the banking standards, including poor practice	<ul style="list-style-type: none"> <li>• Inadequate level of personal accountability attributed to individuals, especially senior managers.</li> <li>• Lack of understanding of senior managers of the 'front line' and ability to hide behind ignorance.</li> <li>• Poor internal governance with inadequate formal checks and balances on individuals' behaviour.</li> <li>• Poor regulatory approach with slow and inadequate responses to prevent or address failure and risks.</li> <li>• Incomplete and unclear application of the Statement of Principles and the associated codes of practice</li> </ul>
Incentives for poor conduct and excessive risk-taking	<ul style="list-style-type: none"> <li>• Remuneration package with bonuses awarded based heavily on short-term performance but not the potential long-term consequences.</li> <li>• Absence of a sense of collective responsibility against individual actions.</li> <li>• Ignorance about product risks and complexity and excessive faith by senior management and regulators in the precision of risk modelling.</li> <li>• Misaligned incentives driven by the performance-based culture and lack of sense of duty to customers</li> </ul>

Source: PCBS report.

The failures identified above can be summarised broadly as 'misconduct', 'poor practice' and 'excessive risk-taking', although there will be overlapping driving factors across each.

The main driving factors behind these failures fall into two main areas:

- Inappropriate behaviour, both on the part of individuals and firms, either carried out deliberately or as a result of misaligned incentives.
- Inadequate identification and management of conduct breaches and failure, both on the part of firms and regulators.

<sup>40</sup> We provide a fuller discussion of these issues in the appendix (see section 7).

For the purposes of our analysis it is useful to examine in more detail the potential motivations of inappropriate behaviour and non-compliance, to enable a more focussed assessment of the benefits of the FCA's policies in addressing failures and detriment.

There is substantial literature on what motivates non-compliance (we use this term generically here to refer to non-compliance with FCA regulations, deliberate misconduct, poor practice and excessive risk-taking). According to this literature, reflected in the seminal work by Becker (1968)<sup>41</sup> intentional non-compliance implies a conscious and rational decision to breach specified regulations. At the most basic level the literature argues that the decision to be non-compliant is based on a trade-off between the potential benefits of non-compliance (or equally, the costs of complying) and the potential cost if caught being non-compliant, adjusted for some measure of the likelihood of being caught (essentially an assessment of the risk). This can be summarised as follows:

- The benefits of non-compliance: the value perceived of undertaking the behaviour, be it profits and remuneration; prestige; etc. An assessment of the likelihood of securing the gains from the non-compliant activity would also be factored into the consideration of the expected benefits. Benefits could also be thought of as forgoing the costs of complying, and could include the time, effort and monetary costs of compliance. The costs of complying would also include the effort required to understand the obligations, such that a more complicated regulatory scheme could be associated with a higher level of non-compliance.
- The likelihood of being caught: the extent to which behaviour is monitored and non-compliance detected.
- The punishment if caught: this could include financial penalties, removal from position or reputational impacts.

More recently, Buccirosi *et. al.* (2009) reinforced this idea of a trade-off arguing that the costs of not complying are greater if the probability of getting caught is high, if the losses on being caught are large and if the probability of errors is low, i.e. regulatory enforcement is robust.<sup>42</sup>

These theories of non-compliance can apply both at the individual and the firm level. At the individual level, for example, the decision might be whether to engage in misconduct such as rigging LIBOR or pushing a consumer to buy an unnecessary product, or excessively risky behaviour, such as authorising a deal or a product that has a high risk of failure (beyond that which the consumer or bank fully understands or accepts). At the more corporate level, non-compliance decisions are likely to be related to the implementation of systems and processes to enable and promote compliance.

It could be argued that the above theories do not apply where individuals are *unintentionally* non-compliant (for example, sales staff being genuinely ignorant of the risks inherent in products they recommend to customers). As no 'optimising' decisions have taken place, the threat of sanction is unlikely to be an effective deterrent.

However, unintentional *individual* non-compliance is likely to be driven by (intentional) firm-level non-compliance. For example, maintaining an appropriate monitoring system over sales staff and providing sufficient training on products to be sold to consumers would reduce the likelihood that unintentional individual non-compliance occurs. Similarly, a senior manager who makes it his business to know what junior staff are doing on the trading floor would limit the possibility of being genuinely unaware of conduct breaches.

The motivations for non-compliance, both clearly intentional and seemingly unintentional, provide a useful framework within which to assess the mechanisms through which the FCA's policies could be expected to

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<sup>41</sup> See: Becker, G. (1968), 'Crime and Punishment: an Economic Approach', *Journal of Political Economy*, vol. 76, No. 2.

<sup>42</sup> Buccirosi, P., Ciari, L., Duso, T., Spagnolo, G., and Vitale, C. (2009), 'Deterrence in Competition Law', *Governance and the Efficiency of Economic Systems (GESY)*, Discussion Paper 285.

secure benefits through reducing non-compliant behaviour. We consider each of these elements in the following sections.

### 5.3 Reduced reward for non-compliance and excessive risk taking

The first mechanism of effect that could lead to a change in behaviour is a reduction in the perceived reward for non-compliance. This is likely to stem primarily from the proposed remuneration policies, in particular the policies on:

- Deferral.
- Clawback.

Assuming individuals are characterised by a positive rate of time preference and risk aversion, a longer minimum deferral period and tougher rules on clawback are likely to reduce the attractiveness of a given variable remuneration package. There is much evidence in the literature to suggest these assumptions are an accurate reflection of senior executive preferences. A recent PwC report<sup>43</sup> shows that the discount rates applied to uncertain future income streams are very large, and far in excess of economic discount rates. Using evidence collected from a cross-country survey of executives, the report finds that deferral of executive remuneration, in Europe, results in a 20 per cent reduction in its perceived value per annum. A study by Pepper, Gore and Crossman (2013)<sup>44</sup> used a series of survey questions to establish senior executives' time preference. They calculated a median annualised discount rate of 18-23 per cent, which they contrast with an annualised accounting discount rate of less than 5 per cent.

This evidence suggests that the [policies on deferral](#) could significantly lower the net present value of a given remuneration package. Engaging in high risk activities which could secure greater profits for the firm and higher levels of variable remuneration for the individual would be less attractive, as the reward to the individual has been eroded away. Using the PwC estimate of a 20 per cent discount rate, the longer minimum deferral period of 5-7 years could have a significant effect on the net present value of a given remuneration package. Under the existing deferral policies, which stipulate a deferral period of 3-5 years and no delay before vesting, the net present value of £1 remuneration, paid evenly across the period, would be in the range of £0.54 to £0.65. However, under the longer 5-7 year deferral period set out in the draft proposals, with vesting delayed until year five, the net present value falls to between £0.22 and £0.18.<sup>45</sup> This represents a significant reduction in an individual's value of the deferred variable remuneration.

The deferral policies reduce the potential upside of a given variable remuneration package and, therefore, may reduce the incentives for excessive risk-taking behaviour.<sup>46</sup>

The deferral policies also extend the period of time over which an individual's variable remuneration is subject to malus in the event that misconduct or failure is linked to the individual. This would increase the uncertainty of receiving the deferred remuneration. The introduction of tougher rules on [clawback](#) are also likely to increase senior managers' perceptions about the uncertainty of their variable remuneration.

The PwC report finds evidence of risk aversion among senior executives. Given the choice between a smaller guaranteed amount of money, and a 50 per cent chance of receiving a sum with a higher expected value, a majority of the respondents chose the former. Since these executives are willing to forego a higher

<sup>43</sup> PwC (2012) 'Making Executive Pay Work – the Psychology of Incentives'.

<sup>44</sup> Pepper, A., Gore, J. and Crossman, A. (2013) 'Are Long-Term Incentive Plans an Effective and Efficient Way of Motivating Senior Executives?', Human Resource Management Journal, vol. 23, No. 1, pp. 36-51.

<sup>45</sup> The final proposals of a longer deferral period of seven years but vesting from year three would result in a net present value of around £0.29.

<sup>46</sup> The impact of the deferral proposals may be somewhat blunted if individuals are able to leave their firm and receive a lump-sum payout of their deferred remuneration from the new firm, as this would effectively 'wipe the slate clean' and remove the incentive to consider risk-taking over a longer period of time.

expected payout to obtain a smaller payout with certainty, this suggests that executives place a value on foregoing risk. The increased uncertainty introduced by the policies could therefore significantly reduce the risk-taking behaviour of executives on a given remuneration package. This behavioural effect may be particularly marked in the UK as the PwC report, which surveys senior executives across 43 countries, found that UK (and Australian) executives are the most risk-averse.

The above dynamics suggest that, under the new policies, individuals should be incentivised to reduce excessive risk-taking and non-compliant behaviour; particularly those individuals who earn a significant portion of their income through variable remuneration. Therefore, these policies are likely to be most relevant to large banks and investment firms, as they tend to offer the larger variable remuneration packages. PwC's finding of high risk aversion among UK executives suggests that the policies could have a notable effect on executive risk-taking and compliance. This may not only be beneficial at the board level, because executive risk-aversion may feed down the levels of responsibility as executives look to reduce their risk exposure. So, as well as potentially having some influence on larger strategic decisions, such as product development, at the top of the firm, the changes may partially feed down to affect the actions of more junior staff, e.g. by reducing mis-selling.

### 5.3.1 Evidence from the survey

The perceived impact of the changes to remuneration policies on individual behaviour varies by firm type. For some firms variable remuneration is not a significant part of their remuneration packages (and deferred variable remuneration even less so) and therefore the proposed policies would have little impact on individual behaviour. This is particularly the case among building societies and smaller banks.<sup>47</sup> Amongst these firms the view was held that individuals do not place a great weight on their bonuses and so, even if these bonuses were reduced or removed, the behavioural impact is unlikely to be significant. Furthermore, variable remuneration is not sufficiently linked to performance or income earned to the extent that individuals would make an explicit link between risky behaviour and potential reward. Overall, therefore, it seems unlikely that the mechanisms discussed above would have much relevance to smaller or simpler banks and building societies.

The evidence among large banks and investment firms is more mixed. Many respondents maintain that the impacts on risk-taking behaviour could be limited, because existing internal remuneration structures already take account of performance criteria, including the level of risk-taking, both at an individual and firm level, when calculating bonuses, rather than simply basing it on the returns the individual generates. If an individual generates significant income but also has taken risks beyond his remit or those specified by the firm's wider risk appetite, then he would not be rewarded. This is linked to the importance of a non-formulaic approach to variable remuneration in incentivising good behaviour that ensures that behaviour is in line with the risk-bearing interests of the firm as a whole, and which does not just consider financial performance. Our fieldwork indicates that there is an industry-wide move towards this approach. It is likely, therefore that the regulatory changes may not add significantly to many firms' existing remuneration structure and so the beneficial impacts on individual incentives in terms of reducing rewards for non-compliance would be limited.

However, many of the large banks and investment firms do emphasise the negative impact the remuneration policies could have on individuals' perception of their variable remuneration, as discussed particularly in section 4.3 on labour market impacts. The policies on deferral and clawback were perceived to lower the value employees place on deferred rewards, which implies that the policies may in fact reduce the link between behaviour (including risky behaviour) and reward in practice even if the firms in the sample maintain that this effect would be unlikely.

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<sup>47</sup> Credit Unions are not subject to the Remuneration Code and thus the policy proposals do not apply to them.

The impact of the extended clawback period may be undermined by the practical difficulties for firms in applying clawback. This was foreseen to be particularly difficult once an individual had left the company. Even when employees are still within the firm it may be difficult to identify the causes of misconduct or a regulatory breach after such a long period of time sufficiently to apply clawback. The individual accountability policies, in particular the statement of responsibilities, would help to identify the individuals involved, although given the complex evolution of many activities and decisions this may still not be possible in all cases. Firms foresee potentially complex legal processes being necessary to recover deferred remuneration, and costly to the point that they would outweigh the benefits of clawback.

Overall, it seems that the reduced reward for non-compliance and risk-taking will have most impact in large banks and investment firms who tend to offer the higher variable remuneration packages. Although their responses do not explicitly suggest an impact on individual compliance and risk-taking behaviour, they do expect the deferral and clawback policies to have a significant impact on the perceived value of deferred remuneration, and so we anticipate greater compliance and lower risk-taking to materialise through the mechanisms discussed above.

An important caveat to this discussion, however, is that this mechanism for reduced reward for non-compliance may be weakened by firms shifting emphasis from variable to fixed remuneration, as discussed in 4.2.3. A lower proportion of income from variable remuneration would mean that the changes to deferral and clawback would have less importance as they would affect a smaller proportion of individuals' remuneration which, in turn, could feed through to a less than expected reduction in non-compliance and excessive risk-taking behaviour. As the majority of firms interviewed said that changes to remuneration structure may be necessary, the effects of deferral and clawback are likely to be more muted than they would have been. That said, firms do place a high importance on deferred variable remuneration as a means of retaining staff. Particularly if firms remain able to cancel deferred remuneration when employees leave, they may still retain an element of variable remuneration even if the proportion of fixed remuneration increases, which should provide some scope for the impact of the remuneration policies to be realised.

## 5.4 Increased likelihood of incurring a sanction if misconduct identified

The increased likelihood of sanction, or the increased probability of being caught, is subjective, as agents may differ in the way that they assess risk. Some may underestimate the likelihood of being caught, while others may overestimate it. Therefore, the impact of an increasing likelihood of sanction on individual compliance depends not only on the actual probability of being caught, but also individuals' perceptions about the probability of being caught. Both the individual accountability and remuneration policies should influence the perceived and actual likelihood of sanction.

The policies likely to be most important in this regard are:

- Presumption of senior management responsibility.
- Statement of responsibilities.
- Rules of conduct.
- Notifying breaches of misconduct.
- Deferrals.

### 5.4.1 SMF regime polices

The **presumption of senior management responsibility** requires the manager responsible for the area of a firm in which there has been a breach of regulatory requirements to prove that he took reasonable steps to prevent the misconduct. This stance, with the onus placed on the SMFs to demonstrate that they

undertook sufficient due diligence checks, could significantly increase their perceptions about the likelihood of sanction in the event of a failure or regulatory breach.

The **statement of responsibilities** is also likely to increase the perceived likelihood of sanction. This proposal requires a clear mapping of all key responsibilities to individual SMFs, with no gaps in these responsibilities, and the understanding that, even when responsibilities are delegated, overall responsibility for a key business function will remain with the designated individual. This will make the FCA better able to hold SMFs to account and impose relevant sanctions. In effect, the statement of responsibilities should reduce the informational asymmetries between firms and the regulator which had previously enabled individuals to claim ignorance and hide behind collective responsibility, such that individuals perceived the regulatory threat as much less credible. This increased likelihood of sanction should raise the expectation of incurring a sanction if misconduct is identified, reducing incentives to engage in non-compliant activities and increasing incentives to ensure that such activities do not occur.

#### 5.4.2 Rules of conduct and notifying breaches of misconduct

The application of the rules of conduct to staff who currently are not subject to them creates the possibility for these individuals to be sanctioned in the event of misconduct or non-compliance in a way that is not possible currently.<sup>48</sup> The small number of high level rules should formalise responsibilities for all staff in an easy to understand way and create a universal, shared understanding in firms of what standards are expected of staff. The rules are relatively qualitative and high-level in nature and thus subject to interpretation and value judgements which should incentivise individuals to act in the spirit of the law. The high-level nature of the rules also enables the FCA to enforce a wider range of good conduct compared to a set of very detailed rules. This may strengthen the credibility of the enforcement deterrent.

This will affect those on those individuals in CP roles who are not currently Approved Persons and already subject to the APR and FCA enforcement, and all relevant persons. The scale of the impact would depend on who is included in these categories and would therefore be subject to the rules. The effect is likely to be weaker if only 'middle management' are classified as relevant persons unless they have specific and direct responsibility for more junior staff such that the application of the rules increases their accountability for non-compliance and misconduct and their responsibility for any misconduct by their staff.

In contrast applying the rules of conduct to all staff in the firm (except ancillary staff) would introduce the scope for all staff to be sanctioned in the event of misconduct.

The proposal to require firms to report **breaches of the conduct rules** may enforce the perception of credible enforcement. This policy will require firms to periodically report rules of conduct breaches by less senior staff to the FCA. The requirement to report all conduct breaches to the regulator should increase the perceived likelihood of sanction among less senior staff.

#### 5.4.3 Remuneration policies

Remuneration proposals may also increase the perceived likelihood of sanction, in particular:

- Deferral.
- Clawback.

**Deferral** is an important feature of variable remuneration schemes because, while bonuses are usually paid to individuals on an annual basis, the profit implications of individual actions may take much longer to

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<sup>48</sup> Although the rules of conduct and breaches of misconduct are likely to have some beneficial impacts on the behaviour of SMFs (i.e. any significant conduct failure involving junior staff would also involve more senior staff, at least through a failure to adequately supervise) and CPs these impacts are likely to be relatively small given that these groups are by and large already subject to rules of conduct under the Approved Person regime.

unravel. The PCBS report<sup>49</sup> considers a deferral period of only three years to be insufficient to take account of the timeframe over which detrimental impacts can arise and the timeframe over which regulators become aware of such misconduct. In addition, Drehmann *et. al.* (2012) undertake a statistical analysis of credit prices and other variables in order to assess the duration of financial cycles. They find evidence that the financial cycle is a medium-term phenomenon, with cycle lengths of 16 years or longer.

An extended deferral period for variable remuneration should allow the impact of senior decision making and risk-taking to be evaluated over a longer portion of the financial cycle. This would increase the probability of the regulator or firm identifying conduct failures and may also allow more time in which to collect evidence and determine the individual(s) responsible for misconduct. This, in turn, could increase individuals' perceived likelihood of sanction and better align the downside risk of their behaviour with the upside risk. Nevertheless, the proposed extension to the deferral period still falls a long way short of Drehmann's estimate of the financial cycle length, which may limit the regulator's ability to evaluate the longer term impacts of individual behaviour.

The impact of the above mechanism would be lessened if individuals' deferred remuneration is cancelled when they leave and they are able to receive a compensating buyout from the next firm. However, this is only likely to really negate the impact of the policy if individuals purposefully undertake risky behaviour with the view to receiving a large bonus which they would then convert into a lump sum by leaving, which does not seem plausible for the majority of individuals.

Changes to the rules on [clawback](#) could also increase the likelihood of sanction by increasing the grounds on which clawback can be used; by increasing the time period over which it can be applied; and by increasing the scope of employees who can be subject to it. Individuals who are subject to these rules will see their deferred remuneration package as more contingent on good long-run conduct, as there are a wider range of circumstances in which variable remuneration can be recouped.<sup>50</sup> This increased contingency of variable remuneration is likely to increase individuals' downside exposure to excessive risk-taking and thereby reduce the incentives for short-termism.

#### 5.4.4 Evidence from the survey

The survey evidence on perceived increased accountability varies significantly. Several of the small firms across credit unions, banks and building societies, believe that the impact on perceived accountability would be limited, with no commensurate change in individual behaviour. This is because individuals already hold significant responsibility and accountability for specific business functions, and they do not expect a need to assign responsibility beyond those who already have it. That said, some of the smaller banks surveyed did expect a significant increase in perceived liability. The same is true of the large firms in our sample, who highlighted that increased personal accountability would affect how decisions were made as individuals would be increasingly cautious about making decisions which could later implicate them in non-compliant outcomes further down the line. This is further evidenced by the large firms' expectations of individual behavioural changes, including increased regulatory compliance, due diligence and monitoring (the latter discussed in 4.2.1).

Whilst, when asked directly, some firms said that individuals may not perceive much additional accountability, many of these firms later said that they would have difficulty in hiring, or promoting, people prepared to accept the level of accountability now associated with these roles. This implies that these firms do foresee an increase in perceived accountability. Such a concern was emphasised by the credit unions, who said that the predominantly voluntary boards and the emphasis on collective responsibility were not compatible with the increased individual accountability. Together this suggests that there could

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<sup>49</sup> 'Changing banking for good', Report of the Parliamentary Commission on Banking Standards, Vol.1, p.50.

<sup>50</sup> 'Changing banking for good', Report of the Parliamentary Commission on Banking Standards, Vol.1, p.50.

be a disproportionately large impact on credit unions, with a largely unremunerated board, relative to large banks and investment firms, where large remuneration packages can be used to help compensate for such changes. Indeed, the evidence in 4.2.3 suggests that most firms, with the exception of credit unions, are likely to increase fixed remuneration as a result of the regulatory changes.

Our fieldwork highlighted that many firms, banks and investment firms in particular, have defined levels of acceptable risk-taking designated to each level of seniority, which are in line with the firm's overall risk appetite. Therefore individuals would only change their behaviour if their individual risk remit was adjusted by the firm. The increased accountability of senior managers may result in a reduction in firms' overall risk appetite which would flow down to individuals' risk remits, if senior managers collectively seek to reduce the scope for downside risks or potentially non-compliant behaviour to occur.

In terms of the most impactful provisions of the senior management regime, the majority of respondents, encompassing all types of firms, emphasised the presumption of senior management responsibility. One firm said that it constituted a significant departure from existing regulation, with another saying that it should focus the minds of those in SMF roles on risks and firm behaviour. This provision is then strongly reinforced by the statement of responsibilities and, to a lesser extent, the criminal offence for reckless misconduct.

There was general agreement among firms that, despite perhaps formalising existing practices, the rules of conduct and the requirement to report breaches would have limited impact on junior staff's perceived accountability. Some firms said that the cost of extending these conduct rules and their lack of proportionality may outweigh any potential benefit. The limited deterrent effect of these policies was, in some cases, attributed to the fact that for most junior staff the FCA is likely to be a rather abstract concept, with individuals having little awareness of regulatory oversight. Increased accountability of more junior staff is expected to largely stem from the discipline imposed by their managers, rather than the threat of regulatory enforcement. As a result, most firms said that perceived accountability among junior staff was more dependent on the quality of management staff and the emphasis they place on the rules of conduct, rather than the rules of conduct in isolation. Several large firms made reference to this, by saying that a wider cultural change would be a top-down driven process, from those in SMF roles to the other employees in the organisation. In some cases, such a cultural change is already said to be taking place, independent of the policies.

Some reference was made to the changes in perceived likelihood of sanction across different types of employee. In particular, a small bank mentioned that those in operations may perceive the changes as a large increase in accountability because they are not accustomed to such responsibility, and may tend to be more risk-averse on average. This idea is also borne out by the common concern among firms that it will be difficult to retain individuals in operations functions, such as legal and human resources, as they look for similar jobs in other sectors (as discussed in 4.3).

With so much variation in what firms currently do, it's not possible to make a clear judgement on the impact on perceived accountability from the survey responses alone. However, the responses do generally support the hypothesis of a perceived increase in individual accountability. Among SMFs, this is predominantly linked to the presumption of senior management responsibility and, to a lesser extent, the statement of responsibilities (although, we must appreciate that these two policies interact). The role of the rules of conduct and notifying breaches of misconduct are deemed to be rather limited, with the perceived accountability of more junior staff largely a product of the discipline imposed on them by their managers.

## 5.5 Increasing the likelihood of instances of misconduct being identified

As well as influencing individuals' behaviour, the FCA's proposals should also allow the FCA to regulate more efficiently, more pro-actively and with greater reach through the swifter identification and management of failures.

The individual accountability policies that are likely to increase supervision and regulatory information are:

- Statement of responsibilities and the presumption of senior responsibility.
- Rules of conduct.
- Notification of breaches of misconduct.
- Remuneration policies.

### 5.5.1 Statement of responsibilities

As discussed above the introduction of the presumption of senior responsibility and the statement of responsibilities is likely to increase accountability of SMFs and thereby increase the likelihood of them being sanctioned in the event that misconduct in their area of responsibility is identified. An increase in the likelihood of sanction for SMFs may incentivise greater internal monitoring of junior staff and more formal decision-making processes as SMFs look to reduce their individual exposure to the actions of other employees. This may in turn increase the likelihood of potential and actual instances of misconduct or regulatory breaches being identified and prevented. It is important that the FCA proposals address individual risk-taking at these lower levels of seniority because past failures have shown that severe consumer detriment can be attributable to the excessive risk-taking behaviour of more junior staff, as in the LIBOR scandal.

This increased monitoring and more considered decision-making could, in turn, reduce the incentives for intentional non-compliance, but also help reduce the frequency of unintentional non-compliance.

The responsibilities map and the increased information to be made available at [pre-approval of SMFs](#) may also allow the FCA to pro-actively identify potential gaps in responsibility so that firms can make the necessary changes before a situation of misconduct and confused responsibility arises. Again this would increase the likelihood of misconduct being identified.

### 5.5.2 Rules of conduct and notification of breaches

The more extensive coverage of the [rules of conduct](#) would increase the scope of regulatory supervision and information, increasing the likelihood that misconduct by staff not currently under the Approved Person regime is identified. The requirement for firms to regularly report on breaches of misconduct to the FCA further increases the emphasis on monitoring.

### 5.5.3 Fitness and propriety

The requirement for firms to report annually on the fitness and propriety of SMFs and certified persons, in principle, increases the monitoring of these individuals. In turn this should improve the firm's ability to identify misconduct. However, since firms already are required to notify the FCA of any change in the fitness and propriety of Approved Persons the effect is likely to be relatively small, especially for those SMFs and certified persons who currently fall within the Approved Person regime.

#### 5.5.4 Remuneration policies

The ability to regulate effectively and the credibility of this regulation are also dependent on the time the regulator has to identify misconduct and on the time necessary to establish who is responsible for this misconduct and hence impose the necessary sanctions. The extended minimum **deferral** period is likely to have this desired effect. This should allow the FCA more time to investigate potential misconduct and, if necessary, build up stronger, more evidence-backed cases which are more likely to hold up in court.

The individual accountability and remuneration proposals could reinforce one another. The individual accountability proposals will give the FCA access to greater information, while the remuneration proposals will give the regulator more time to use this information to identify conduct failures and ensure that the correct individuals are held to account.

There is also likely to be a positive feedback loop from increased supervision and regulatory information to an increase in the perceived likelihood of sanction. If individuals perceive the new regulatory regime as more credible (due to its improved efficacy, its more pro-active stance and/or its greater scope), this could be perceived as an increase in the likelihood of sanction and thereby reduce risk-taking and intentional non-compliance.

#### 5.5.5 Evidence from the survey

There is little survey evidence which speaks directly to the impact of the SMF regime policies on the regulators' ability to identify misconduct. Instead the focus is on how individuals' perceptions of this influence their behaviour, as discussed in section 5.4. Reference to the ability of the regulator to identify misconduct was made by one large bank which said that the SMF regime policies would give the regulator more levers with which to enforce compliance.

An important issue arising from the survey is that the extent of any increase in the likelihood of identifying misconduct depends on the existing structures in place. Some of the smaller firms said that identifying regulatory failure or misconduct is already very straightforward because of their size, and therefore do not anticipate an increased capability to identify misconduct. Larger firms have noted that while it can be easy to identify misconduct where roles are clearly defined (for example sales advisers), identifying those responsible at higher levels of the organisation can be very difficult as many decisions are made collectively by committees. This may suggest some room for improvement under the new regime, and perhaps more so for large firms with complex organisational structures.

As discussed in section 4 respondents to the survey note that it is not always possible to identify activities that may give rise to more risk ahead of time. Firms could reduce their risk-appetite as a whole in an attempt to avoid potentially non-compliant behaviours from occurring. Senior individuals could also engage in more monitoring to help in the identification of risks. Evidence from our survey shows that such increased monitoring of employees, with greater provisions for reporting and sign-off, is unlikely to occur across the board (the most widespread change in this regard was more detailed and protracted decision-making processes). That said, firms that indicated such an increase were the larger and more complex organisations where, arguably, this type of monitoring is more necessary and would be most beneficial.

Firms expect that the impact of the rules of conduct and notification of breaches will be largely insignificant, with most firms instead emphasising the importance of internal disciplinary pressure from managers (as discussed in 5.4.3). However, several firms related this to the fact that junior staff are not usually aware of the rules of conduct. Therefore, firms largely considered the impact of the rules of conduct and notification of breaches by their effect on the perceived likelihood of sanction, while not considering the potential impact on the regulator's ability to actually identify misconduct. Therefore there is still a possibility that such a mechanism of effect exists. In this regard, the (regular) reporting of small breaches

could be useful if it helps the regulator shed light on potential endemic errors or poor ways of treating customers.

The common view among firms, both small and large, is that the certificate of continuous fitness and propriety is likely to have very little impact on individual behaviour in isolation. Nevertheless, some respondents thought that it may provide them with additional levers with which to enforce staff compliance internally. This view is largely consistent with the hypothesis of impacts above, as we expected relatively little impact from the policy, except for an increase in internal monitoring and hence the firm's ability to identify misconduct.

Firms also believe that the remuneration proposals, which will increase the time period the regulator has to identify misconduct, assign responsibility and impose sanctions, will have little impact on individual behaviour. This is largely seen in the survey responses of large banks for whom variable remuneration packages are most important. One large bank believes that individuals are unlikely to evaluate risky decisions on the basis of the number of years it could take to get found. Furthermore, they believe that the five year deferral period currently in place for senior employees provides a sufficient cycle over which to identify problems which could justify the application of malus (whilst many firms in the sample applied a five year deferral policy to the most senior individuals' variable remuneration, others did employ lower limits of four and three years. This view is echoed by another large bank which doubts that a deferral period beyond five years will have much effect on the regulator's ability to discover and attribute misconduct. With whistle-blowing and three-line of defence approach already in place, this firm does not anticipate much effect of an extended deferral period on the likelihood of discovering wrongdoing.<sup>51</sup> The effectiveness of this mechanism will depend on the ability of the regulator to identify conduct breaches over a longer period of time and effectively link them to responsible individuals. The deferral policy may be particularly excessive in the case of small firms for whom problems are likely to come to light much more quickly.

Overall, the evidence in support of the hypotheses of impact discussed above is somewhat limited. The consensus among firms is that neither individual accountability policies nor remuneration policies will have a significant additional impact on the regulator's ability to identify misconduct. That said, the policies are likely to increase the likelihood of identifying misconduct indirectly through the expected increase in internal monitoring and controls discussed in 4.2.1.

## 5.6 Increased costs of sanction

Increased costs of sanctions should reinforce any increase in the likelihood of sanctions being applied and any increase in the likelihood of misconduct being identified, and thereby add further incentive for individuals to behave in an appropriate way.

The proposals that are most likely to increase the perceived costs of sanction are:

- Criminal offence for reckless misconduct.
- Rules of conduct.
- Exceptional government intervention.

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<sup>51</sup> According to a KPMG report (<https://www.kpmg.com/RU/en/IssuesAndInsights/ArticlesPublications/Audit-Committee-Journal/Documents/The-three-lines-of-defence-en.pdf>) the three lines of defence approach is used as a 'means to demonstrate and structure roles, responsibilities and accountabilities for decision making, risk and control to achieve effective governance risk management and assurance'. The three stages are; risk and control in business operations; oversight functions to implement policies and provide guidance and oversight over business processes and risk; and, internal audit and assurance providers to provide independent and objective assurance and consulting.

### 5.6.1 Criminal offence

Under the new regime, SMFs will be subject to criminal offence proceedings for reckless misconduct that results in the failure of the institution. SMFs' liability to criminal prosecution is a significant increase in their potential costs of sanction, over and above any pecuniary costs. This criminal offence provision, in conjunction with the statement of responsibilities which helps the regulator identify the individuals most responsible, should disincentivise excessive risk-taking and non-compliant behaviour by SMFs.

However, the effectiveness of this increased cost of sanction will depend on the extent to which it is possible to prove the various facts required to establish the offence. Its effectiveness is also limited by the fact it applies only to the failure of the institution. There may be many other instances of failures and misconduct that result in significant detriment but which do not amount to the failure of an institution.

### 5.6.2 Certified Person and Relevant Person regimes

The rules of conduct policy increases the sanction to which those individuals not currently under the AP regime would be subject. Under the new regime, the FCA would be able to apply its range of sanctions. However, the extent to which this represents an additional increase in the perceived cost of sanction would depend on the extent to which such individuals can currently be sanctioned by their firm for misconduct (e.g. disciplinary action or losing their job), and the extent to which FCA sanction is perceived to be greater.

### 5.6.3 Exceptional government intervention

The draft exceptional government intervention policy seeks to apply the Remuneration Code, i.e. the provisions on malus and clawback, to *all* discretionary compensation in the event that a FCA-regulated firm receives state aid. The Code would no longer apply only to variable remuneration or bonuses, in order to prevent regulated firms from undermining the policy by increasing other forms of discretionary pay.<sup>52</sup>

In the past, there was a large imbalance between individuals' downside incentives in worst case scenarios relative to their upside incentives in best case scenarios. The implicit taxpayer guarantee was a large contributing factor to this limited downside risk, as taxpayers money was used to bailout failing banks, while employees continued to receive reward for their behaviour in spite of the considerable detriment caused. The exceptional government intervention policy could help to correct for this by increasing individuals' downside liability. This increased contingency of pay could help to ensure that the variable remuneration structure is more closely aligned with the long-term interests of the firm, rather than providing incentives for short-termism. The PCBS believes this is particularly important where individuals predominantly operate as part of a smaller team within the firm, and thus may be more driven by the performance of the team, rather than the firm as a whole.<sup>53</sup>

However, the decrease in short-termism may be, to some extent, undermined by a 'free rider' style problem that may arise. The problem is that, by sanctioning all individuals for institutional failure, individuals could have less incentive to curtail their own risk-taking behaviour, as they may well suffer losses as a result of the misconduct or excessive risk-taking of their colleagues. Nevertheless, if other FCA remuneration proposals, such as deferral and clawback, are effective then the moral hazard problem should be limited because individuals will be more exposed to the costs of their own actions.

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<sup>52</sup> In the final policy proposal the FCA proposes that the Regulators would have an explicit power to render void or cancel all deferred compensation, in respect of all Senior Persons and other licensed staff. This does not include unvested pension rights. This change between the draft and final proposals is unlikely to materially affect our analysis, as both imply a greater risk to individuals' variable remuneration in the event of government intervention.

<sup>53</sup> 'Changing banking for good', Report of the Parliamentary Commission on Banking Standards, Vol. I, p.49

#### 5.6.4 Evidence from the survey

There is some evidence from the survey which emphasises the increased cost of sanction as a significant concern of firms.

Firms made little reference to this mechanism of effect on individual behaviour. Instead most emphasis was placed on the reduced reward for non-compliance and the increased likelihood of sanction, as discussed in 5.3 and 5.4 respectively. That said, some reference was made to the impact of the new criminal offence law for reckless misconduct on the costs of sanction and the behaviour of individuals in SMF roles, and in particular its interaction with the other SMF regime policies, i.e. the presumption of senior management responsibility and the statement of responsibilities. However, there was limited reaction from firms regarding the impact of the rules of conduct or exceptional government intervention on the costs of sanction.

Despite the absence of clear evidence from our fieldwork, the increased cost of sanction interacts closely with the increased likelihood of sanction, although the most significant increase — the criminal offence — would apply only in the most extreme of cases. The *additional* impact of the new regimes over and above the FCA's current powers of sanction is therefore likely to be limited.

### 5.7 Benefits to firms

Aside from the benefits to consumers, firms may also benefit from the introduction of the new regime. In particular, specific policies may, to some extent, influence the efficiency and costs of the staff hiring process. The costs of staff hiring are multifaceted, including the costs of recruitment processes, the costs of training new staff, the costs associated with lost productivity, and the administrative costs associated with new hires. These costs can be significant. Indeed, Bliss (2012)<sup>54</sup> finds that the costs of staff turnover can reach 150 per cent of the employee's annual salary, or as much as 250 per cent in the case of senior managers. Clearly, therefore, the impact on staff hiring costs should not be overlooked.

The impact on the costs of staff hiring should be largely attributable to the following individual accountability policies:

- Pre-approval.
- Conditional approval.

The new regime plans to limit **pre-approval** to SMFs, whereas under the Approved Persons Regime (APR) regime **pre-approval** was required for all APs, which approximately equates to all SMFs and Certified Persons in the new regime. This will, therefore, lead to a significant decrease in the number of individuals requiring pre-approval. The FCA discussion paper on the scope of the SMF and Certified Persons regimes says that the new pre-approval regime would cover 10,000 individuals – a two-thirds reduction from the 31,000 individuals covered by the APR regime. Pre-approval is a required regulatory vetting process that certain staff must go through before a firm can appoint them. This clearly adds time and costs to the staff hiring process. Therefore, a reduction in the number of individuals requiring pre-approval should significantly reduce the time and costs involved in the staff hiring process, specifically for the Certified Persons who were subject to pre-approval under the APR regime. The exclusion of Certified Persons from the pre-approval process is likely to reduce the downtime between outgoing and incoming staff, and thus could reduce the lost productivity costs of the staff hiring process identified by Bliss.

**Conditional approval** is a new policy area which will allow pre-approval to be granted subject to specific conditions being met in the future, e.g. training requirements, or subject to time limitations. Time limited approval could allow firms to take on interim staff to cover SMF roles temporarily, such that the firms have

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<sup>54</sup> Bliss, W. G. (2004), 'Cost of employee turnover', The Advisor. <http://www.isquare.com/turnover.cfm>.

the necessary time to find the most suitable long-term candidate. Similarly, conditional approval subject to training or qualifications could allow firms to hire staff more quickly, without having to wait for them to meet all necessary regulatory requirements from the outset.

Conditional approval should help reduce some of the staff turnover costs identified by Bliss. By speeding up the process of staff turnover, conditional approval should decrease recruitment costs, including the costs of advertising and the costs of employing recruitment staff, and should also help limit the lost productivity costs, by minimising the downtime between outgoing and incoming staff. Furthermore, by reducing the probability of pre-approval not being granted, conditional approval would reduce the likelihood of the recruitment costs referred to above being duplicated.

More generally, firms will benefit from any increase in trust in the industry that arises as a result of the new regime. The regulatory changes undertaken may improve consumer trust in the regulated firms, if the consumers perceive the changes to be effective. In particular, consumers may be more trusting of certified advisors in regulated firms, if they believe that the certification process will reduce the likelihood of consumer mis-selling and excessive consumer risk exposure. This is linked to the regulatory badge effect discussed in 4.5.

### 5.7.1 Evidence from the survey

Very few firms flagged up potential benefits or disbenefits to the staff hiring process of the pre-approval or conditional approval regimes. Only a small number made specific reference to the potential benefits from the reduction in the number of staff subject to pre-approval. However, a small credit union is concerned by the extra requirement of pre-approval that the individual in question fits in with the wider skills of the board. The firm notes that the extent to which it could detrimentally impact on staff hiring will depend on how much the FCA scrutinises applications in line with these skill requirements and requests evidence of such skills.

A large bank mentioned that even under the existing regime pre-approval can take approximately 3 months. As a majority of appointments for this firm are internal hires, who are ready to start sooner than external hires, this delay is an even greater burden. Therefore, if the additional skills requirement further increases the time taken for pre-approval, then the burden for firms, especially those with a large proportion of internal staff hires, could be even greater. However, this firm also noted that the reduced scope of pre-approval, including only those in SMF roles, would generate savings for the firm.

With regard to conditional approval policy, firms cannot see many circumstances where someone who would previously have been refused approval would now be accepted. The implication is that conditional approval is unlikely to have a significant impact on the functioning of pre-approval and, therefore, on the ease with which firms can hire staff.

The small number of firms drawing attention to these mechanisms suggests that the impact of pre-approval and conditional approval will be very limited, especially in the case of the latter. The extent to which pre-approval could have small benefits for the staff hiring process is likely to depend on the benefits of reduced policy scope relative to the increased costs that may result from the additional skills requirement, with the former likely to outweigh the latter.

## 5.8 Quantitative analysis of benefits to consumers

### 5.8.1 Concepts of consumer harm

There are two overarching concepts of consumer harm:

- Ex post consumer loss refers to situations where individual consumers have experienced negative outcomes relative to some benchmark such as expectations or reasonable expectations.
- Structural consumer loss refers to loss of consumer welfare due to market failure or regulatory failure, typically measured as the loss of consumer surplus.

Both concepts of harm have advantages and disadvantages in estimating the actual harm created by misconduct or excessive risk-taking.

Structural harm represents the loss in expected consumer welfare as a result of market inefficiencies created by the misconduct. As such it recognises loss from transactions that would have been advantageous but never take place — which are ignored by approaches that focus on actual outcomes — and it covers the impact on all consumers, and thus automatically recognises that market or regulatory failures typically will not damage all consumers equally, but in fact may work to the advantage of certain people. Moreover, because it is an ex ante concept, it is well-suited to situations in which consumers knowingly take on risk, as it is not dependent on the outcome.

However, the estimation of this form of harm relies on comparing actual market transactions with those that might have arisen in a theoretical situation that by definition has not arisen. This means that it is intrinsically likely to be very difficult to measure with any precision, and estimates are likely to be subject to very wide margins of error.

In contrast, ex post consumer loss focuses on instances in which consumers experience negative outcomes (relative to their expectations or reasonable expectations) following a transaction. Such negative outcomes may take various forms, including financial loss, loss of time, and negative psychological effects. Thus this concept focuses on the “losers”, in contrast to the structural concept which aggregates together outcomes for all consumers — losers and gainers alike. Therefore, even when consumers have been poorly advised, they might still benefit from the purchase. In this case, had matters turned out well, consumers would have gained ex post welfare. The ex post consumer loss concept takes no account of this feature — consumers that happen to do well out of bad advice do not appear in the aggregate calculation as “compensation”.

Also, unlike the first approach, according to this ex post concept of consumer loss we focus on what actually happens after the transaction (“ex post”) as opposed to the structural consumer loss concept which focuses on what is expected to happen at the time of the transaction (“ex ante”) and thus (unlike ex post consumer loss) includes the fact that some valuable transactions may not occur at all.

It should now be clear that ex post consumer loss and structural consumer loss are fundamentally different concepts — neither is a subset of the other.

Quantifying the potential scale of any reduction in consumer harm resulting from the policies would require us to examine in detail the different types of behaviour and in each case estimate the harm that would have arisen. This is clearly not feasible. Rather, here, we consider recent examples of misconduct and estimate the harm associated with them. We then attempt to estimate the likelihood of such events occurring under the new regime. In this way we attempt to establish an approximate scale of the potential benefits of the proposals. We must emphasise, however, time and data limitations mean that this only offers a crude estimate of the scale of any benefits.

## 5.8.2 Types of behaviour trying to dis-incentivise/prevent

There are two main sources of harm to consumers in financial services markets:

- Mis-selling — this is when a consumer is sold a product on the basis of incorrect or mis-leading information, and can arise both from:
  - selling someone a product that they do not need; and/or
  - selling someone a product with a different risk profile than desired.

- Manipulation of market instruments.

The aim of the new policies on individual accountability and remuneration is to reduce the incentives for such behaviour and to enable managers and the authorities to identify and intervene more swiftly when such behaviour does occur.

### 5.8.3 Mis-selling

There have been a number of examples of such behaviour in recent years, including:

- Precipice bonds — thousands of precipice bonds were mis-sold, mainly to retired individuals, between 1999 and 2001.<sup>55</sup> The bonds are linked to a series of complicated financial instruments and very commonly dependent on the performance of the stock market.<sup>56</sup> However, many individuals were sold the bonds without adequate information on the risks of the investment. When the market value of shares dropped significantly, many have lost huge amount of money unexpectedly.
- Endowment mortgages — an endowment is a monthly saving plan, usually invested in shares and property, which was designed to pay off the loan taken out for the home (i.e. mortgage) and was sold to millions of consumers, peaking in the late 1980s. It was a non-transparent product and the associated risks were not made clear to many customers that purchased it.<sup>57</sup> According to the Consumers' Association, more than 5 million people were mis-sold an endowment mortgage without being properly informed on the risks of under-performance (i.e. that it would not cover the full value of their mortgage).<sup>58</sup>
- Card Protection and Identity theft insurances – this type of insurance aims to provide protection to consumers from potential loss due to fraud and identity theft.<sup>59</sup> There are around seven million people who were sold the insurance policy. However, poor practice has been found in which the insurance was packaged as compulsory to the credit products or was sold using high-pressure selling techniques to force consumers to buy the products which were unsuitable for them.
- NHFA investment products — between 2005 and 2010, NHFA (which was acquired by HSBC in 2005) was found to have mis-sold asset-backed investment products and provided inappropriate advice to its customers. The targeted customer group of NHFA was mainly elderly and was particularly vulnerable to poor practice. A third party audit of 421 NHFA customer records had revealed around 87 per cent of the customers were sold products that were not suitable to them.<sup>60</sup> A total of 2,485 or more customers could be the victims of this mis-selling.<sup>61</sup>
- Barclays investment funds — a total of 12,331 customers, many of whom were elderly people, were mis-sold the Aviva's Global Balance Income Fund and Global Cautious Fund by Barclays between 2006 and 2008. The customers often lacked the sophisticated knowledge to understand the risk involved in the investment. Some unsuitable sales were made which exposed customers to an unacceptable level of risks with potential significant impact on their investment.
- Payment protection insurance — Payment Protection Insurance (PPI) enables borrowers to insure the repayment of loans. They are commonly sold alongside credit products and paid through a single or a regular premium that could add up to 56 percent to the amount loaned. According to the Financial

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<sup>55</sup> <http://www.telegraph.co.uk/finance/personalfinance/investing/2922915/FSA-draws-line-under-precipice-debacle.html>.

<sup>56</sup> <http://www.theguardian.com/money/2004/jun/26/bonds.fundsbondstrusts>.

<sup>57</sup> <http://www.moneysavingexpert.com/reclaim/endowments-miss-sold>.

<sup>58</sup> <http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/2828940/Endowment-mis-selling-is-a-national-scandal.html>.

<sup>59</sup> <http://www.telegraph.co.uk/finance/personalfinance/consumertips/banking/10258876/Are-you-one-of-7m-mis-sold-identity-insurance.html>.

<sup>60</sup> <http://www.publications.parliament.uk/pa/jt201213/jtselect/jtpcb/writetv/misselling/sj015.htm>.

<sup>61</sup> <http://www.bbc.co.uk/news/business-16095962>.

Ombudsman Service estimates, there are around £50 billion of PPI policies sold over the past 10 to 15 years.<sup>62</sup> Consumer group CAB found evidence of high pressure selling of unsuitable PPI and unfair policies to consumers in their super-complaint in 2005.<sup>63</sup> In 2005 they found that PPI premiums are three times higher than cost of insurance cover and that the borrowers are overcharged £3 billion per year for PPIs.

- Interest rate swaps — interest rate swaps give the consumer certainty of borrowing cost and reduce the risk of being exposed to high interest rates. The products are complex and are being sold under poor-practice which makes it hard for consumers to understand the product and the risks associated with it. There has been poor disclosure of exit costs, inadequate information of risk, non-advisable sales and sales practices driven by monetary rewards or personal incentives. FSA carried out a further review of a sample of 173 sales to non-sophisticated customers and reported that over 90 per cent of the sales were not compliant with the regulatory requirements.<sup>64</sup> The majority of SMEs have faced great losses.

In each of the above cases, the mis-selling practices can be broadly categorised as follows:

- Poor product design: the nature of the product is mainly profit-driven with unnecessary features that do not promote consumer interests.
- Sale-driven culture: in most cases, consumers were mis-sold unsuitable products or given inappropriate advice in the sales that mis-led their understanding of the performance of the products and the risks involved. Which? has concluded the prevailing sales-based culture where salesmen often have the incentives to boost up short-term sales for bonus has led to a number of mis-selling practices.
- Inadequate corporate governance: various poor selling practices have been used, such as “high-pressure” tactics or force sales where consumers are often mis-led at the point of sale. However, the misleading sales processes had not been corrected or even identified by senior management which implied a serious failure in internal checks and reporting.

### Manipulation of market instruments

Seemingly less common, but equally (if not more) detrimental, than mis-selling is the manipulation of market instruments. There have been recent cases:

- LIBOR fixing — in 2012 the FSA revealed a series of bank manipulations of LIBOR. Individual traders at several banks were able to rig the rate for the bank as a whole to give the wrong impression of the market. This caused trillions of dollars of financial investments being wrongly priced which in turn undermines the investors’ confidence in the system. Regulators in the US, EU and the UK have imposed fines amounting up to more than £3.6 billion for the manipulations.
- Exchange rate (FOREX) fixing — several banks worldwide have been accused of manipulating the exchange rate market by artificially fixing exchange rates. At least 10 UK banks are under investigation and traders have been suspended in the meantime. They are accused of colluding to set benchmark rates at a daily basis over a number of years. This is a massive market where £3 trillion worth of currencies are traded globally each day; hence it could cause great losses to the economy.<sup>65</sup>

<sup>62</sup> <http://www.ft.com/cms/s/0/8310b6ec-8ced-11e3-ad57-00144feab7de.html#axzz33UhOvsOw>.

<sup>63</sup> Citizens Advice Bureau (2005), “Protection racket: CAB evidence on problems with payment protection insurance”.

<sup>64</sup> FSA update, “interest rate hedging products: information about our work and findings”, <http://www.fsa.gov.uk/static/pubs/other/interest-rate-hedging-products.pdf>.

<sup>65</sup> <http://www.bbc.co.uk/news/business-26526905>.

## 5.8.4 Cost associated with such behaviour

### Mis-selling

In cases of mis-selling harm arises both as a result of the ex post loss to consumers mis-sold products which then did not deliver in line with the promises, and the structural loss arising from the impact on consumer confidence and trust in the market which reduces consumer demand for advice resulting in fewer transactions than would otherwise occur. Since it is inherently difficult to assess the loss due to forgone transactions we focus here on the ex post loss experienced by those consumers that were mis-sold the products.

In the case of mis-selling, however, the ex post concept of consumer loss can be seen as broadly capturing the risks that lead to the market distortion measured in the structural concept (though without correctly measuring the size of those market distortions). Thus we might expect that measures that limit the ex post loss caused by mis-selling without imposing too significant regulatory constraints on the market might reasonably be expected to reduce structural loss, also.

We rely on existing estimates of the ex post loss to consumers that has arisen as a result of mis-selling, as set out below:

- Precipice bonds: there was around £7.4 billion invested in the bonds between 1997 and 2004 and the FCA (FSA) has estimated investors could lose up to £5 billion due to mis-selling.<sup>66</sup>
- Endowment mortgages: millions of homeowners have been caught in the endowment mortgage scandal but it is difficult to estimate the total number of mis-sold mortgages as providers do not usually differentiate between endowment mortgages and savings endowments. According to the Association of British Insurers, a total of £450 million of compensation has been paid to over 300,000 people.<sup>67</sup>
- Card Protection and Identity theft insurances: the FCA has concluded that the mis-selling affected around 7 million people. Each of the victims would be compensated an average of £200 for the loss. The total compensation bill to the industry was around £1.3 billion.<sup>68</sup>
- NHFA investment products: HSBC is estimated to set aside £29 million to compensation the loss of the consumers.<sup>69</sup>
- Barclays investment funds: Barclays had been ordered to pay back £60 million to affected customers from the mis-selling of investment funds.<sup>70</sup>
- Payment protection insurance: based on total PPI premiums paid by consumers, Which? estimated that a total of over £40 billion of PPI has been sold to thousands of consumers since 1996.<sup>71</sup> The costs to consumers can arise from the PPI premium and the extra interest payment as result of the additional amount of loan taken to cover the premium. Taking into account all the cost elements, Which? suggested that the total costs to consumers could reach almost £50 billion.

While many PPI policies were mis-sold, not all of them were. In the financial year of 2010/2011, the Financial Ombudsman Service received approximately 100,000 complaints and around 75 per cent of them were upheld in favour of the consumers.<sup>72</sup> We therefore apply an indicative 25 per cent reduction

<sup>66</sup> <http://www.theguardian.com/money/2004/jun/26/bonds.fundsbondstrusts>.

<sup>67</sup> <http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/2828940/Endowment-mis-selling-is-a-national-scandal.html>.

<sup>68</sup> <http://www.telegraph.co.uk/finance/personalfinance/consumertips/banking/10258876/Are-you-one-of-7m-mis-sold-identity-insurance.html>.

<sup>69</sup> <http://www.bbc.co.uk/news/business-16095962>.

<sup>70</sup> <http://www.dailymail.co.uk/news/article-1348405/Barclays-pays-60m-conned-customers-Daily-Mail-campaign-victory.html>.

<sup>71</sup> Written evidence from Which? To the Parliamentary Committee –

<http://www.publications.parliament.uk/pa/jt201213/jtselect/jtpCBS/writev/misselling/sj015.htm>

<sup>72</sup> BBC, “Payment Protection Insurance”, <http://www.bbc.co.uk/programmes/b006mg74/features/ppi-information>

to the total cost estimated by Which? in order to account for PPI policies that were not mis-sold. This equates to an estimate of around £37.5 billion.

- Interest rate swaps: the FCA has reported that at least 60,000 swaps were mis-sold to SMEs.<sup>73</sup> By May 2014, a total of 6,726 claims were made with a total compensation of around £1 billion paid to affected customers.<sup>74</sup> Using the industry estimate on the average compensation of £152,500 per settlement, the total compensation bill can reach around £9.1 billion for all 60,000 mis-sold cases.<sup>75</sup>

We summarise the estimated costs of the mis-selling scandals in the table below.

**Table 5.2: Cost of consumer harm caused by mis-selling practices**

<b>Mis-selling scandals</b>	<b>Estimated loss to consumers</b>
Precipice bonds	£5 billion
Endowment mortgages	£450 million
Card Protection and Identity theft insurances	£1.3 billion
NHFA investment products	£29 million
Barclays investment funds	£60 million
Payment protection insurance	£37.5 billion
Interest rate swaps	£9.1 billion
<b>Total</b>	<b>£53.4 billion</b>

Source: Europe Economics analysis.

As shown in the table above, the total consumer detriment caused by seven major mis-selling scandals in the past 20 years was around £53.4 billion. Assuming the frequency of mis-selling practices is around 7 in every 20 years, this would imply one mis-selling activity every three years at an average cost of £7.6 billion. We estimate that the average costs to consumers would be around £2.5 billion per year. While mean estimation gives an equal weight to all events, it may generate an upward biased figure due to the PPI event which caused a relatively high level of consumer detriment than other events. In the presence of a possible outlier, it may be more suitable to use the median figure which place less emphasis on extreme values. Using the median of the estimated costs of the mis-selling scandals, the annual cost is estimated to be around £0.4 billion. In sum, we estimate that the average costs to consumers could be between £0.4 billion and £2.5 billion per year.

Due to lack of in-depth market information, our estimates are based on high-level assumptions and can only represent an indicative cost to consumer per year. The following factors would need to be considered when interpreting the estimation provided:

- Unreported consumer loss – our analysis focus mainly on compensation that had been paid back to consumers to cover their losses. It does not take into account the number of affected customers who did not claim and receive compensation either because they did not realise they had been mis-sold the products or because they did not suffer any negative outcome. Therefore, the actual consumer harm, including the unreported loss is likely to be higher than the reported amount of compensation.
- Sensitive to time period chosen – we examined the number of major poor selling practices in the past two decades which is an ideal period that allows for economic cycles. However, the frequency of mis-

<sup>73</sup> <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10527353/FCA-chief-warns-Treasury-swaps-scandal-could-be-significantly-bigger.html>.

<sup>74</sup> <http://www.fca.org.uk/static/documents/aggregate-progress.pdf>.

<sup>75</sup> <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10563361/Cost-of-swap-scandal-has-tripled-says-regulator.html>.

selling practice is unlikely to follow a discernible trend and could vary from zero to more than 7 in any twenty years.

- Size of consumer detriment – our estimated annual cost represents an average loss to consumer based on the past 7 major mis-selling practices. As seen from the table above, the size of consumer detriments can be between £29 million and £37.5 billion. It is therefore possible that the average cost will change with the frequency and scale of the mis-selling practices.

### Manipulation of market instruments

As in the case of mis-selling, behaviour that distorts the market will create losses both to individual consumers that purchase affected products, as well as a wider reduction in consumer welfare from distortions to prices and consumer demand for affected products. This welfare impact can reach further if demand and prices for complementary products are also affected. For example, if mortgages are affected, this may have a knock on effect on house prices. Given the nature of the effect on consumers, the structural loss measure is particularly relevant here, any estimate based on ex post consumer loss risks substantially underestimating the harm caused.

### LIBOR fixing

In 2012, the FSA revealed a series of bank manipulations of LIBOR – the London Interbank Offered Rate – which is the average interest rate estimated by major banks for inter-bank borrowing between 2005 and 2009.<sup>76</sup> Disciplinary action has been taken against a number of major banks whose traders were involved in the rate rigging. The LIBOR has a global prevalence<sup>77</sup> and the rate manipulation has led to trillions of dollars' worth of financial instruments being incorrectly priced and has seriously undermined investors' confidence in the financial system. If the market is unable to rely on fundamental measurements to set loan values then this could have further significant impacts for the identification of financial crises.

The rate was generally manipulated downward, as such some retail consumers with mortgages and other loans may have benefitted; on the other hand other hand the inappropriately low interest rates would have negatively impacted interest payments from residential mortgage-backed securities.<sup>78</sup>

Morgan Stanley has estimated that the scandal might impose a negative cost to the industry of between £15 billion and £20 billion, but an accurate figure on the scale of harm is difficult to model due to the complexity and inter-dependence nature of financial transactions.<sup>79</sup> This estimated cost includes the fines to the major banks and potential litigation costs but there could also be long-term impact on the industry. In terms of financial penalties, regulators in the U.S., UK, and EU have imposed fines of more than \$6 billion (approximately £3.6 billion) for the manipulation and have taken criminal actions against several bankers and traders.<sup>80</sup>

However, given the high degree of complexity in assessing the costs to consumers of the LIBOR fixing it is difficult to quantify the loss. As such we do not include this in our estimate of the potential benefits to consumers from the introduction of the policy proposals on accountability and remuneration.

<sup>76</sup> Report of the Parliamentary Commission on Banking Standards, "Changing banking for good", 2013.

<sup>77</sup> For example, around 45 percent of adjustable-rate prime mortgages and 80 percent of adjustable-rate subprime mortgages are based on Libor, while half of variable-rate private student loans are set to Libor. See Alessi and Sergie (2013) 'Understanding the Libor Scandal', Council of Foreign Relations.

<sup>78</sup> These products accounted for around £360 billion in the UK in 2008 alone. See The Guardian 'Does Barclays Libor scandal affect me?' 28 June 2012.

<sup>79</sup> Jon Macaskill (2012), "Libor scandal: counting the cost of the fix", <http://www.euromoney.com/Article/3067441/Libor-scandal-Counting-the-cost-of-the-fix.html>.

<sup>80</sup> <http://www.cfr.org/united-kingdom/understanding-libor-scandal/p28729>.

### Exchange rate fixing

Similar to the LIBOR fixing, the manipulation of FOREX has caused a wide scale of distortion to the financial market. With the investigation still in progress, the level of the harm caused is unknown but it is predicted to be worse and to exceed the cost and severity of the LIBOR scandal.<sup>81</sup>

### 5.8.5 Effectiveness of disincentives created by policies

The policies aim to create disincentives for risk-taking behaviour and misconduct by:

- Reducing rewards for non-compliance and excessive risk taking.
- Increasing the likelihood of individuals being sanctioned in the event misconduct is identified.
- Increasing the likelihood of instances of misconduct being identified.
- Increasing the burden of sanctions imposed.

The effectiveness of the policies will depend on the extent to which they impact on these factors. To assess this we rely on feedback from the structured interviews.<sup>82</sup> Taking into consideration this information, we estimate the likely effectiveness of the proposed regime. We acknowledge that there is a high level of subjectivity in this process and the resulting estimates of the benefits should be considered as illustrative.

#### Individual accountability policies

The individual accountability policies will affect the likelihood of individuals being sanctioned, the likelihood of instances of misconduct being identified, and the burden of the sanctions imposed. In particular the increased accountability under the Senior Management Function is likely to be an important driver of the benefits.

Increasing the likelihood of individuals being sanctioned in the event misconduct is identified, and the cost of such sanction, effectively speaks to individuals' perceptions of individual accountability. The survey evidence on the perceived increased accountability varies a lot. Few firms considered it likely that individuals would *directly* change their behaviour in terms of the levels of risk they engaged with when undertaking activities or making decisions.<sup>83</sup> This was particularly the case for credit unions, which cited the simple, low-risk nature of their products and business models, and the fact that the scope of the SMF regime is unlikely to capture individuals beyond the current board, as reasons for limited behaviour changes relevant to the benefit mechanisms. However, large banks and investment firms did consider it likely that the policies would result in behavioural changes as senior managers sought to ensure they would be protected in the event that misconduct or a regulatory breach was discovered, driven by the statement of responsibilities and the presumption of senior responsibility. Such behaviour includes increased due diligence, monitoring and sign-off processes, as well as more formalised and considered decision-making. These actions are all likely to contribute to an increased likelihood that potential and actual regulatory breaches are identified and prevented.

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<sup>81</sup> <http://www.globalreinsurance.com/how-forex-rigging-scandal-will-cause-a-wave-of-do-insurance-claims/1407604.article>.

<sup>82</sup> We explored the potential to use evidence on the effectiveness of similar policies as benchmarks to assess the likely effectiveness of these policies, principally the introduction of the AP regime and the remuneration code. However, in the absence of any existing analysis of their effectiveness, and the potential for complaints and disciplinary data to be distorted by a number of other factors, such as the financial crisis, other regulatory interventions that coincided with these policy initiatives, we did not feel that this was an appropriate approach to adopt here.

<sup>83</sup> This would only be likely if the overall risk appetite of the firm were to decrease which would then flow down into the individuals' risk remits.

The impact of the policies beyond those related to the senior management function on the behaviour of employees is likely to be limited, with junior staff placing more weight on the disciplinary actions of their employers than of the regulator. However, the increased scope of the regulator over these individuals through the Rules of Conduct will increase the ability to sanction misconduct if it occurs which, over time, may have a deterrent effect on poor behaviour.

As the policies are likely to have the greatest impact on large banks and investment firms (as discussed above, behaviour changes are likely to be greatest among these firms), the overall effectiveness of the policies therefore will depend upon the extent to which the mis-selling activities identified earlier were conducted by large banks and investment firms compared with smaller businesses and credit unions. For the mis-selling scandals, it is not unfair to assume that majority of the harm stemmed from large banks since:

- they represent a large proportion of the market share in the credit market (harm generated by smaller firms, such as credit unions, with low market shares would be on a much smaller scale); and
- the majority of the fines issued targeted big banks (two particular scandals on mis-selling of investment products caused by Barclays and NHFA, which was acquired by HSBC).

Based on this and the fact that the accountability policies appear to be more likely to have an impact on behaviour in the larger banks and investment firms, we conclude that the proposals may reduce the likelihood of future mis-selling.<sup>84</sup>

#### Remuneration policies

The remuneration policies should reinforce the impact of the accountability policies by reducing the rewards for non-compliance and increasing the likelihood that misconduct is identified. In particular the deferral and clawback policies are likely to be important drivers of the benefits.

Evidence from our fieldwork suggests that the remuneration policies are unlikely to have a significant impact on reducing rewards for non-compliance and excessive risk taking for small firms (and credit unions which are not included in the scope). In contrast the impact for large banks and investment firms is likely to be much stronger.<sup>85</sup> This is driven by the longer deferral periods and stricter rules around clawback and, to a lesser extent, the provisions around exceptional government intervention. That said, the effectiveness of the policies may be blunted somewhat if firms move towards greater proportions of fixed versus variable remuneration, as less of individuals' remuneration would be at risk in the event of poor behaviour. Given that firms place a great deal of value on variable remuneration as a means of staff retention it is unlikely that this would be completely done away with and thus the muted effect on the policies may be limited.

The strength of the policies in terms of increasing the likelihood that misconduct is identified by providing longer deferral periods is unlikely to be great, given the difficulties in proving all necessary facts to hold individuals accountable after so many years. Firms do however consider that the policies will increase the likelihood of *sanction* where misconduct is identified.

As the remuneration policies are likely to have the greatest impact on large banks and investment firms, the overall effectiveness again will depend upon the extent to which the mis-selling activities identified earlier were conducted by large banks and investment firms, which we have established in the discussion above.

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<sup>84</sup> We note that the examples of mis-selling illustrated here have already been identified and to some extent dealt with through compensation schemes. This raises the natural question of the benefit of the new policies over and above the existing mechanisms to identify and address such misconduct. However, we assume that the policies would reduce *future* instances of such misconduct.

<sup>85</sup> See section 5.3 - Evidence from survey.

### Effectiveness of the policies

In order to quantify the reduction in consumer harm, and thus the benefits, it is necessary to assign a value to the potential effectiveness of the policies in changing the detrimental behaviour identified in the sections above. This is not straightforward for a number of reasons, notably the uncertainty around the extent to which the policies will in fact change behaviour and the lack of clear evidence of the results of other, similar policy changes.

We reviewed a range of sources to identify comparable interventions associated with improving compliance, focussing where possible on individual compliance where the intervention was aimed at one or more of the elements in our theoretical compliance model (i.e. addressing the reward for non-compliance, the likelihood of sanction and/or the cost of sanction).

**The Public Company Accounting Reform and Investor Protection Act** (otherwise known as the Sarbanes-Oxley Act), was enacted in 2002 in the USA after a series of high-profile corporate scandals involving companies such as Enron and Worldcom. In effect, the Sarbanes-Oxley Act places high level executives (most specifically the CEO and CFO) personally accountable for financials submitted to auditors, investors, and regulators. Each officer must personally sign documents to verify the integrity and ethics of regulatory filings. Executives found with wrongdoing can be tried in criminal courts, introducing a large downside and significant personal responsibility. The Sarbanes-Oxley Act increased criminal penalties for various kinds of financial fraud — maximum prison terms for mail fraud, for example, jumped to 20 years from five years. The Sarbanes-Oxley Act also created a new auditor watchdog, the Public Company Accounting Oversight Board (PCAOB). The Sarbanes-Oxley Act led to a number of changes in affected businesses, including implementing new accounting and reporting systems, increased auditing activity including independent audit committees, and strengthened internal controls. In a survey of affected businesses, 48 per cent noted a positive impact of the Sarbanes-Oxley Act in detecting and preventing fraud.<sup>86</sup> In the aftermath of the Sarbanes-Oxley Act there have been significantly fewer corporate fallouts and it is widely held that the legislation created a sharp deterrent effect on criminal behaviour by public companies.<sup>87 88</sup>

This example provides for increased individual accountability, increased costs of sanction, and increased likelihood of sanction (through the new regulatory board). Key differences to the FCA's regimes considered here are:

- The introduction of a whole new regulatory regime, including a new watchdog organisation.
- A focus on accounting error and fraud, which are arguably easier to measure against a baseline of 'good practice' and thus detect and prevent compared to the more subjective and varied concept of banking risk and misconduct.
- A greater range of new sanctions (i.e. criminal offences for misconduct at a number of levels below outright firm failure).

We therefore consider this example to represent a level of effectiveness significantly beyond that implied by the new regime represented by the FCA's individual accountability policies. That said, the above intervention did not specifically address the reward received for non-compliance which we would expect to increase the relative effectiveness of the combined regimes. Using the results of the business survey quoted above as an indication of effectiveness of the Sarbanes-Oxley Act, we assume a level of effectiveness equal to half that could be applicable to the new regimes represented by the FCA's policies, i.e. that these could result in a *maximum* reduction in harm of around 25 per cent.

<sup>86</sup> United States Securities and Exchange Commission (2009) 'Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements' [http://www.sec.gov/news/studies/2009/sox-404\\_study.pdf](http://www.sec.gov/news/studies/2009/sox-404_study.pdf)

<sup>87</sup> Drawbaugh, K and Aubin, D 'Analysis: A decade on, is Sarbanes-Oxley working?', Reuters July 30 2012 <http://www.reuters.com/article/2012/07/30/us-financial-sarbox-idUSBRE86Q1BY20120730>

<sup>88</sup> Public Company Accounting Oversight Board 'Remarks on The Sarbanes-Oxley Act of 2002: Ten Years Later', 24 September 2012 [http://pcaobus.org/News/Speech/Pages/09242012\\_NYU.aspx](http://pcaobus.org/News/Speech/Pages/09242012_NYU.aspx)

**Economic models of individual tax compliance** highlight the link between enforcement and compliance. For example, Witte and Woodbury (1985) find a significant positive relationship between the probability of auditing (i.e. the likelihood of non-compliance being detected) and individuals' compliance with personal tax laws.<sup>89</sup> Their empirical results find that for a one per cent increase in the probability of audit, voluntary compliance increases by up to 0.2 per cent. Dubin and Wilde (1988) also find deterrent effects of auditing on tax non-compliance.<sup>90</sup>

It is not possible to directly link these estimates to a potential reduction in misconduct and poor performance in the banking sector as a result of the FCAs policies, but they do serve as evidence that an increase in the likelihood of sanction can increase individual compliance.

Using the sources described above and the overall perception of effectiveness from the surveys, we apply an indicative maximum effectiveness of the FCA policies in terms of a reduction in the instances of mis-selling of 25 per cent. Given the lack of quantitative estimates of the effect of similar policies on consumer harm, and the uncertainties surrounding the effectiveness of these policies, this estimate effectiveness should be viewed as purely illustrative. We also apply a more conservative lower bound of 10 per cent, and present the quantitative results below.<sup>91</sup>

### 5.8.6 Expected reduction in consumer harm

To estimate the expected reduction in consumer harm we consider both the cost to consumers from mis-selling activities, and the expected effectiveness of the new regime. This can be represented as follows:

$$\text{Expected benefit} = C \times (E_L; E_U)$$

Where  $C$  is the average annual cost to consumers from mis-selling,  $E_L$  is the lower bound percentage reduction in mis-selling and  $E_U$  is the upper bound percentage reduction in mis-selling that would be expected to occur as a result of the new individual accountability and remuneration policies.

Based on our estimate that the average costs to consumers could be between £0.4 billion and £2.5 billion per year, this implies a reduction in loss of between £0.1 billion and £0.6 billion per year at the upper bound of effectiveness, and a reduction of between £0.04 billion and £0.25 billion per year at the lower bound of effectiveness.

**Table 5.3: Indicative benefits stemming from the individual accountability and remuneration policies**

Estimated effectiveness (%)	Expected reduction in annual loss (£ bn)		
	Low	High	Mid-point
<b>Upper bound - 25%</b>	0.10	0.63	0.36
<b>Lower bound - 10%</b>	0.04	0.25	0.15

Source: Europe Economics estimates.

The quantified benefits are intended to provide a reasonable illustration of the possible effects of the FCA's policies. The uncertainties around the exact impact of the policies on individuals' behaviour and firm outcomes and the lack of quantitative information about the effect of similar policies prevents a more definitive estimation of the benefits.

<sup>89</sup> Witte, A and Woodbury, D., 'The effect of tax laws and tax administration on tax compliance: the case of the U.S. Individual Income Tax', *National Tax Journal*, 38(1), 1985.

<sup>90</sup> Dubin, J and Wilde, L 'An empirical analysis of Federal income tax auditing and compliance', *National Tax Journal*, 41(1) March 1988.

<sup>91</sup> This lower bound of 5 per cent is the same as the lower bound of the effectiveness of the Individual Accountability policies in isolation reported in Europe Economics' CBA on Individual Accountability only. This is because we do not consider that Remuneration policies will have a very material impact in addition to the Accountability policies, and only at the upper bound.

If the benefit is sufficiently high we might also expect the policies to improve confidence and trust in the industry which would reduce the structural harm caused by mis-selling.

## 5.9 Quantification of benefits to firms

The proposed individual accountability regime has removed the pre-approval requirement for approved persons that are not performing senior management functions (SMFs). It has also introduced the possibility of conditional approvals for SMFs. These policies may have the following benefits to firms:

- Direct cost saving from the reduction in pre-approval applications – this is costs saved from making an application to the FCA.
- Indirect cost saving from the reduction in pre-approval applications – this refers to the saving in opportunity costs which a firm would incur from the “waiting period” to transfer an employee to an approved function.
- Direct and indirect savings from the conditional approval – whereby firms can reduce duplication of applications for SMFs who may previously have been refused approval under the current regime, and reduce the opportunity cost of potentially having a role unfilled.

### Direct cost savings from the reduction in pre-approval applications

Between April and September 2013, there were 12,945 applications for approved persons received by the FCA.<sup>92</sup> As this number refers to *all* applications and not just those from firms within the scope of the new RAP<sup>93</sup> regime, we apply the ratio of the total number of approved persons within and without RAP firms as a broad approximation of the proportion of these new applications that would be made by Rap firms (34 per cent).<sup>94</sup>

Approximately 25 per cent of them were for Significant Influence Functions, which we assume would broadly be included under the SMF regime. We therefore assume that 75 per cent of the RAP applications would be eliminated under the new regime.

Based on our desk-based research and findings from the interviews, an application for an Approved Person takes on average around 1.5 days of a compliance officer’s time.<sup>95</sup> The average salary, including overheads, of a compliance officer is around £233 per day. As such, the estimated cost per application is around £350.

This produces an estimated annual saving to firms within new authorised persons regime of approximately £2.3 million.

This saving will not be spread equally across all affected firms. Based on our fieldwork, for many small firms, in particular credit unions, the roles that would be included in the SMF regime (e.g. the board and executive directors) account for all the approved persons in the firm. In this case these firms would not benefit from such savings under the new regime. The savings could be substantial for the larger firms with large populations of Approved Persons who would not be included in the SMF regime.

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<sup>92</sup> We are waiting application numbers for the second half of the year; for the purposes of this analysis we have doubled this 6-monthly figure. See <http://www.fca.org.uk/firms/being-regulated/approved/approved-persons/volumes>

<sup>93</sup> Regime for Authorised Persons.

<sup>94</sup> The total number of unique approved persons is approximately 150,000, and the number of approved persons employed by the RAP firms is approximately 50,000 based on FCA data.

<sup>95</sup> This differs from previous estimates of half a day used in our Consumer Credit work and previous FCA consultations. However, in this case we are measuring a reduction in all activities associated with pre-approval of an Approved Person, not simply the filling out of an application form.

### Indirect savings from the reduction in pre-approval applications

These savings are likely to apply mainly to internal candidates waiting to move into an authorised person role, as externally hired candidates are likely to have a natural notice period which would cover a delay in processing the application. Quantifying these potential savings is not feasible for a number of reasons. As the individual would already be working for the firm the correct measure of the opportunity cost should be the wage differential between the two roles, which is infeasible to estimate across the board given the variety of salaries of approved person roles and of the vast range of other non-authorised roles. It is also unlikely that the delay in processing non-SIF applications would be significant. We therefore do not consider it of value to attempt such an estimation.

### Saving from conditional approval

The policy on conditional approvals is unlikely to result on any notable savings to firms. The hypothesis is that some individuals in SMF roles who might have been refused approval by the FCA due to, say, a lack of qualifications, could be granted conditional approval until such qualifications were achieved. The firm would therefore save on having to re-apply at a later stage. However, feedback from our fieldwork suggests that the number of withdrawn applications is very low across firms and, more importantly, firms do not foresee any clear circumstances where those withdrawn under the current regime could be granted conditional approval under the proposed regime. It is therefore unlikely that this policy would bring notable benefits to firms.

## 6 Summary and Conclusions

### 6.1 Introduction

The Individual Accountability and Remuneration policies proposed by the FCA are intended to address key failings in the banking sector identified by the Parliamentary Committee on Banking Standards.

The policies in relation to individual accountability implement various provisions set out in the Act. The new individual accountability regime provides a clearer allocation of responsibility to senior managers and provides the FCA with stronger powers to sanction senior managers in event of a regulatory breach or bank failure. The regime also extends the scope of regulatory enforcement to cover a larger pool of relevant individuals and introduces formal processes among firms to assess the fitness and propriety of the individuals covered by the regime on an ongoing basis. These features aim to improve the FCA regulatory framework and strengthen its enforcement power.

The FCA has developed policy proposals for changes to the current Remuneration Code to address identified ways in which firms' provision of variable remuneration can contribute to excessive risk taking and misconduct. The policy proposals include a longer deferral time period for variable remuneration combined with later vesting, a longer clawback period, and extensions to the applicability of the Remuneration Code to all forms of discretionary award in times of exceptional government intervention. These policies aim to align more closely the upside and downside risks of decision-making.

The policies on individual accountability apply to deposit-accepting banks, building societies, credit unions and the nine dual PRA/FCA-regulated investment firms. The policies on remuneration apply to the above scope with the exception of credit unions, which are not currently subject to the Remuneration Code.

In this report we estimate the direct costs to firms of complying with the policies and discuss the likely indirect costs arising from the policies. We analyse the way in which the policies may bring about benefits in the form of reducing behaviour associated with misconduct and excessive risk taking, and present an illustrative range of quantified benefits in the form of reductions in harm.

Our analysis is informed by desk-research and a programme of structured interviews with 20 firms across banks and investment firms, building societies and credit unions.

### 6.2 Direct costs to firms of complying with the policies

The policies will result in firms incurring direct compliance costs. These costs vary across the different types of firms affected and are influenced by the extent to which firms already have similar processes in place to those required by the policies. In relation to the individual accountability policies, one-off set up costs are in general significantly greater than ongoing costs, driven by the costs involved in setting up the new accountability regime and training individuals and by the fact that, for some firms at least, the ongoing processes required by the policies are often in line with current procedures which require limited adaptation costs.

Among smaller firms the costs associated with the SMF policies account for the largest share; among large firms these costs are substantial but are outweighed by the costs associated with implementing the Rules of Conduct and Notifying of Breaches in misconduct, as the latter policies are driven to a large extent by employee numbers. Smaller firms are also more likely to be able to adapt flexibly to these policies (i.e. by simple updates or extensions to current procedures) compared with large firms which foresee significant

investments in IT and training to implement the policies across their more complex and arguably rigid organisational structures and systems.

The direct costs of the regime represent a larger share of income for small firms compared to large. Credit unions are particularly impacted, with one-off costs reaching nearly three per cent of sector income.

The remuneration policies are only likely to result in noticeable costs for large banks, investment firms and building societies, as the smaller firms do not have significant variable remuneration provisions in place. The costs will be largely one-off, consisting of updating guidance and policies (including obtaining legal advice).

### 6.3 Indirect costs to firms and wider impacts

The policies will also result in indirect costs to firms.

Operational inefficiencies are likely to increase under the new regulatory regime.

- Large firms, with complex organisational structures, may increase internal monitoring and control procedures, which could duplicate resources and increase costs. This impact is unlikely to occur across all firms, in particular smaller and simpler organisations. Improvements to internal control procedures could increase the likelihood of risks and misconduct being identified by the firm.
- Most firms are likely to increase the volume and detail of the records of decisions, and there may be a move towards more collective decision making. This will result in decision-making becoming more formalised, protracted and lengthy. This will increase operational inefficiencies and may cause delays to innovation and wider business development.
- Detrimental impacts on staff motivation are unlikely.
- Most firms, credit unions aside, are likely to make adjustments to their wage structure to compensate individuals for the increased accountability and/or reduced reward under the new regime. Changes to wage structure could, to some extent, reduce the beneficial behavioural impacts of the remuneration policies.

Labour market effects, i.e. the impact on firms' ability to hire and retain staff, are a key concern for firms.

- Credit unions, with largely voluntary boards used to taking collective responsibility, feel particularly vulnerable to retention issues given the significant increase in personal accountability for these individuals and the fact that they cannot compensate for this effect with more generous remuneration.
- Large banks and investment firms, who are more exposed to international labour markets, are likely to be at a significant competitive disadvantage *vis a vis* non-UK firms. There may also be a loss of competitiveness *vis a vis* branches of EEA firms operating in the UK which are not subject to the remuneration policy proposals. Firms may also suffer from an increasingly unlevel playing field *vis a vis* other UK sectors such as retail and industry and lose out on much-valued diversity among board members.
- Detrimental impacts on staff hiring and retention could be most visible among non-executive directors and individuals in operational roles, as their skills are more readily applicable to other sectors.
- There is also concern that increased accountability could mean that the regulatory changes have the perverse effect of attracting individuals more prepared to take risks, which would, to some degree, counteract the behavioural benefits.
- Views on the impacts on product innovation are mixed:
  - There is some evidence that firms may concentrate on less complex products, which could reduce consumer welfare through reduced choice, but a widespread increase in foregone innovation is not considered to be likely.

- However, there may already be a process of product narrowing and a movement away from complex products in some retail firms, irrespective of regulatory change
- Delays to innovation are likely, due to regulatory uncertainty, more internal controls and a lengthier decision-making process. This could benefit consumers if this results in a better understanding of the products, but reduce consumer welfare if such delays become excessive and product innovation becomes inefficient.
- A beneficial regulatory badge effect for firms subject to the new regime is unlikely (in the short to medium term at least).
- Costs to consumers will depend on the degree of pass through, which will be determined by the relative price sensitivity of consumers and firms, the structure of the market, the degree of competition and the extent of product differentiation across firms.
- There may also be an impact on firms' competitive position, both between large and small companies, and between firms affected by the regulation and those that are not:
  - Any shift to a greater emphasis on fixed remuneration resulting from the policies would be likely to disadvantage smaller firms, though this may be, to some extent, offset by the additional internal monitoring and other internal control costs that will predominantly fall on large firms.
  - The proportionately higher burden of complying with the policies for small firms may also place them at a disadvantage vis-à-vis their larger competitors.
  - Firms that are subject to the policies may also lose out to those that are not (e.g. international competitors) if it becomes more difficult for the former to attract and retain staff, in particular those who have more cross-transferable skills and are more internationally mobile.
  - Any delays to the delivery of new products that arise from the policies would also place firms subject to the regulations at a competitive disadvantage to those that are not. This is potentially of particular relevance to small firms, who are more reliant on their agility in developing new products/services in order to achieve a competitive advantage.

## 6.4 Benefits of the policies

The individual accountability and remuneration policies are likely to bring about beneficial changes in behaviour and reduce non-compliance, misconduct and excessive risk taking, working through the following mechanisms:

- Reducing rewards for non-compliance and excessive risk taking.
- Increasing the likelihood of individuals being sanctioned in the event misconduct is identified.
- Increasing the likelihood of instances of misconduct being identified.
- Increasing the burden of sanctions imposed.

Increasing the likelihood of individuals being sanctioned in the event misconduct is identified, and the cost of such sanction, effectively speaks to individuals' perceptions of individual accountability. The survey evidence on the perceived increased accountability varies a lot. Few firms considered it likely that individuals would *directly* change their behaviour in terms of the levels of risk they engaged with when undertaking activities or making decisions.<sup>96</sup> However, large banks and investment firms did consider it likely that the policies would result in behavioural changes as senior managers sought to ensure they would be protected in the event that misconduct or a regulatory breach was discovered, driven by the statement of responsibilities and the presumption of senior responsibility. Such behaviour includes increased due diligence, monitoring and sign-off processes, as well as more formalised and considered decision-making.

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<sup>96</sup> This would only be likely if the overall risk appetite of the firm were to decrease which would then flow down into the individuals' risk remits.

These actions are all likely to contribute to an increased likelihood that potential and actual regulatory breaches are identified and prevented.

The impact of the policies beyond those related to the senior management function on the behaviour of employees is likely to be limited, with junior staff placing more weight on the disciplinary actions of their employers than of the regulator. However, the increased scope of the regulator over these individuals through the Rules of Conduct will increase the ability to sanction misconduct if it occurs which, over time, may have a deterrent effect on poor behaviour.

The remuneration policies should reinforce the impact of the accountability policies by reducing the rewards for non-compliance and increasing the likelihood that misconduct is identified.

Evidence from our fieldwork suggests that the remuneration policies are unlikely to have a significant impact on reducing rewards for non-compliance and excessive risk taking for small firms (and credit unions which are not included in the scope). In contrast the impact for large banks and investment firms is likely to be much stronger.<sup>97</sup> This is driven by the longer deferral periods and stricter rules around clawback and, to a lesser extent, the provisions around exceptional government intervention. That said, the effectiveness of the policies may be blunted somewhat if firms move towards greater proportions of fixed versus variable remuneration, as less of individuals' remuneration would be at risk in the event of poor behaviour. Given that firms place a great deal of value on variable remuneration as a means of staff retention it is unlikely that this would be completely done away with and thus the muted effect on the policies may be limited.

The strength of the policies in terms of increasing the likelihood that misconduct is identified by providing longer deferral periods is unlikely to be great, given the difficulties in proving all necessary facts to hold individuals accountable after so many years. Firms do however consider that the policies will increase the likelihood of *sanction* where misconduct is identified.

As the remuneration policies are likely to have the greatest impact on large banks and investment firms, the overall effectiveness again will depend upon the extent to which the mis-selling activities identified earlier were conducted by large banks and investment firms, which we have established in the discussion above. Given the strength of the evidence on both the remuneration and the accountability proposals, we consider that the accountability proposals will have a greater impact on individuals' behaviour than the remuneration policies, but that the latter reinforce the former and together the two regimes will positively influence behaviour and outcomes.

Quantifying the benefits of the policies is not straightforward, given uncertainty around the extent to which the policies will in fact change behaviour and the lack of clear evidence of the results of other, similar policy changes. We present an illustrative quantification whereby we estimate the harm caused by a series of mis-selling scandals and apply a percentage reduction in similar, future harm as a result of the policies. Benefits in the form of reduced harm range from £0.04 billion to £0.6 billion per year.

Firms would benefit from the new individual accountability regime in that the processes around applications for Approved Persons would be limited to those in SMF roles. We estimate that this could save the affected firms just over £2 million each year. This would be limited to the larger firms which currently have substantial numbers of Approved Persons who would not be included in the SMF regime.

The share of the wider benefits of the policies is unlikely to be equal across the affected sectors. In particular, the evidence of the role of credit unions in the mis-selling scandals and systemic bank failures which characterise much of the harm referred to in the PCBS report is extremely limited; the same might be said of building societies. The costs of the policies will affect credit unions disproportionately (in terms of a share of annual income). The high compliance costs, combined with the likelihood that credit union

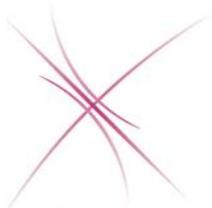
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<sup>97</sup> See section 5.3 - Evidence from survey.

board members may be particularly unwilling to take on the additional personal accountability implied by the regime, may have an impact on the feasibility of some firms to remain in the market.



# Appendices



Europe Economics

# 7 Key Business Functions and Conduct Rules

We include here for completeness the indicative list of key business functions and the draft Conduct Rules that were circulated to firms as background material to the structured interviews.

## 7.1 Indicative list of key business functions

### Key Business Functions<sup>98</sup>

Financial crime (e.g. fraud)

Client Assets

Sales

Marketing

(PCBS said that “Those who ... market products should be held responsible should those products be mis-sold to consumers)

Product development

(i.e. creation of new financial products) (PCBS said that “Those who design ... products should be held responsible should those products be mis-sold to consumers.”)

Customer service

(i.e. dealing with customers or clients after the point of sale, including queries and fulfilment of customer requests)

Customer Complaints Handling

(PCBS said that banks need to be “...motivated to deal with complaints appropriately the first time around.”)

First line quality assurance of sales

Managing customers’ investments (including fund management, advisory or discretionary portfolio management)

Collections and dealing with customers in arrears

Proprietary trading (trading on the firm’s own account, including Treasury management functions)

Financial/investment advice

Trading on behalf of clients

Information Technology

Human Resources/Personnel (e.g. recruitment, training and competence, performance monitoring)

Incentive Schemes – not limited to sales

(PCBS said that “...poorly constructed incentive schemes in retail banking have also hugely distorted behaviour.”)

Disaster Recovery

Underwriting loans

Wholesale activities (e.g. settlement, sponsoring/listings, custody, other middle/back office or non-trading activities)

Market making

Day to day retail banking activities (e.g. payment services, provision of payment cards, person current accounts)

Secured and unsecured credit

Firms specific risks and associated business functions (where not covered above)

<sup>98</sup> These functions are based on the likely functions undertaken in a large bank. Smaller firms or credit unions may not have all of these functions, they may also have additional functions that we need to consider.

## 7.2 Draft conduct rules

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### Expectations of all Relevant Persons

1	You must act with integrity.
2	You must pay due regard to the interests of customers and treat them fairly.
3	You must observe proper standards of market conduct.
4	You must act with due skill, care and diligence.
5	You must be open and cooperative with the FCA, the PRA and other regulators.

### Expectations of Senior Managers

	<i>You must take reasonable steps to ensure that the business of the firm for which you are responsible ...</i>
SM1	...is controlled effectively.
SM2	...complies with the relevant requirements and standards of the regulatory system.
SM3	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee this effectively.
SM4	You must take reasonable steps to ensure that any breach of the firm's regulatory obligations of which you are aware is being appropriately addressed.
SM5	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

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## 8 Overview of the Main Failures

### 8.1 Introduction

The evidence presented to the Parliamentary Committee on Banking Standards (PCBS) provides a detailed account of the main problems and market failures that the individual accountability and remuneration policies attempt to address. The table below summarises the main failures and problems identified in the report by the PCBS.

**Table 8.1: Summary of key failures and problems**

<p>Conduct failures in the banking standards, including poor practice</p>	<ul style="list-style-type: none"> <li>• Inadequate level of personal accountability attributed to individuals, especially senior managers.</li> <li>• Lack of understanding of senior managers of the ‘front line’ and ability to hide behind ignorance.</li> <li>• Poor internal governance with inadequate formal checks and balances on individuals’ behaviour.</li> <li>• Poor regulatory approach with slow and inadequate responses to prevent or address failure and risks.</li> <li>• Incomplete and unclear application of the Statement of Principles and the associated codes of practice</li> </ul>
<p>Incentives for poor conduct and excessive risk-taking</p>	<ul style="list-style-type: none"> <li>• Remuneration package with bonuses awarded based heavily on short-term performance but not the potential long-term consequences.</li> <li>• Absence of a sense of collective responsibility against individual actions.</li> <li>• Ignorance about product risks and complexity and excessive faith by senior management and regulators in the precision of risk modelling.</li> <li>• Misaligned incentives driven by the performance-based culture and lack of sense of duty to customers</li> </ul>

Source: PCBS report.

The main driving factors identified above fall into two main areas:

- Inappropriate behaviour, both on the part of individuals and firms, either carried out deliberately or as a result of misaligned incentives.
- Inadequate identification and management of conduct breaches and failure, both on the part of firms and regulators.

We now assess in more detail the mechanisms of effect through which the driving factors outlined in the table above lead to different types of failures. These failures can be summarised broadly as ‘misconduct’, ‘poor practice’ and ‘excessive risk-taking’, although there will be overlapping driving factors across each. We draw out how each main failure might result in structural detriment and personal consumer loss. Examples of different types of problems are presented as case studies.

### 8.2 Misconduct

Professional misconduct refers to improper and unacceptable behaviours which can be driven by personal greed or other personal rewards rather than the interests of customers. This includes reckless behaviours, dishonest actions and manipulation of information.

Misconduct can potentially be carried out by all types of staff. Although it is characterised by *deliberate* poor behaviour, the effects of misconduct can be exacerbated, perhaps unintentionally, by poor governance and a lack of individual accountability.<sup>99</sup> For example, evidence received by the PCBS highlighted that the complex organisational structure of large banks often means that senior executives are unable to effectively supervise actions made further down the chain of delegation, and that this leads to confusion around the lines of responsibility and a dilution of accountability. The Centre for the Study of Financial Innovation raised concerns to the PCBS that even formal risk management frameworks, such as the ‘three lines of defence’, were being adopted as a “box-ticking” exercise in which each line completed the check based on assumption of compliance of the risk takers without adequate judgement.

A lack of understanding of senior managers of the front line, coupled with little individual accountability, can also mean that managers do not ensure that they are aware of the actions of other employees and that misconduct goes unnoticed and unaddressed.

Poor internal governance in firms can be considered as another driving factor behind problems arising from misconduct. There are examples of misconduct that had lasted for many years, causing wide-scale detriment, before they were identified and corrected. As reported by the PCBS, for example, three major banks, Barclays, UBS and RBS have been implicated in the LIBOR manipulations but the senior management in all three cases claimed to be unaware of the misconduct of its junior staff.<sup>100</sup> The prolonged absence of adequate internal governance could lead to unnecessary consumer detriment that could have been corrected if the misconduct was addressed at an earlier stage.

Complex structures and a lack of clear lines of responsibility can also hamper the adequate and effective use of the enforcement powers (e.g. fines and penalties, public censure, banning from the industry) in cases of misconduct as it can be difficult to identify those holding final responsibility for the behaviour or for identifying and addressing the behaviour.<sup>101</sup> This in turn can result in limited incentives for senior managers to enforce high standards of conduct and compliance among staff, and ensure that they themselves are aware of and understand what happens at the ‘front line’.

Misconduct can lead to a number of problems for consumers and the market such as fraud, market manipulation and mis-selling (to the extent that it is deliberate). Both personal loss and structural detriment could arise, depending on the scale and nature of the misconduct. For instance, market manipulations are likely to be characterised to a greater extent by structural detriment, as these impair the operation and structure of the market and result in sub-optimal market outcomes and losses from gains from trade. For example, as shown in the case study below, the LIBOR fixing scandal resulted in the mispricing of financial instruments on a vast scale, which led to huge losses and had wider implications for market confidence. In this case personal consumer loss could be relatively low, as the rate was often manipulated downwards and thus retail consumers may have benefited from cheaper mortgages (particularly sub-prime and buy-to-let mortgages), and credit cards and other loans. This highlights the importance of considering both structural detriment and personal consumer loss when assessing the harm caused by market failures.

#### **Case study: the LIBOR fixing scandal**

In 2012, the FSA revealed a series of bank manipulations of LIBOR – the London Interbank Offered Rate – which is the average interest rate estimated by major banks for inter-bank borrowing between 2005 and 2009.<sup>102</sup> Disciplinary action has been taken against a number of major banks whose traders were involved

<sup>99</sup> F. Burns (2003), “U.S. corporate governance: What went wrong and can it be fixed?”.

<sup>100</sup> Report of the Parliamentary Commission on Banking Standards, “Changing banking for good”, 2013.

<sup>101</sup> For example, the consumer group Which? observed to the PCBS that no enforcement action had been taken against individual senior executives of the PPI mis-selling scandal.

<sup>102</sup> Report of the Parliamentary Commission on Banking Standards, “Changing banking for good”, 2013.

in the rate rigging. The LIBOR has a global prevalence<sup>103</sup> and the rate manipulation has led to trillions of dollars' worth of financial instruments being incorrectly priced and has seriously undermined investors' confidence in the financial system. If the market is unable to rely on fundamental measurements to set loan values then this could have further significant impacts for the identification of financial crises. The scandal has revealed the failures in banking control structures against misconduct and poor conduct of practices.

Personal consumer loss is difficult to measure: as the rate was generally manipulated downward some retail consumers with mortgages and other loans may have benefitted; on the other hand the inappropriately low interest rates would have negatively impacted interest payments from residential mortgage-backed securities.<sup>104</sup> Aggregate estimates of the impact on economies may include a consideration of structural detriment, for example if compensation and fines demanded of implicated banks are based on an indication of total harm caused. Morgan Stanley has estimated that the scandal might impose a negative cost to the economy of between £15 billion and £20 billion, but an accurate figure on the scale of harm is difficult to model due to the complexity and inter-dependence nature of financial transactions.<sup>105</sup> This estimated cost includes the fines to the major banks and potential litigation costs but there could also be long-term impact on the industry. In terms of financial penalties, regulators in the U.S., UK, and EU have imposed fines of more than \$6 billion (approximately £3.6 billion) for the manipulation and have taken criminal actions against several bankers and traders.<sup>106</sup>

#### Associated driving factors

The LIBOR scandal has been identified as a case of serious collective misconduct in the banking industry. Individuals used false LIBOR submissions for personal gains and in most cases have been held to account. However, such actions were not identified by corporate governance and allowed to last for a number of years. Individuals responsible for *these* failures have not been held to account. As highlighted in the PCBS report, the senior executives of three major banks that have been fined by FCA denied knowledge of the actions of their staff. This ignorance and collective decision-making shows a lack of individual accountability to address conduct failures.

### 8.3 Excessive risk-taking

Firms in the banking sector face a wide variety of risks both in terms of the nature of the risk and its level. For example, there are risks associated with the development of products, with investment decisions and with the growth of the business. Risk-taking can be beneficial to the development of the industry and can promote innovation. However, excessive risk taking can result in financial losses to consumers<sup>107</sup> and losses to banks that destabilise the financial system. Whilst there is no absolute definition of 'excessive' or 'improper' risk, we consider this to reflect decisions where the potential benefits of the risk are not accurately or sufficiently weighed up against the potential costs. Excessive risk-taking where consumers are concerned would also cover instances where the firm understands the risk (of, say, a certain product) but this is not adequately communicated to the consumers to enable him to make his own assessment of the costs and benefits of taking on that risk.

<sup>103</sup> For example, around 45 percent of adjustable-rate prime mortgages and 80 percent of adjustable-rate subprime mortgages are based on Libor, while half of variable-rate private student loans are set to Libor. See Alessi and Sergie (2013) 'Understanding the Libor Scandal', Council of Foreign Relations.

<sup>104</sup> These products accounted for around £360 billion in the UK in 2008 alone. See The Guardian 'Does Barclays Libor scandal affect me?' 28 June 2012.

<sup>105</sup> Jon Macaskill (2012), "Libor scandal: counting the cost of the fix", <http://www.euromoney.com/Article/3067441/Libor-scandal-Counting-the-cost-of-the-fix.html>

<sup>106</sup> <http://www.cfr.org/united-kingdom/understanding-libor-scandal/p28729>

<sup>107</sup> It is important to note that it is appropriate for consumers to face risks that they understand, as risk is associated with higher returns. However, excessive risk-taking by firms whereby consumers are not aware of nor compensated for risks is not appropriate and can lead to consumer harm.

Misaligned incentives can result in an individual or group placing more weight on the potential benefits of a risky decision than on the costs. Such misaligned incentives could arise from remuneration that is focussed too much on upside risk and not enough on downside risk; or from externalities compounded by a lack of individual accountability where those taking a decision will not suffer the (full) potential negative consequences of that decision.

In particular, the compensation structures employed in major banks have been highlighted as failing to combat incentives to take on excessive risks. Remuneration packages with bonuses based heavily on short-term performance but not the potential long-term consequences has led to asymmetry between rewards for short-term success and costs of long-term failure for individuals, contributing to poor prudential standards.<sup>108</sup>

Individuals and firms may also not be aware of the extent of risk or of the potential negative consequences. A driving factor in this regard is the complexity of models used in banks which has led to misplaced confidence in the performance and risks of investment activities. This is supported by a study by Kregel (2008) that argues that the statistical methods used in credit assessment has dramatically undervalued and mispriced risks.<sup>109</sup> The PCBS report highlighted that senior management can have “excessive faith” in the application of such models, without adequate checks or understanding of the accuracy and limitation of the models. This ignorance is exacerbated by an overreliance on mathematical models, and a lack of individual accountability that might incentivise individuals to reduce their levels of ignorance (e.g. by trying to understand the models and other important activities).

Improper risk taking can lead to a range of problems and implications for consumer detriment. *Ex post* personal loss is likely to represent a significant element of detriment arising from excessive risk taking. For example personal loss may be experienced by consumers if the returns from a product are subject to a greater level of downside risk than they were led to understand by the seller and willing to accept. Personal loss may also arise from bank failures or losses that are driven by poorly understood downside risk and involve consumer funds. Detriment may also be structural in nature if excessive risk-taking behaviour distorts the normal functioning of the market.

The example of the mis-selling of interest rate swaps speaks largely to *ex post* consumer loss, as discussed in more detail below.

#### **Case study: interest rate swap mis-selling**

An interest rate swap is a financial derivative instrument designed to manage potential risk exposure to interest rates movements. The two parties of the contract agree to exchange interest rate cash flows against the fixed base rate, i.e. if interest rates go up, the buyer would be compensated. A swap can be sold in conjunction with a floating rate loan which would in turn give a business a fixed rate of interest. A swap contract can protect consumers from an increase in interest rates and give them greater degree of certainty over their borrowing costs; but can also expose consumers to potential payment in the event that interest rates fall below the base rate. There are different types of interest rate swaps and the complexity of the product varies subject to different terms and conditions, such as termination and duration of the contract.<sup>110</sup>

Interest-rate swaps were often combined with loans to small and medium-sized enterprises (SMEs). This cross-selling practice was very common and has accounted for the majority of transactions with SMEs. The PCBS found that these financial products were sold without sufficient explanation to customers of the risks

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<sup>108</sup> S.Bhattacharyya et al. (2011), “Risk-taking by banks: what did we know and when did we know it?”, AFA 2012 Chicago Meetings paper.

<sup>109</sup> J.Kregel (2008), “Minsky’s cushions of safety: systemic risk and the crisis in the U.S. subprime mortgage market.”.

<sup>110</sup> Report of the Parliamentary Commission on Banking Standards, “Changing banking for good”, 2013

involved if interest rates fell below the base rate. With the economic downturn and record low interest rates, SMEs suffered significant losses as a result of having to make extra payments on the swaps.

As with many examples of problems in the banking sector, the mis-selling of interest rate swaps covers a range of failures including what we identify as misconduct and poor practice, as well as excessive risk taking. In addition to the complexity of the products and lack of information which made it difficult for SMEs to understand the risks inherent in purchasing these products, the FSA identified other poor sales practices, including:<sup>111</sup>

- Poor disclosure of exit costs.
- Non-advised sales (in which consumers are given objective information to make their own decision) had strayed into advice.
- Unsuitable products being sold to customers that did not match the underlying loans.
- Sale practices that were driven by monetary rewards or personal incentives rather than the interests of the customers.

FSA carried out a further review of a sample of 173 sales to non-sophisticated customers and reported that over 90 per cent of the sales were not compliant with the regulatory requirements. The FSA has taken steps to address the consumer detriment caused by the mis-selling of swaps. This includes establishing fundamental principle of redress assessment which must be fair and reasonable for individual customers. According to FCA data, a total of 1,040 mis-selling cases had been reported by January 2014 and the average size of settlement was around £152,500 per claim (a significant increase from £50,000 in 2013).<sup>112</sup> The number total number of mis-sold interest rate swap agreements could stand at around 28,000.<sup>113</sup> A number of major bankshave already put aside around £3 billion to cover the cost of paying compensation and the administrative cost associated with the redress process.

#### Associated driving factors

The failure of corporate governance in addressing poor practice and non-compliance is considered by the PCBS as a primary driving factor of this failure. The remuneration of individuals and levels of senior accountability have also failed to correct the misaligned incentives in cross-selling the interest-rate swaps products to SMEs.

The failure could also have been exacerbated by a lack of understanding and undervaluing on the part of firms of the risks associated with the products. Interest rate swaps are complicated hedging products which require sophisticated knowledge to manage but senior managers who may lack such knowledge may be persuaded by employees within their chain of command that the products are “customer friendly”.<sup>114</sup>

As highlighted in the U.S Financial Crisis Inquiry Commission’s report, the breakdown in corporate governance and failures in financial regulation can be concluded as the key driving factors that caused the financial crisis of 2007/2008.<sup>115</sup> The report found a fundamental change in the banking model – one that was based increasingly on risky activities that produced large profits, but accompanied by governance breakdowns and irresponsibility. A number of examples have been provided to show the ignorance of senior executives in monitoring the risk of their activities effectively. For instance, the senior management of AIG failed to conduct adequate risk assessment of the company’s \$79 billion derivatives exposure to mortgage-related securities which eventually led to substantial losses. There have also been evidences

<sup>111</sup> FSA update, “interest rate hedging products: information about our work and findings”, <http://www.fsa.gov.uk/static/pubs/other/interest-rate-hedging-products.pdf>

<sup>112</sup> <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10563361/Cost-of-swap-scandal-has-tripled-says-regulator.html>

<sup>113</sup> [http://www.stephensons.co.uk/site/businesses/srvdefending/interest\\_rate\\_swap\\_hedging/](http://www.stephensons.co.uk/site/businesses/srvdefending/interest_rate_swap_hedging/)

<sup>114</sup> <http://www.telegraph.co.uk/finance/rate-swap-scandal/9283247/Major-failures-surround-banks-interest-rate-swap-scandal.html>

<sup>115</sup> Financial Crisis Inquiry Commission, “The financial crisis inquiry report”, 2011.

found on poor internal governance with inadequate formal checks and balances on individual decisions in the EU banking industry. As quoted from the PCBS report, the banking culture has often been characterised by a lack of collective responsibility to protect the reputation of the industry and consumers' interests.

## 8.4 Poor practice

For the purposes of this analysis we define poor practice as commercial activities that do not protect and promote consumer welfare but are driven by other interests. We apply this concept more broadly than deliberate misconduct as described above to cover behaviour that, although it may be deliberate, is not necessarily intended to cause harm. Poor practice can arise from poor standards of internal activities like a lack of adequate internal controls, failures in risk assessment or risk management, or insufficient conduct training for staff which can affect the quality of services offered to consumers. Where individuals responsible for these failures are not held to account and systems changed accordingly, instances of poor practice can continue from one case to another.

Poor practice can also be driven by mis-aligned incentives. Evidence presented to the PCBS found that the remuneration of bankers can be closely linked their financial performance for the firm rather than their compliant behaviour or long-term interests of their customers. For instance, salesmen at major banks could be rewarded six times as much personal commission for selling a loan with PPI as compared to selling a loan without PPI. It has been argued by Citizen Advice that incentives to mis-sell PPI products were promoted in return for profits for the firm.

The mis-selling of products which are not suitable for consumers is a key example of poor practice, although we acknowledge that the mis-selling of certain products can also be driven by excessive risk taking and even deliberate misconduct. The case study below on the mis-selling of payment protection insurance (PPI) provides an example of poor practice, although as noted there are overlaps in terms of other driving factors.

Personal consumer loss is likely to be a significant type of detriment rising from mis-selling, particularly if consumers expend time and resources complaining and seeking redress. Personal consumer loss could also arise from consumers paying more than they would have had they fully understood the product they were sold (e.g. if they had fully understood the risks associated with the product or the value/necessity of the product). Structural detriment would occur if, for example, demand for such products fell as a result of consumers taking account of the risk of being mis-sold to (indeed, this lack of trust could affect demand for other products resulting in even wider structural detriment). Both the price paid and the quantity consumed could fall, reducing consumer surplus and producer surplus compared to a situation with no mis-selling.

### **Case study: mis-selling of PPI**

Payment protection insurance (PPI), also known as credit insurance, is an insurance product that enables borrowers to insure their repayment of loans in the event that their financial and personal circumstances deteriorating. PPI was commonly sold alongside credit products and this cross-selling practice helped to make up for loss-leading credit product sales or deliver further profits to the banks. Consumers usually paid for PPI through either a single or a regular premium which could add up to 56 per cent of the loan amount. According to the Financial Ombudsman Service estimates, around £50 billion of PPI policies were sold over the past 10 to 15 years.<sup>116</sup>

However, evidence has been found of wide-spread mis-selling practices of PPI products. The Citizen's Advice Bureau presented a super-complaint in 2005 in which it reported that high-pressure selling

<sup>116</sup> <http://www.ft.com/cms/s/0/8310b6ec-8ced-11e3-ad57-00144feab7de.html#axzz33UhOvsOw>

techniques and unfair practices were used to force consumers to buy the products which were unsuitable for them and at times even unaffordable.<sup>117</sup> Subsequent market reviews conducted by the FSA and other regulators confirmed widespread poor sales practices and inadequate compliance standards.

Common mis-selling practices found by Which? included misleading consumers to purchase PPI products on the incorrect basis that it was compulsory, and selling products that did not suit the consumers' circumstances.<sup>118</sup> Consumers were also told that the approval rate of their loan would be affected if they were not covered by PPI products. In other poor practices, PPI was packaged as a product associated with the main credit product and consumers may not have even noticed that they were paying for it.

In addition to PPI being sold to consumers who did not need it, the mis-selling included a lack of information on the nature of the product itself. Although PPI can be a useful product in protecting consumers from a risk of indebtedness, the high rejection rate of claims has failed many consumers. Like any other insurance product PPI has exclusion policies and does not cover all types of circumstances and vulnerable borrowers. A survey by the Citizen's Advice Bureau in 2001 found that the percentage of unsuccessful claims was around 85 per cent which was in sharp contrast to the 85 per cent success rate claimed by the industry. Further, the high cost of PPI which is often paid in the form of a one-off premium has increased the financial burden of consumers. Lenders would also treat this as an additional opportunity to advise consumers to take out extra loan to cover the costs.

As estimated by the Citizen's Advice Bureau in 2005, PPI premiums were about three times higher than the costs to firms of providing the insurance cover, which suggested that borrowers could have been over-charged by as much as £3 billion per year for PPI products.<sup>119</sup> The mis-selling of PPI has developed into the biggest financial mis-selling scandal in recent years and has resulted in extensive losses to consumers and has significantly damaged public confidence in the banking industry.

The mis-selling of PPI demonstrates how banks can exploit information asymmetries between them and their customers to their advantages.<sup>120</sup> Consumers are often not fully aware of the costs and implications of the products that are sold to them. Even if information is provided, they can be in the form of small print and consumers can be bombarded with information which may be as detrimental as not providing enough information to them.

To address the consumer detriment caused by the mis-selling, FSA took over regulation of PPI in 2005 and the Competition Commission recommended a ban on single premium PPI and a prohibition on banks selling PPI alongside credit products which were came into force in April 2012.<sup>121</sup> The FSA also published Policy Statement 10/12 which formally states the approach which firms should take to assess the PPI complaints with adequate redress. Various major banks have made a large number of payments to consumers affected by the mis-selling of PPI. By February 2014, the total industry compensation bill had reached around £20 billion.<sup>122</sup>

### Key underlying driving factors

One of the key driving factors of the mis-selling scandal identified was the inadequate internal governance of banks involved which has failed to combat misaligned incentives in PPI selling and to address the poor practices. According to the PCBS report, despite large volumes of complaints made by individual consumers and consumer groups, the limited number of whistle-blowing by internal employees reflect the

<sup>117</sup> Citizens Advice Bureau (2005), "Protection racket: CAB evidence on problems with payment protection insurance".

<sup>118</sup> <http://www.which.co.uk/news/2011/05/top-five-ppi-mis-selling-tactics-253105/>

<sup>119</sup> Citizens Advice Bureau (2005), "Protection racket: CAB evidence on problems with payment protection insurance".

<sup>120</sup> Report of the Parliamentary Commission on Banking Standards, "Changing banking for good", 2013.

<sup>121</sup> Report of the Parliamentary Commission on Banking Standards, "Changing banking for good", 2013.

<sup>122</sup> <http://www.ft.com/cms/s/0/8310b6ec-8ced-11e3-ad57-00144feab7de.html#axzz33UhOvsOw#>

ineffective reporting and checks procedure in the banking industry. Senior executives were found to have failed to provide adequate supervision of the actions of more junior staff but also provided incentives for them to sell products that were not in the interests of consumers.

## 9 Approach to Extrapolating Compliance Costs

In this section we describe in more detail our approach to extrapolating the costs estimated in our compliance cost model to the wider sectors.

To recap, average fixed costs across the large and small firms in our sample are multiplied up by the number of large / small firms in the sector. Variable costs for large and small firms, as a percentage of annual income, are multiplied up by the share of sector income implied by the large / small split.

### 9.1 Banks

Data from the FCA indicate that around 160 banks and investment firms would be affected by the new individual accountability regime. This excludes non-EEA firms operating in the UK. The remuneration policies include non-EEA branches and therefore the number of firms in scope is around 240.

We use data from the Bank of England (BoE) to estimate the annual income of the firms covered by the new regimes.<sup>123</sup> (Some income data was available to us from the FCA but at the time of writing details regarding the exact components and coverage of the data were not available. We have used this data as a cross-check to inform our distribution analysis). The BoE data includes the total annual income for monetary financial institutions operating in the UK (i.e. contributing to UK national accounts).<sup>124</sup> Total income for 2013 is just under £120 billion. This includes income from non-EEA branches and building societies.

We subtracted the annual income of building societies from the BoE figure to arrive at the total income for banks operating in the UK. This was just under £115 billion in 2013.

We then subtracted 11 per cent of this to exclude the income attributable to non-EEA branches.<sup>125</sup> This results in a total income figure of around £103 billion relevant to the accountability regime.

The table below summarises the estimates across the two populations.

**Table 9.1: Population statistics for banks and investment firms**

	Individual accountability regime	Remuneration regime
Number of firms	160	240
Total sector income, 2013	£103bn	£115bn

Source: FCA and Bank of England.

#### 9.1.1 Distribution of income

In order to arrive at a large/small split for banks and investment firms, a distribution of income across firms is required. Given the uncertainty in relation to the FCA income data we cross-checked the distribution

<sup>123</sup> Bank of England Statistics Table B3.2 'Monetary financial institutions' annual profit and loss' [http://www.bankofengland.co.uk/statistics/Pages/iadb/notesiadb/income\\_expenditure.aspx](http://www.bankofengland.co.uk/statistics/Pages/iadb/notesiadb/income_expenditure.aspx)

<sup>124</sup> The BoE data represents around 240 firms (including building societies and non-EEA branches).

<sup>125</sup> This proportion of total income is based on the sample from the FCA which includes non-EEA branches.

implied by the FCA data using the BoE estimates distributed across a Zipf distribution, which we explain below.

Analyses of firm size using historical data have strongly indicated that the distribution of firms can be described by a form of lognormal distribution.<sup>126</sup> Similarly, research carried out on the distribution of U.S. firm size indicated a particular form of power law distribution, a Zipf distribution.<sup>127</sup> Technically this means that the probability of a firm being larger than a given size, S, is inversely proportional to S. In other words, firm sizes are highly skewed such that there are a large number of small firms and a small number of large firms. Heuristics like the 80:20 “rule” draw upon this research.

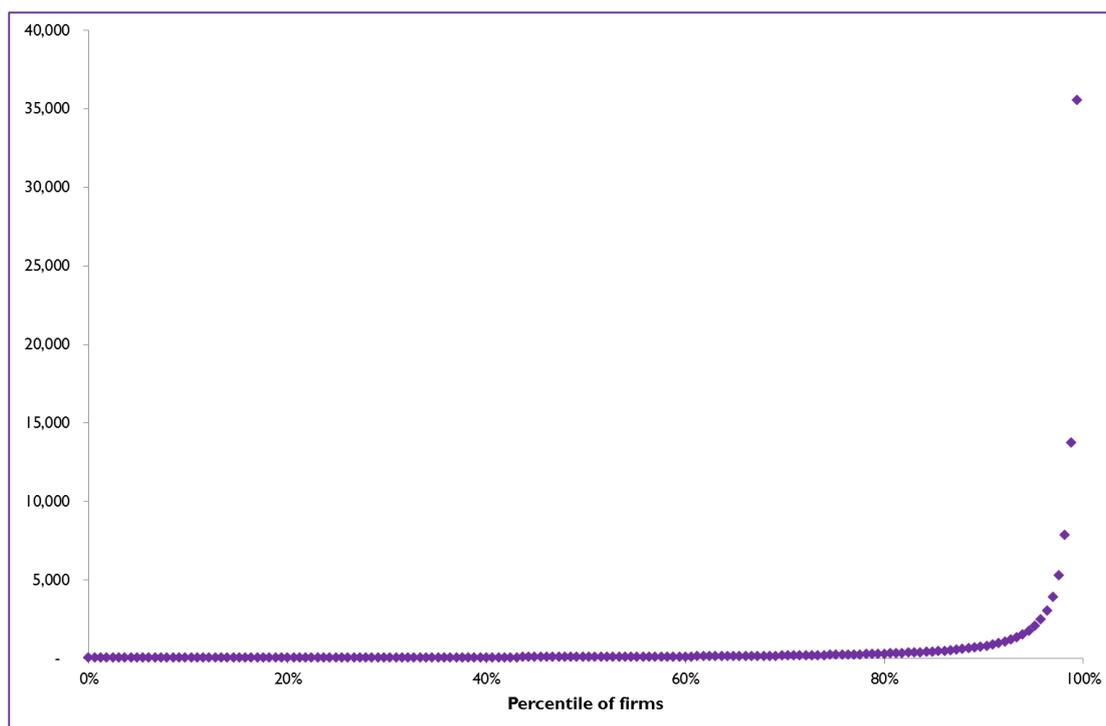
For a discrete pareto-distributed random variable, X, the distribution of firm size (by turnover) is drawn from the following cumulative distribution function (CDF):

$$P(X \leq x) = \left\{ 1 - \left(\frac{k}{x}\right)^\alpha \text{ for } x \geq k, 0 \text{ if otherwise} \right\}$$

where k is the minimum firm size and  $\alpha$  defines the curve, and which, in effect, captures the degree of market concentration.

Using the BoE income data for the sector and the total number of firms we generated a distribution of income which enabled us to assess the firm numbers applicable to different proportions of total income. The results are shown in the chart below.

**Figure 9.1: Distribution of income across firms**



Source: BoE income data and Europe Economics analysis.

A clear change in firm size in this distribution occurs around the 90<sup>th</sup> percentile of firms, i.e. approximately the top 10 per cent of firms can be considered the largest — around 15 or 16 firms out of the 160 relevant to the accountability policies. These firms account for around 80 per cent of sector income. We cross-checked these results with the distribution of the FCA income data, which indicates that the top 15 firms in

<sup>126</sup> R.Perex, et al. (2005), ‘Company size distribution for developing countries’, see [http://esfm.ipn.mx/~richp/papers/developingcountries\\_PhysA\\_359\\_2006.pdf](http://esfm.ipn.mx/~richp/papers/developingcountries_PhysA_359_2006.pdf)

<sup>127</sup> R. Axtell, et al. (2001), ‘Zipf distribution of U.S. Firm Sizes’, [http://www.swarmagents.cn/thesis/doc/jake\\_204.pdf](http://www.swarmagents.cn/thesis/doc/jake_204.pdf)

the sample account for around 80 per cent of income. A similar distribution analysis of the BoE data was undertaken for the income and firm numbers relevant to the remuneration policies scope — here a natural break occurred just under the top 10 per cent of firms – around 18 – which also account for around 80 per cent of sector turnover in both the BoE income data and the FCA income data.

We therefore set a threshold at 80 per cent of sector income above which firms are considered large. This captures 15 firms in the sector relevant to the accountability policies and 18 firms in the sector relevant to the remuneration policies.

### 9.1.2 Sensitivity analysis

As the cost extrapolation is dependent on the split between large and small we conduct a sensitivity using a large natural split in the FCA data as the threshold (where the difference between the income of the firms on either side of the divide is 30 per cent) — this captures 8 firms as ‘large’ in both the accountability- and remuneration-relevant sectors.

This results in a reduction in the costs for ‘large’ firms and an increase in the costs for ‘small’ firms (which is unsurprising as the number of large firms has decreased). The decrease in the one-off costs for large firms slightly outweighs the increase for small firms, — total sector costs from the accountability policies are around four per cent lower, and costs for the remuneration policies around 17 per cent lower. Ongoing costs are higher across the sector by around 16 per cent for the accountability policies; the change in ongoing costs from the remuneration policies is negligible.

### 9.1.3 Detailed costs across the sector

The table below provides a breakdown of the sector costs per policy. This is in addition to the tables in Section 3 that show the total costs to the sector for the accountability and remuneration policies.

**Table 9.2: One-off compliance costs for banks and investment firms (£million)**

<b>One-off costs</b>	<b>Large</b>	<b>Small</b>
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	19.6	50.4
Certified persons regime - set up	2.5	4.6
Continuing fitness and propriety	6.2	1.2
Regulatory references	0.2	0.1
Rules of conduct (SMF+CP)	38.7	6.3
Rules of conduct (SMF+CP+MM)	82.5	7.6
Rules of conduct (everyone)	110.1	9.8
Reporting breaches (SMF + CP)	9.8	0.6
Reporting breaches (SMF + CP + MM)	12.8	0.6
Reporting breaches (everyone)	31.4	0.6
<b>Remuneration policies</b>		
Deferral of remuneration	4.8	6.0
Clawback	6.7	11.5
Exceptional government intervention	Negligible	Negligible

**Table 9.3: On-going compliance costs for banks and investment firms (£million)**

Ongoing costs	Large	Small
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	2.8	5.1
Certified persons regime - on-going	Negligible	Negligible
Continuing fitness and propriety	4.0	2.3
Regulatory references	Negligible	3.1
Triennial DBS Checks	0.0	0.1
Annual DBS Checks	0.0	0.2
Rules of conduct (SMF + CP)	0.0	Negligible
Rules of conduct (SMF + CP + MM)	0.0	Negligible
Rules of conduct (everyone)	0.6	Negligible
Reporting breaches (SMF + CP)	0.8	1.2
Reporting breaches (SMF + CP + MM)	1.4	1.7
Reporting breaches (everyone)	2.4	2.3
<b>Remuneration policies</b>		
Deferral of remuneration	0.6	0.9
Exceptional government intervention	Negligible	Negligible

## 9.2 Building societies

Data from the Building Society Association (BSA) indicates that 45 building societies would be subject to the new regime, with a sector income of around £4.5 billion in 2013. We apply a threshold of £100 million annual income, below which firms are considered small and above which they are considered large. This threshold is in line with a natural break in the size distribution of firms, whereby the next firm below the threshold has annual income of only 30 per cent of the income of the firm above the threshold. This results in a split of six large firms (accounting for 90 per cent of sector income) and 39 small firms. We scale up the fixed costs by the number of firms in the small and large categories, and the variable costs as a proportion of annual income.

As the cost extrapolation is dependent on the split between large and small we conduct a sensitivity using another break in the data at annual income of £20 million. This results in an overall increase in one-off costs across the sector of around 25 per cent, and a decrease in variable costs of around 11 per cent. However, given the significant break in the data around the £100 million mark we consider this to be the most appropriate threshold.

### 9.2.1 Detailed costs across the sector

The table below provides a breakdown of the sector costs per policy. This is in addition to the tables in Section 3 that show the total costs to the sector for the accountability and remuneration policies.

**Table 9.4: One-off compliance costs for building societies (£million)**

<b>One-off costs</b>	<b>Large</b>	<b>Small</b>
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	2.08	0.93
Certified persons regime - set up	1.03	0.46
Continuing fitness and propriety	0.67	Negligible
Regulatory references	Negligible	0.02
Rules of conduct (SMF+CP)	1.27	0.18
Rules of conduct (SMF+CP+MM)	2.24	0.37
Rules of conduct (everyone)	12.76	0.69
Reporting breaches (SMF + CP)	0.60	Negligible
Reporting breaches (SMF + CP + MM)	0.60	Negligible
Reporting breaches (everyone)	0.60	Negligible
<b>Remuneration policies</b>		
Deferral of remuneration	0.11	Negligible
Clawback	0.02	Negligible
Exceptional government intervention	Negligible	Negligible

**Table 9.5: Ongoing compliance costs for building societies (£million)**

<b>Ongoing costs</b>	<b>Large</b>	<b>Small</b>
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	0.03	Negligible
Certified persons regime - on-going	Negligible	Negligible
Continuing fitness and propriety	0.07	0.21
Regulatory references	0.03	0.08
Triennial DBS Checks	Negligible	Negligible
Annual DBS Checks	Negligible	0.01
Rules of conduct (SMF + CP)	0.06	Negligible
Rules of conduct (SMF + CP + MM)	0.12	Negligible
Rules of conduct (everyone)	0.84	Negligible
Reporting breaches (SMF + CP)	0.11	Negligible
Reporting breaches (SMF + CP + MM)	0.11	Negligible
Reporting breaches (everyone)	1.65	Negligible
<b>Remuneration policies</b>		
Deferral of remuneration	0.02	Negligible
Exceptional government intervention	Negligible	Negligible

### 9.3 Credit unions

Data from the FCA show that there are 523 credit unions that would be subject the policies, with a sector income of around £167 million in 2013.

Given the overall small nature of credit unions and similar features across all sizes (in particular, the likelihood that the number of SMFs would be limited to the board, the size of which is less variant across the size of the firm) we do not create a large/small divide. We extrapolate the average fixed costs from our sample across all firms in the sector, and extrapolate the variable costs as a proportion of income.

### 9.3.1 Detailed costs across the sector

The table below provides a breakdown of the sector costs per policy. This is in addition to the tables in Section 3 that show the total costs to the sector for the accountability and remuneration policies.

**Table 9.6: One-off compliance costs for credit unions (£million)**

<b>One-off costs</b>	<b>All firms</b>
<b>Individual accountability policies, one-off</b>	
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	3.179
Certified persons regime - set up	0.123
Continuing fitness and propriety	0.118
Regulatory references	Negligible
Rules of conduct (SMF+CP)	0.828
Rules of conduct (SMF+CP+MM)	1.124
Rules of conduct (everyone)	1.219
Reporting breaches (SMF + CP)	0.131
Reporting breaches (SMF + CP + MM)	0.131
Reporting breaches (everyone)	0.131

**Table 9.7: Ongoing compliance costs for credit unions (£million)**

<b>Ongoing costs</b>	<b>All firms</b>
SMF, statement of responsibility, presumption of senior responsibility and pre-approval	0.020
Certified persons regime - on-going	0.059
Continuing fitness and propriety	0.735
Regulatory references	0.735
Triennial DBS Checks	0.941
Annual DBS Checks	Negligible
Rules of conduct (SMF + CP)	Negligible
Rules of conduct (SMF + CP + MM)	Negligible
Rules of conduct (everyone)	Negligible
Reporting breaches (SMF + CP)	Negligible
Reporting breaches (SMF + CP + MM)	Negligible
Reporting breaches (everyone)	Negligible



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