

Strengthening accountability in banking: a new regulatory framework for individuals – Feedback on ***FCA CP14/13 / PRA CP14/14 and consultation on additional guidance

March 2015



Contents

Abbreviations used in this document	3
1 Overview	5
2 Feedback on the Senior Managers' Regime	11
3 Feedback on Fitness and Propriety and the Certification Regime	18
4 Feedback on the Conduct Rules	22
5 Consultation on guidance on the Presumption of Responsibility	24
Annex	
1 List of FCA Senior Management Functions and Prescribed Responsibilities	26
2 List of non-confidential respondents	28
Appendix	
1 Near-final rules on the Senior Managers' Regime	30
2 Draft guidance on the Presumption of Responsibility	31

In this Consultation Paper we report on the main issues arising for the FCA from Consultation Paper FCA CP14/13 / PRA CP14/14 – Strengthening accountability in banking: a new regulatory framework for individuals. We plan to make final rules in the spring/summer.

In Chapter 5 of this Feedback Statement we consult on guidance relating to the Presumption of Responsibility. We are asking for comments on this by 16 June 2015. You can send them to us in writing to:

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Abbreviations used in this document

The Act	Financial Services (Banking Reform) Act 2013
APR	Approved Persons Regime
CF	Controlled Function
CP	Consultation Paper
CR	Certification Regime
CRD	Capital Requirements Directive
DEPP	Decision Procedure and Penalties Manual (Handbook)
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LIBOR	London Interbank Offered Rate
MiFID	Markets in Financial Instruments Directive
MLRO	Money Laundering Reporting Officer
NED	Non-executive director
PCBS	Parliamentary Commission on Banking Standards
PPI	Payment Protection Insurance
PRA	Prudential Regulation Authority
SMF	Senior Management Function
SMR	Senior Managers' Regime
SYSC	Senior Management Arrangements, Systems and Controls (Handbook)

1. Overview

Introduction

- 1.1** We, the Financial Conduct Authority (FCA), consulted jointly with the Prudential Regulation Authority (PRA) in July on a new regulatory framework for individuals working in banking (*Strengthening accountability in banking: a new regulatory framework for individuals*¹). The proposals were intended to encourage accountability for decision-making in relevant firms, focusing particularly on senior management, while aiming for good conduct at all levels. Our proposals followed recommendations made by the Parliamentary Commission on Banking Standards (PCBS) and reflected the powers given to us in the Financial Services (Banking Reform) Act 2013 (the Act). We received 77 responses to the consultation paper and we are now providing feedback in this paper on the decisions we have made as a result. The PRA will publish feedback separately.
- 1.2** The majority of respondents to the consultation were supportive of the overall aims of the regime. Many respondents felt that banks and other affected firms would need a significant amount of time to prepare for the new regime, which will replace our current Approved Persons Regime (APR) for these firms. HM Treasury has now announced that the new regime will need to come into force by 7 March 2016². We plan to publish our final rules in the spring/summer. However, to give firms as much time as possible to prepare for the changes, we are providing in this paper a set of near-final rules³ on our new Senior Managers' Regime (SMR), together with a steer on our policy intentions for the whole regime, including the Certification Regime and the application of our Conduct Rules.
- 1.3** We are also consulting on further, more detailed guidance on the presumption of responsibility, which was introduced by the Act. There was strong demand from firms for this guidance, which should be read alongside the PRA's draft supervisory statement on this subject⁴.

1 FCA CP14/13 / PRA CP14/14 is available at www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13.

2 www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-03/HCWS336/

3 Although in general the rules and guidance in Appendix 1 are near final, there are some areas in which this is not the case. We shall need to make adjustments where other consultations impact upon them, such as CP14/31 (*Strengthening accountability in banking: forms, consequential and transitional aspects*), CP15/10 (*Strengthening accountability in banking: UK branches of foreign banks*), CP15/5 (*Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms*), CP15/4 (*Whistleblowing in deposit-takers, PRA-designated investment firms and insurers*) and the consultation in chapter 5 of this CP on the presumption of responsibility. Adjustments will also be needed to take into account the parts of CP14/13 not included in Appendix 1 and the PRA's rules and statements of policy in this area.

4 This was included in Consultation Paper FCA CP15/5 / PRA CP7/15: *Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms*, February 2015 at www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05.

Who does this affect?

- 1.4** This paper will be of primary interest to UK banks, building societies, credit unions and PRA-designated investment firms (collectively referred to in this paper as 'relevant firms'⁵). This paper will also be relevant to UK branches of foreign banks. The proposals will affect a large number of individuals within the relevant firms, including, but not limited to, all their existing approved persons.
- 1.5** Alongside this paper, we are issuing a separate consultation, jointly with the PRA, on the accountability regime for foreign firms with UK branches – also described as 'incoming branches' (*Strengthening accountability in banking: UK branches of foreign banks*). We aim to achieve consistency as far as possible across UK banks and incoming branches, while remaining within the scope of our responsibilities under EU law in regard to incoming EEA branches. Accordingly, affected firms should read this paper alongside that consultation.

Is this of interest to consumers?

- 1.6** This paper 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

- 1.7** The behaviour and culture within banks played a major role in the 2008-09 financial crisis, in conduct scandals such as Payment Protection Insurance (PPI) mis-selling, the attempted manipulation of LIBOR and failings in regard to the spot foreign exchange (FX) market. Under the statutory and regulatory framework in place at the time, individual accountability was often unclear or confused, undermining public trust in both the banking system and in the regulatory response.
- 1.8** Following recommendations made by the Parliamentary Commission on Banking Standards (PCBS), amendments were made to the Financial Services and Markets Act 2000 (FSMA) through the Financial Services (Banking Reform) Act 2013 (the Act), which applied to UK relevant firms. As a result, we consulted on the introduction of a new regime for individual accountability – both through the July CP and a subsequent consultation in December on various technical matters, including forms and consequential and transitional rules⁶.
- 1.9** The policy decisions and near-final rules contained in this paper must be read alongside CP15/10 on foreign branches and, importantly, in conjunction with feedback and rules from the PRA once published. For example, the senior management functions we list in this paper (in Figure 2, Annex 1) are limited to FCA functions, but firms will need to take account of that fact that other functions will be specified by the PRA. Figure 1, at the end of this chapter, outlines a 'road map' to the new regime.

⁵ Section 71A of FSMA refers to these firms as 'Relevant Authorised Persons'. Other regulated firms are not affected by the changes.

⁶ FCA CP14/31 / PRA CP28/14: *Strengthening accountability in banking: forms, consequential and transitional aspects*, December 2014 (www.fca.org.uk/your-fca/documents/consultation-papers/cp14-31).

Summary of feedback and our response

1.10 Respondents to the July CP made comments and raised questions across several areas. These included the time needed to implement the new regime; their desire for further clarification on the steps expected of senior managers under the presumption of responsibility; the inclusion of some particular senior management functions (including non-executive directors (NEDs)) and our approach to allocation of responsibilities more generally. In regard to the Certification Regime, issues raised included concerns about the increased responsibilities on firms for overseeing the fitness and propriety of staff and the loss of regulatory intelligence to inform such decisions. A number of respondents also raised questions about the proportionality of the new regimes for smaller firms.

Senior Managers' Regime (SMR)

1.11 This is the new regime for individuals who are subject to regulatory approval, which focuses on senior individuals who hold key roles or have overall responsibility for key areas. Having considered the feedback received and issues raised during consultation, we have made some changes to the detail of the regime – the most notable of which we have already announced in CP15/5 *Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms*⁷, (February 2015). We explained that we will not apply the SMR to so-called 'standard' NEDs (i.e. those NEDs who do not chair specified subcommittees of the board). In Chapter 2, we discuss other changes to the SMR, including changes designed to simplify the rules in light of feedback received.

1.12 Responses to the consultation raised concerns about how the regime might affect firms and groups with particular legal structures. We want to be clear that for the new regime to work effectively, firms will need to identify the senior individuals who have overall responsibility for the activities of the firm and ensure that they are approved under the regime, regardless of their job titles or which entities they may be based in within a group structure. We are not seeking to prescribe organisational structures, but to ensure that the right people are held accountable for the right responsibilities.

1.13 Having listened to concerns about the proportionality of the regime, we also discuss in Chapter 2 what will be required, in practice, for smaller firms. In particular, we make clear that for smaller firms with less complex business models and governance arrangements, we intend the responsibilities maps they need to create and submit to be correspondingly less complex. We will consider further whether we could provide examples of simplified templates for smaller firms in the coming months.

1.14 In response to requests for guidance on the circumstances in which we would seek to apply the presumption of responsibility, how we would apply it, and the steps that a Senior Manager should take in order to rebut the presumption, we discuss in Chapter 5 the new guidance on which we are consulting (in Appendix 2).

Certification Regime

1.15 The Certification Regime applies to staff who could pose a risk of significant harm to the firm or any of its customers (for example, it covers staff who give investment advice, execute client orders or administer benchmarks). In contrast to the SMR, the Act requires firms themselves to assess the fitness and propriety of certain employees, without regulatory pre-approval. Responses to our consultation expressed concern about this additional responsibility for firms, including the loss of comfort that comes from the regulator separately considering the fitness and propriety of individuals (through consideration of firms' applications for individuals to

⁷ FCA CP15/5 / PRA CP7/15 is available at www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05.

perform approved functions). Some respondents were worried that functions no longer subject to regulatory pre-approval would no longer appear on the FCA Register. Concerns were also expressed about the legal framework that governs the sharing of information in employee references and the feasibility of all firms being able to access criminal records data.

1.16 Overall, we believe that it is an important feature of the new regime that firms are responsible for certifying the fitness and propriety of staff carrying out these functions. The Act clearly distinguishes between senior management functions, for which pre-approval is required, and other functions that could involve a risk of significant harm to the firm or its customers (which we have labeled as certification functions). It was a clear intention of Parliament that the SMR should be narrower than the current Approved Person Regime⁸, allowing regulators to focus resources on authorising and supervising the most senior staff in firms. It follows that regulators will no longer perform checks of those members of staff who will consequently fall outside of regulatory pre-approval and, as a result, that we will not hold the same information on these individuals in future as we do now. We plan to issue final rules on certification in the spring/summer and firms will need to make preparations for taking on their new responsibilities in regard to these staff.

1.17 We have sought, in this paper, to answer a number of the questions raised about the practicalities of the regime in Chapter 3. We also use this paper to set out our intention to make adjustments to the scope of the regime in response to feedback received about the coverage of individuals undertaking wholesale activities, such as traders, which may involve re-consultation.

Conduct Rules

1.18 In July, we consulted on new conduct rules with a wide application to most employees within firms. Responses indicated that there were concerns about the cost implications of this, given the need for training and reporting of any breaches of the obligations that this would bring. We have given careful thought to the scope of the new rules and believe a wide scope is critical to improving accountability and awareness of conduct issues all the way through firms, and for promoting the right culture, governance and conduct, in support of our consumer protection and market integrity objectives.

1.19 However, we recognise the importance of ensuring that the new rules can be implemented proportionately. We will look further at the reporting requirements that fall on firms, in regard to potential breaches of the new rules, and consider how they should be applied in practice. In doing so, we will need to take into account that the obligation on firms to report to the regulator where it knows or suspects that an individual has failed to comply with any conduct rules is in the Act.

Cost Benefit Analysis

1.20 In our July CP, we set out a cost benefit analysis (CBA) of the proposed changes to the accountability regime for UK relevant firms. In response to comments, we are presenting some refinements and clarifications in this paper to some of the original proposals. We do not expect these to materially alter the substance of the CBA provided in July, but will confirm this in our final Policy Statement in the spring/summer.

⁸ See Chapter 5 of *Implementing the recommendations of the Parliamentary Commission on Banking Standards*, House of Commons Treasury Committee, October 2014.

- 1.21** One area where costs and benefits may need to be reconsidered in the future is in respect of changes to the scope of the Certification Regime in relation to wholesale activities, such as trading. We will include a CBA, in the event that we consult on such changes and the associated draft rules.

Next steps

What do you need to do next?

- 1.22** If your firm is affected by these changes, you will need to ensure that you are preparing to comply with the new rules by 7 March 2016. The inclusion of near-final rules in this paper means that relevant firms are likely to be able to make progress straightaway, particularly in:

- identifying the staff roles that will require pre-approval
- finding out whether there are any areas where responsibilities require clarification before a statement of responsibilities can be prepared.

What will we do?

- 1.23** We will publish a Policy Statement in the spring/summer, finalising both:

- the rules that are presented in this paper
- rules for other areas of the new accountability regimes.

- 1.24** At the same time, we will consult if required on our proposal to increase the scope of the Certification Regime in regard to wholesale market activities, such as trading. The new rules will commence by 7 March 2016.

Figure 1: High-level 'Road Map' to the new regime

Finalisation of rules and guidance

- Publication in this paper of FCA feedback on the new accountability regime for banks and other relevant firms, consultation on new guidance and publication of near-final rules for key aspects of the SMR – March 2015
- Publication of FCA/PRA consultation on the accountability regime for foreign branches in (FCA CP15/10 / PRA CP9/15) – March 2015
- Publication of PRA Policy Statement on accountability – late March 2015
- Publication of FCA and PRA final rules on accountability (including feedback on the FCA/PRA consultation on forms, consequential and transitional aspects, FCA CP14/31 / PRA CP28/14) – Spring/Summer 2015
- If necessary, FCA consultation on expansion of the Certification Regime in regard to wholesale markets – Summer 2015 (followed by a Policy Statement by end 2015)⁹
- Publication of FCA Policy Statement on foreign branches (subject to Parliament extending the regime to foreign branches)

⁹ We recognise that firms will need time to implement any changes that we consult on in this area.

Preparing for implementation

- As part of the publication of the final rules, we will give information on how the transitional period will be managed in terms of important matters such as how to submit forms
- Final deadline for firms to submit their grandfathering notifications (including their Responsibilities Map and Statements of Responsibilities) – 8 February 2016
- New rules come into effect – 7 March 2016
- FCA's Register will show new Senior Managers (in banks and other relevant firms) from 7 March 2016
- Firms' deadline for issuing certificates for individuals under the Certification Regime – 7 March 2017

2. Feedback on the Senior Managers' Regime

- 2.1** In this chapter, we discuss responses received to the proposals we consulted on relating to the SMR and the changes that we have made as a result. Appendix 1 contains a set of near-final rules for this area, in order to help firms to understand the changes we are describing and begin to prepare for the new rules coming into force.
- 2.2** Our new regime for senior managers focuses on senior individuals who hold overall responsibility for key areas of firms. As with our current Approved Person Regime, individuals performing functions designated as within the SMR will be subject to pre-approval by the regulators. Our new regime is designed to accommodate a range of different business models and organisational structures and, by design, it provides flexibility for firms in identifying the particular roles that will require pre-approval. Instead of focusing on the job titles that individuals may hold, it will be important for firms to make sure that they have a clear understanding of the responsibilities of senior individuals so that, overall, the right people are held accountable for the right roles. We expect responsibilities to be allocated to individuals who are senior enough and have sufficient authority and resources to discharge their roles appropriately.
- 2.3** In this chapter, we seek to answer a number of questions that we received in responses to the consultation about the practical application of the new regime in different situations, including where firms have different legal structures. The regime is designed to be proportionate, in that the less complex a firm is, the fewer of its senior managers are likely to require pre-approval and the simpler its responsibilities map will be. However, we recognise the concerns on the practical application of the rules for smaller firms, so we also consider this issue in the chapter.

Scope of the new regime

- 2.4** Overall, the majority of respondents were supportive of the new regime's scope, considering that the combined FCA and PRA senior management functions (SMFs) generally captured the key decision-makers as intended. As a result, we are not proposing significant changes to the scope of the regime, with the exception of the decision we have already announced to remove 'standard' NEDs from the SMR. But, in response to specific feedback, and with the desire to deliver greater clarity and consistency, we have made some adjustments to specific functions, as described in this section.

Application to Non-Executive Directors (NEDs)

- 2.5** The July CP asked readers whether the proposed list of FCA SMFs captured the appropriate set of roles. Some respondents were concerned with the inclusion of NEDs in the SMR as they thought it could prompt NEDs to take on executive responsibilities that would compromise their independence, undermine the principle of collective decision-making or limit a firm's ability to attract and retain high-quality NEDs.

Our response

Having considered a wide spectrum of views and detailed comments from respondents, we decided that 'standard' NEDs (those who do not have responsibilities for chairing certain board sub-committees), will not need to be designated as Senior Managers. We set out our decision on this and the rationale for it in CP15/5.

Money Laundering Reporting Officers (MLROs)

- 2.6** We consulted on designating the MLRO as an SMF. We received some feedback suggesting that the MLRO function should not be within the scope of the SMR, but instead the person with overall responsibility for financial crime matters should be held accountable. This reflected a concern that the MLRO (which can be a technically-focused role) could become a scapegoat for failings instead of more senior decision makers being held accountable.
- 2.7** An alternative option suggested was to create a SMF with the overall responsibility for financial crime matters, and require the MLRO to be a certified person.

Our response

We want to recognise the importance of a senior individual being accountable for ensuring that anti-money laundering and counter-terrorism financing controls are properly implemented and managed. For this reason, we have decided to retain our proposal to specify the MLRO as a Senior Management Function. We are not intending to change the core roles and responsibilities of the MLRO that are set out in legislation that is based on international standards and EU law.

In addition to the MLRO function, we will prescribe a financial crime responsibility (i.e. having overall responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime). Firms will be required to allocate this responsibility to an approved Senior Manager, who may also be the MLRO, but does not have to be. Through supervisory dialogue, we will ensure that there is accountability for financial crime matters at the most senior level, without expanding the number of specified SMFs or dictating how firms arrange themselves.

Significant Responsibility Function (SMF18)

- 2.8** We consulted on the Significant Responsibility Senior Manager function, SMF18. This function was created to allow firms the freedom to have senior executives who have overall responsibility for an area of the firm, but who are not appointed as Board directors (and do not perform any of the other SMF functions). Feedback indicated there was some concern that the scope of this function could potentially be very wide and have the effect of diluting accountability. Clarity was requested as to how it would work in practice, and how it would fit with the list of key functions, or main business areas, that we included in the July CP¹⁰.

¹⁰ We set out this list of key functions in Figure 4 of CP14/13, but referred to them in the draft instrument under the heading "The main business areas and management functions of a relevant authorised person".

Our response

We believe that this function is important as it provides firms (and regulators) with the flexibility to cater for specific business structures and circumstances. SMF18 is intended to only capture individuals who have overall responsibility for a business area or activity of the firm, where that individual is not otherwise performing one of the other SMFs (either FCA or PRA). We want to know who is responsible for an area without having to specify a series of granular SMFs. We expect in many cases that overall responsibility will be allocated to individuals approved for one of the other FCA or PRA senior management functions. Therefore, we expect that the function will only be used when needed. Firms have the flexibility to allocate overall responsibility for the different aspects of their business as they see fit. SMF18 will only apply if a person with overall responsibility does not require approval for any other SMF (i.e. there will be not automatic expectation that a firm will have any individuals approved under SMF18).

We have clarified in our near final rules that there is no direct link between SMF18 and the list of main business areas that we have provided. We did not intend for this list to be either prescriptive or exhaustive and, to make this clear, we have decided that it is more appropriate for it to be in guidance rather than in rules and to move it out of the chapter that defines senior management functions (see Appendix 1¹¹). The list is indicative of the main business areas and management functions of a firm, helping them to prepare their responsibilities maps.

FCA Senior Management Responsibilities

Allocation of responsibilities to Senior Managers

- 2.9** Our new regime seeks to clarify who is responsible for managing and overseeing key aspects of a firm's affairs, while providing flexibility to allow firms to allocate responsibilities in a way that suits their different business models and organisational structures. We consulted on an approach that sets out some specific requirements that must be allocated among senior managers ('prescribed responsibilities'), but also requires pre-approval of any other individuals who have overall responsibility for an area of the firm's business (i.e. they report to the Board in regard to that particular area). Most of our prescribed responsibilities are shared with the PRA and will be set out in both regulators' rules, reflecting the fact that they relate to areas of equal mutual interest
- 2.10** We have received requests for more guidance on our responsibilities framework, and some respondents commented that it was quite complex for firms to understand. Comments focused particularly on our proposals concerning overall responsibility and how they interact with the list of main business areas (which we discussed in the previous section, in regard to SMF18).

¹¹ The text on main business activities can now be found at SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person).

Our response

We have sought to simplify and clarify our approach to senior management responsibilities in our near-final rules, while ensuring that responsibilities are allocated appropriately.

We have set out the list of FCA prescribed responsibilities¹² in Figure 3, Annex 1. As mentioned previously, we have introduced a prescribed responsibility in relation to financial crime. We have also introduced a new prescribed responsibility for developing and overseeing the firm's remuneration policies and practices (in accordance with the Remuneration Code¹³).

We have also introduced a prescribed responsibility in relation to overall responsibility for the firm's compliance with the Client Assets Sourcebook (CASS), where these requirements are relevant. Firms holding client money and/or custody assets are subject to specific requirements (set out in CASS) and owe particular duties to their clients. Given the nature of these requirements, and the possibility that failing to meet them can directly lead to consumer detriment, we consider it important that overall responsibility for compliance with these requirements is allocated at the most senior level within a firm¹⁴.

A firm must allocate each of the FCA prescribed responsibilities to one or more SMFs of the firm (generally excluding SMF18)¹⁵. We will also seek to align our prescribed responsibilities with the PRA's final rules where appropriate in due course.

In addition to revising our list of prescribed responsibilities, we have sought to clarify our approach to other senior managers who do not necessarily carry out prescribed responsibilities but have overall responsibility for an activity, area or function. Firms are required to ensure that one or more SMFs have overall responsibility for each of the activities, business areas and management functions of the firm. (We originally included overall responsibility for the key risks of a firm too, but have since removed this element given that it overlaps with other FCA and PRA prescribed responsibilities and PRA senior management functions.) Once they have identified staff holding prescribed responsibilities, firms have the flexibility to allocate overall responsibility for the other aspects of their business to their senior managers as they see fit, ensuring that there are no gaps. If a firm allocates overall responsibility for an aspect of its business not covered by a prescribed responsibility to someone who is not either approved by the PRA or approved for one of the other FCA functions (such as the executive director function) the person will need approval for SMF18 (as discussed in the previous section of this chapter).

12 These align with a subset of PRA's prescribed responsibilities (in the July CP these were prescribed responsibilities 1 to 8, as set out in Annex 2).

13 SYSC 19A (Remuneration Code) – <http://fshandbook.info/FS/html/FCA/SYSC/19A>.

14 This may or may not be the person performing the existing controlled function, CF10a the CASS operational oversight function. If it is not, that individual will be within the scope of the Certification Regime and overall responsibility would rest with the senior manager to whom they ultimately report. Guidance on this will be included in our Policy Statement in the spring/summer.

15 We accept that in some circumstances it may be appropriate for this function to be used for the new prescribed responsibility for CASS.

Statements of responsibility and responsibilities maps

- 2.11** The Act requires an application for approval to perform an SMF to include a statement setting out the aspects of the firm's affairs which the person in question will be responsible for managing: a statement of responsibilities (SoR). We also proposed a requirement, jointly with the PRA, for the creation of responsibilities maps – which specify a firm's management and governance arrangements in a single document – along with a requirement for annual confirmation by the firm's board that there are no gaps in the allocation of responsibilities. We have received a series of responses to consultation that question the proportionality and practicality of maintaining SoRs as well as comments relating to our proposals for responsibilities maps.
- 2.12** SoRs are required to detail exactly what each Senior Manager is responsible for. They are intended to drive benefits through requiring firms to properly consider their arrangements and 'who does what'. They also underpin the presumption of responsibility by clearly delineating who is presumed to be responsible for what. We received requests to clarify what a 'significant change' that triggers the requirement to submit a revised statement might be. We also received feedback that for smaller firms, or firms with simpler business models, the requirement to prepare and maintain responsibilities maps is disproportionate as their attribution of responsibility could be thought as more straightforward.

Our response

The obligation to prepare and submit SoRs is imposed by the Act. We do not consider it to be appropriate to set a threshold for what might constitute a significant change that would trigger a revised SoR submission, as this is something that firms will need to consider on a case-by-case basis. However, examples of potential significant changes which, in our view, may require the submission of a revised SoR include the following (some of which were set out in the PRA's proposed supervisory statement):

- A variation of the person's approval.
- Fulfilling or failing to fulfil a condition on approval.
- Re-allocation or removal of: one of the prescribed responsibilities; or overall responsibility for a function of the firm.
- A change in the way a responsibility has been shared among more than one person.
- A change to the job that the person is doing for the firm. Relevant factors here might include: the importance to the firm of the functions being given up or taken on; whether the SMF manager's seniority in the firm's management changes; changes to the identity, number or seniority of those whom the SMF manager manages; or changes to the skills, experience or knowledge needed by the SMF manager for the job.

We consulted on a template for the SoR in our December CP¹⁶, and we are in the process of considering responses. Our publication of our final rules in the spring/summer will include the revised template.

¹⁶ FCA CP14/31 / PRA CP28/14: *Strengthening accountability in banking: forms, consequential and transitional aspects*, December 2014 (www.fca.org.uk/your-fca/documents/consultation-papers/cp14-31).

We remain of the view that responsibilities maps are an important tool for firms and regulators in ensuring that all relevant responsibilities within a firm are clearly mapped. The requirement to produce a responsibilities map is designed to be inherently proportionate, in that firms with a simple allocation of responsibilities will only need to produce simple documents. (This also reflects the fact that smaller firms with less complex business models may not, in practice, be required to put forward senior managers' for all the prescribed responsibilities listed in Figure 3, Annex 1 – some only apply where the firm is subject to specific existing requirements, for example in relation to the internal audit function requirements set out in SYSC 6.2).

For smaller non-complex firms (i.e. those below a certain balance sheet threshold, with limited business lines and which do not rely on the governance arrangements of a wider group), we would expect the map to be a simple document which summarises the allocation of responsibilities within the firm and the firm's management and governance arrangements. We have added guidance to make this clear. We are intending to include an example of a simple responsibilities map in our Policy Statement, along with our final rules, which we aim to publish this spring/summer, once we have received wider feedback on our separate consultation on other technical matters and forms.

In the July consultation, the PRA proposed to apply the SMR in a tailored way to small credit unions (defined as those with assets lower than or equal to £25m). As we are now providing guidance on what we expect of smaller non-complex firms in regard to responsibilities maps, we think that it will make sense to align our balance sheet threshold with the PRA's final rules. Once the PRA's rules have been finalised, we plan to make reference to it in our final rules to be published in the spring/summer.

We have also made minor modifications to make our approach to responsibilities maps clearer for both smaller and larger firms (for example, explaining that they need not be a single document, but instead can be a combination of several documents as long as it is clear how they link together).

We have reconsidered whether an annual attestation from the Board of a firm as to its compliance with the requirements for responsibility maps is proportionate. We are persuaded that this is not needed, and that we can instead rely upon our existing general requirement, in Principle 11, that 'a firm must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice'. In line with this requirement, we would expect firms to tell us, without delay, about any material gaps or changes arising in regard to senior management responsibility.

Complex Legal Structures

- 2.13** Some responses to the consultation requested clarification for how our proposals would work for firms with complex legal structures or matrix management. In particular, some firms were concerned about how the regime would accommodate situations where an individual in one legal entity takes on overall responsibility for a particular area across one or more other entities of a banking group. In some cases, queries were also linked to questions about the territorial application of the new regimes, which is discussed further in relation to the Certification Regime in Chapter 3 (see the section on Breadth and territoriality of the Certification Regime).

Our response

Having reviewed the issues raised, we consider that the regime appropriately accommodates complex groups and matrix structures and that this intention was clear in the July CP. If a firm's structure is preventing it from clearly allocating responsibilities, this in itself suggests a regulatory risk which we would wish the firm to mitigate.

We recognise that our focus on individuals with 'overall responsibility' may, in practice, require some firms to formalise existing arrangements between the Board and individuals based outside the legal entity, to whom overall responsibility for a function has been delegated. We do not propose to prescribe what sort of arrangement would be needed to formalise an individual's responsibilities (but, as an example, this might be done through a contract of employment or through formal board delegation).

Handover arrangements

- 2.14** We proposed a requirement on firms to take reasonable steps to ensure a senior manager taking over a new role has the information needed to perform their responsibilities effectively. We also proposed that a firm must have a policy about how it intends to achieve this and we included guidance suggesting that handover certificates could form part of such a policy. Responses indicated there were a number of concerns about the use of handover certificates.

Our response

Having reviewed the responses, we are concerned that there has been a misunderstanding of our policy intention, as we do not wish to mandate the use of handover certificates. We have added guidance to try to make this clearer, noting that we accept that there will be cases where it will be impractical to ask a predecessor to prepare a handover certificate.

Conditional and time limited approvals

- 2.15** We received no substantive feedback on our proposals on conditional and time limited approvals, so we plan to go ahead and implement our approach in this area.

3.

Feedback on Fitness and Propriety and the Certification Regime

- 3.1** In this chapter, we discuss responses received to our proposals on the Certification Regime. In addition, we provide feedback on the area of firms' obligations in assessing fitness and propriety (while many of the comments received in this area related to the Certification Regime – where regulatory pre-approval of individuals will not be available – these obligations are also relevant in regard to senior managers).
- 3.2** The Certification Regime applies to staff who could pose a risk of significant harm to the firm or any of its customers (for example, investment advisers, brokers or staff that administer benchmarks). Many of the responses to the consultation focused on the loss of reassurance currently provided by the regulators through their assessment of the fitness and propriety of applicants as part of the pre-approval process. Concerns were also expressed about the sharing of information in employee references and the need for firms to access criminal records data.
- 3.3** Clearly, it is an important feature of the new regime that firms should fully embrace their obligations for assessing the fitness and propriety of staff carrying out certified functions. With that in mind, we have tried to focus this chapter on some of the practical issues arising for firms as they anticipate taking on greater responsibilities in this area. We have not included near-final rules on certification in this paper, however we confirm our intention to issue final rules in the spring/summer.
- 3.4** We also explain that, in light of the feedback received, we are planning to consult as required on expanding the coverage of the Certification Regime in the wholesale markets, regardless of whether or not staff are in customer-facing roles or qualify as material risk takers.

Fitness and propriety

Responsibilities under the Certification Regime

- 3.5** In the July CP, we asked if respondents agreed with the FCA's approach to fitness and propriety. A significant body of respondents questioned the additional responsibility for assessing fitness and propriety of certain staff that is inherent in the Certification Regime. In addition, we received a number of queries about the practical arrangements involved in the move towards a system whereby firms must seek to obtain regulatory references and conduct criminal records checks on prospective Senior Managers.

Our response

The additional responsibilities for industry associated with the assessment of fitness and propriety reflects both the PCBS recommendations and the legislation that flowed from these. The Act clearly distinguishes between senior management functions, for which pre-approval is required, and other functions that could involve a risk of significant harm to the firm or its customers. These are the functions that will be regulated by the new Certification Regime. It follows that firms will cease to have reassurance provided by the regulators through their assessment of the fitness and propriety of applicants, in the process of deciding whether or not to pre-approve individuals, as occurs now. We note, though, that we will continue to maintain the Prohibition Register.

As previously proposed, our final rules will reflect the fact that the responsibility for the assessment of fitness and propriety is on firms. We will consider whether we can offer further practical guidance that may be of assistance to firms in discharging these duties.

However, we note the concerns in this area and will consider what more can be done within the context of the current legislation. We are also aware that firms within the scope of the Fair & Effective Markets Review have made similar comments in response to that consultation¹⁷. We will therefore also consider this issue within that context, working with the Bank of England and HM Treasury.

Providing cover in exceptional circumstances

- 3.6** One other area raised by respondents relates to the arrangements for a certification function to be covered, in exceptional circumstances, by a person who is not certified. We consulted on allowing such an arrangement in situations where there are no qualification requirements associated with the role in question, to provide cover for a certified person whose absence was reasonably unforeseen, for a period of up to two weeks.

Our response

We recognise firms' concerns about arrangements for covering the role of a certified person in exceptional circumstances. In response to the feedback received, we have decided to increase the period during which a role can be covered by someone who is not certified to four weeks provided, as before, that a qualification is not required to perform the role.

Scope of the Certification Regime

Breadth and territoriality of the Certification Regime

- 3.7** Some respondents questioned the breadth of the regime, which, as a general principle, involves all line managers of certified persons being certified themselves, leading to the inclusion of chains of middle managers. The intention of this policy is to ensure that a certified person

¹⁷ *How fair and effective are the fixed income, foreign exchange and commodities markets?*, October 2014 (<http://www.bankofengland.co.uk/markets/Documents/femr/consultation271014.pdf>).

cannot face pressure to act inappropriately from supervisors who are not themselves held equally accountable. In practice, it means that if a firm employs a customer-facing financial adviser, for example, every manager above them in the same chain of responsibility will have to be certified (until the senior manager approved under the SMR is reached).

- 3.8** This issue is linked to the question of how our regime applies where the individuals in question may be outside the UK (i.e. where a certified person has a reporting line to a manager in another country). Respondents questioned whether this would have the effect of also capturing the management chain of the overseas individual (for example capturing all the way up to the Board of the overseas entity). This aspect of territoriality is also relevant to incoming branches and so is discussed further in CP15/10.

Our response

We believe that it is important that a certified person should only be managed by another certified person (or a senior manager) so that they cannot face pressure to act inappropriately from a supervisor who is not held equally accountable for their actions. As a result, we have decided not to reduce the scope of the regime in this area.

Where a certified person has a reporting line overseas, their overseas manager will be subject to the Certification Regime only if the manager is dealing with clients in the UK. However, our approach to overall responsibility means that firms must ensure that one or more SMFs have overall responsibility for each of the activities, business areas and management functions of the firm. Therefore, the relevant Senior Manager(s) will remain responsible and accountable for the performance of all activities, business areas and management functions of the firm, even in the event that the certification regime does not capture all individuals in the reporting chain of a particular area.

Application to traders

- 3.9** Since issuing our consultation in July, we have become aware that the proposals we consulted on result in an inconsistent approach to individuals involved in wholesale activities, including traders. The proposals included a requirement to certify individuals in customer-facing roles that are subject to qualification requirements and we also explained that those proprietary traders who would currently fall under CF29 would be subject to the regime.
- 3.10** In practice, it seems likely that some, but not necessarily all individuals involved in wholesale activities, such as trading, would fall within the scope of the regime – for example, individuals trading on behalf of clients classified under MiFID as ‘eligible counterparties’ would not necessarily be covered (such as if they are dealing as agent in that capacity or where the broker is executing orders on behalf of clients by dealing on own account). Some respondents highlighted this anomaly. Respondents also highlighted that not all individuals currently approved under the customer-dealing function (CF30) would necessarily be covered.

Our response

Having considered this matter, we believe that many individuals involved in wholesale activities, such as trading, could be performing roles that could pose 'significant harm' to the firm or its customers. As a result, we are considering extending the scope of the certification regime to ensure that these individuals are captured within the regime. We would plan to consult, if required, on any changes to this effect in the spring/summer.

Application to mortgage advisers

- 3.11** A number of respondents highlighted that the proposal to certify mortgage advisers could introduce an inconsistency between mortgage advisers in banks and other relevant firms, who will be certified, and those working in firms such as mortgage brokers or lenders that are outside of the new regime, who will not. This second group are not currently caught under the Approved Persons Regime.

Our response

The Act imposes an obligation on us to ensure that those individuals who meet the 'significant harm' test under the Certification Regime are subject to fit and proper standards. We have considered the feedback and remain of the view that mortgage advisers do meet the 'significant harm' test and, and we think that the obligation that this creates under the Act is best discharged by keeping them within the scope of the Certification Regime.

We recognise that, with the introduction of the new regime for relevant firms, in many areas inconsistent standards will exist between individuals working for banks and other relevant firms, who will be subject to the new accountability regime, and individuals working in other types of firms. After preparations for the new regime are complete, we will return to this issue and look at whether such inconsistencies should be addressed, as well as considering whether changes are needed to our Approved Persons Regime more generally.

4. Feedback on the Conduct Rules

- 4.1** This chapter provides feedback on the responses received to the proposals relating to the Conduct Rules, under which we will seek to ensure that individuals at almost all levels of firms can be held accountable for their actions, in line with the different jobs that they do. We consulted on a set of conduct rules that would apply to most employees within relevant firms. This wide application to employees was the key aspect of the Conduct Rules on which respondents focused. Concerns were expressed about the cost implications of training staff and of reporting any breaches of the obligations, which would be magnified by the scope of the rules.
- 4.2** We have given careful thought to this issue and believe a wide scope is critical to improving accountability and awareness of conduct responsibilities, in order to drive the appropriate culture, governance and conduct in firms. But we do recognise the importance of ensuring that the new rules can be implemented proportionately and in this chapter we discuss what might be expected of firms in practice.

Scope of the conduct rules

- 4.3** A number of respondents challenged the application of the Conduct Rules to more junior staff on the grounds that it would be overly burdensome to apply the conduct rules to all staff. However, there was not universal agreement among respondents about what the right scope should be, with at least one respondent suggesting that it would be simpler for firms if the Conduct Rules were applied to all staff within relevant firms, including ancillary staff.

Our response

We think it is very important that staff at all levels of an organisation are subject to minimum standards of conduct and held accountable for their actions. The importance of conduct issues should be understood throughout an organisation, it should not stop below a certain level of seniority. The Conduct Rules we propose are standards we would expect firms to be operating to already; they are very high level and should be easy to understand and map across to everyday tasks performed by staff throughout the firm. As a result, we have no plans to narrow the range of staff who are subject to the rules on which we consulted. In finalising the rules we will seek to make sure that we achieve our aim of applying the Conduct Rules to all employees except for staff carrying out purely ancillary functions (i.e. staff carrying out a role which would be fundamentally the same in a non-financial services firm).

Reporting of rules breaches

- 4.4** The Act requires firms to notify the regulators when they are aware that or suspect that a person has breached the Conduct Rules, or when a firm has taken formal disciplinary action against a person for any reason specified by the regulator. In July we consulted on the rules that specify when disciplinary action has to be notified. We also consulted on the frequency of this reporting and the frequency of the obligation in the Act to report actual or suspected breaches of conduct rules.
- 4.5** We proposed that actual or suspected breaches by a Senior Manager should be reported within seven days. For other individuals, we proposed reporting 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 the disciplinary action that they need to report for that quarter. Firms responding to the consultation felt that our threshold for reporting breaches was too low, creating a potentially disproportionate burden on them. Some raised concerns about suspicions having to be reported that would prove to be based on misunderstandings, rather than behaviour that breaches the Conduct Rules.

Our response

We understand firms' concerns in this area and, as we prepare our final rules for publication in the spring/summer, we will consider what adjustments can be made, particularly to the frequency and method by which firms are required to report breaches to us. We will consider whether further guidance would be helpful and we will also take account of responses received in this area in response to our technical CP¹⁸. However, we will need to keep in mind that the Act requires notification of suspected or known breaches of the Conduct Rules.

¹⁸ FCA CP14/31 / PRA CP28/14: *Strengthening accountability in banking: forms, consequential and transitional aspects*, December 2014 (www.fca.org.uk/your-fca/documents/consultation-papers/cp14-31).

5. Consultation on guidance on the Presumption of Responsibility

- 5.1** Under the Presumption of Responsibility, which was introduced by the Act, when a Relevant Authorised Person contravenes a relevant requirement, the Senior Manager with responsibility for the management of any of the firm's activities in relation to which the contravention occurred, is guilty of misconduct unless they satisfy the relevant regulator that they took such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing).
- 5.2** Some respondents to the July 2014 CP asked the FCA for further guidance on:
- the circumstances in which we would seek to apply the Presumption of Responsibility;
 - how we would apply it; and
 - the steps that a Senior Manager should take, in order to be able to rebut the Presumption of Responsibility.
- 5.3** In response to this feedback, we are consulting on further, more detailed guidance, which is set out in Appendix 2.
- 5.4** Our draft guidance will apply to individuals performing an SMF specified by either regulator on behalf of a Relevant Authorised Person, whether physically based in the UK or overseas. This will include NEDs who perform an SMF by virtue of their carrying on one or more of the following roles: Chairman; Senior Independent Director; Chair of the Audit, Remuneration, Risk or Nominations Committee. NEDs who do not perform an SMF will not be subject to the Presumption of Responsibility.
- 5.5** The Presumption of Responsibility will stand alongside the FCA's power to impose financial penalties on Senior Managers for breaching the Conduct Rules, and for being knowingly concerned in a firm's breach of a regulatory requirement.
- 5.6** The steps that a Senior Manager should take, in order to be able to rebut the Presumption of Responsibility, are such steps as would have been taken by a competent Senior Manager at that time in that specific individual's position with that individual's role and responsibilities in all the existing circumstances. Considerations to which the FCA would expect to have regard, when determining whether or not a Senior Manager has taken such steps, are set out in the Decision Procedure and Penalties Manual (DEPP)¹⁹. Senior Managers, when considering what steps to take, should also have regard to their existing statutory, common law and equitable

¹⁹ <http://fshandbook.info/FS/html/FCA/DEPP>

obligations, including those set out in the Companies Act 2006, the Conduct Rules, the UK Corporate Governance Code²⁰, and the Model Code²¹.

- 5.7** The steps the FCA would reasonably expect a NED to take, in order to be able to rebut the presumption, are different from those reasonably expected of an executive director, reflecting their different roles. This is consistent with the FCA's guidance on the role of NEDs²². Under the presumption of responsibility, a NED is neither required nor expected to assume executive responsibilities.

Q1: Does the draft guidance in Appendix 2 provide clarity on the FCA's proposed application of the presumption of responsibility?

²⁰ <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf>.

²¹ <http://fshandbook.info/FS/html/handbook/LR/9/Annex1>.

²² FCA CP15/5 / PRA CP7/15: *Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms*, February 2015 at www.fca.org.uk/your-fca/documents/consultation-papers/cp15-05.

Annex 1

List of FCA Senior Management Functions and Prescribed Responsibilities

Figure 2: List of FCA Senior Management Functions (SMFs)

FCA controlled functions for UK relevant authorised persons

Type	SMF	Description of FCA controlled function
FCA governing functions	SMF 3	Executive director function
	SMF 13	Chair of the nomination committee function
FCA required functions	SMF 16	Compliance oversight function
	SMF 17	Money laundering reporting function
Significant responsibility function	SMF 18	Significant responsibility function

Figure 3: List of FCA Prescribed Senior Management Responsibilities²³

1.	Responsibility for the <i>firm's</i> performance of its obligations under the senior management regime
2.	Responsibility for the <i>firm's</i> performance of its obligations under the employee certification regime
3.	Responsibility for compliance with the requirements of the <i>regulatory system about management responsibilities map</i>
4.	Responsibility for: (a) leading the development of; and (b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all members of the <i>firm's</i> governing body
5.	Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all persons performing <i>designated senior management functions</i> on behalf of the <i>firm</i> other than members of the <i>governing body</i>
6.	Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of: the internal audit function in accordance with SYSC 6.2 (Internal Audit)
7.	Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the compliance function in accordance with SYSC 6.1 (Compliance)

²³ This list can also be found in the near-final rules in Appendix 1 – see SYSC 4.7.7R (Table: FCA-prescribed senior management responsibilities). As noted in Chapter 1 of this paper, adjustments may be needed to our near-final rules to take into account the PRA's rules and statements of policy in this area.

-
8. Responsibility for:
 - (a) safeguarding the independence of; and
 - (b) oversight of the performance of;the risk function in accordance with SYSC 7.1.21R and SYSC 7.1.22R (Risk control)
 9. Overall responsibility for the *firm's* policies and procedures for countering the risk that the *firm* might be used to further *financial crime*
 10. Overall responsibility for the *firm's* policies and procedures for compliance with CASS
 11. Responsibility for developing and overseeing the *firm's* remuneration policies and practices in accordance with SYSC 19A (Remuneration Code)
-

Annex 2

List of non-confidential respondents

1	Armagh Credit Union
2	Association of British Credit Unions Limited
3	Association of Foreign Banks
4	Ballinderry Credit Union
5	Banbridge Credit Union Ltd
6	Bannvale Credit Union Limited
7	Barclays Bank PLC
8	Bath Building Society
9	BBA & AFME
10	Berwin Leighton Paisner
11	Building Societies Association
12	Capital Credit Union
13	Cattellyst Consultancy
14	Chartered Banker Institute
15	Chartered Banker Professional Standards Board
16	Chartered Institute for Securities and Investment
17	Coalisland Credit Union Ltd
18	Council of Mortgage Lenders
19	Coventry Building Society
20	Crossmaglen Credit Union Ltd
21	Darlington Building Society
22	Deutsche Bank
23	Employment Lawyers Association (ELA)
24	Enniskillen Credit Union Ltd
25	FCA Practitioner Panel
26	FCA Smaller Business Practitioner Panel
27	Financial Services Consumer Panel
28	Freshfields Bruckhaus Deringer LLP
29	Glasgow Credit Union
30	Global Witness, Anti-Corruption APPG, Transparency International UK
31	Herbert Smith Freehills LLP
32	HSBC
33	ICAEW
34	Institute of Business Ethics
35	Institute of Directors

36	Intermediary Mortgage Lenders Association (IMLA)
37	Investment & Life Assurance Group
38	Investment Management Association (IMA)
39	Irish League of Credit Unions
40	Japanese Bankers Association
41	Kilkeel Credit Union Ltd
42	Kingsley Napley LLP
43	Labour Finance and Industry Group
44	Leeds City Credit Union
45	Lisburn Credit Union Ltd
46	Lloyds Banking Group
47	Mansfield Building Society
48	Moody's Analytics UK Ltd
49	Mr Tony Davison
50	Nationwide Building Society
51	Newington Credit Union
52	Omagh Credit Union Ltd
53	Partners Credit Union
54	Pennyburn Credit Union Ltd
55	PWC
56	Questionmark
57	Santander
58	Scottish Building Society
59	Scotwest Credit Union
60	Secure Trust Bank
61	Simmons & Simmons LLP
62	Taylor Wessing LLP
63	Termonmaguirk Credit Union Ltd
64	Tesco Bank
65	TSB Bank PLC
66	UKCreditUnions Limited (UKCU) and ACE Credit Union Services (ACE)
67	Ulster Federation of Credit Unions
68	Unite the Union
69	West Bromwich Building Society
70	Which?

Appendix 1

Near-final rules

INDIVIDUAL ACCOUNTABILITY INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 60 (Applications for approval);
 - (3) section 60A (Vetting candidates by relevant authorised persons);
 - (4) section 63C (Statement of policy);
 - (5) section 63F (Issuing of certificates);
 - (6) section 63ZD (Statement of policy relating to conditional approval and variation);
 - (7) section 63E (Certification of employees by relevant authorised persons);
 - (8) section 64A (Rules of conduct);
 - (9) section 69 (Statement of policy);
 - (10) section 137A (The FCA’s general rules);
 - (11) section 137T (General supplementary powers);
 - (12) section 139A (Power of the FCA to give guidance);
 - (13) section 395 (The FCA’s and PRA’s procedures); and
 - (14) articles [to follow] of the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order (SI 2015/492).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:

Annex	Date comes into force
[To follow]	[To follow]
The remainder of this instrument	7 March 2016

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. [Not included]

Amendments to the FCA 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
Supervision manual (SUP)	Annex K
[Others]	[To follow]

Amendments to the material outside the Handbook

F. [To follow]

G. [To follow]

H. [To follow]

Citation

I. This instrument may be cited as the Individual Accountability Instrument 2015.

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

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.

[*Editor's Note:* Definitions not relating to the material in this document will follow]

<i>chair of the nomination committee function</i>	<i>FCA controlled function</i> 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.5.2R.
<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>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-prescribed senior management responsibilities</i>	the responsibilities in <i>SYSC</i> 4.7.7R (Table: FCA-prescribed senior management responsibilities).
<i>management responsibilities map</i>	the document describing the management arrangements of a <i>relevant authorised person</i> required by <i>SYSC</i> 4.5.4R.
<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 (A) or (B): <ul style="list-style-type: none"> (A) the meaning in section 71A of the <i>Act</i> (Meaning of “relevant authorised person”) which, in summary, is a <i>firm</i> that is an institution that: <ul style="list-style-type: none"> (1) is incorporated in, or formed under the law of any part of, the <i>United Kingdom</i>; and (2) is not an institution that has <i>permission</i> for <i>effecting contracts of insurance</i> or <i>carrying out contracts of insurance</i>; and

- (3) meets one of the following conditions:
- (a) it has a *Part 4A permission* that includes *accepting deposits*; or
 - (b) it meets all of the following conditions:
 - (i) the institution is an *investment firm*; and
 - (ii) it has a *Part 4A permission* that includes *dealing in investments as principal*; and
 - (iii) when carried on by it, that activity is a *PRA-regulated activity*.

(B) [Non-UK country branches to follow]

senior management function

a function defined in section 59ZA of the *Act* (Senior management functions) which means, in summary (in relation to the carrying on of a *regulated activity* by a *relevant authorised person*), a function that:

- (1) requires 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*.

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*.

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).

UK relevant authorised person

a *relevant authorised person* coming within paragraph (A) of the definition of *relevant authorised person* which, in summary, is a *relevant authorised person* incorporated in, or formed under the law

of any part of, the *United Kingdom*.

Amend the following definitions as shown.

- compliance oversight function* (in the *FCA Handbook*):
- (1) (for relevant authorised persons) FCA controlled function SMF16 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons), described more fully in SUP 10C.6.1R; and
 - (2) (for other firms) FCA controlled function CF10 in Parts 1 and 2 of the table of FCA controlled functions, described more fully in SUP 10A.7.8R.
- controlled function* (B) (in the *FCA Handbook*):
- a function, relating to the carrying on of a *regulated activity* by a *firm*, which is specified by:
- (1) either the *FCA* in:
 - (a) ~~(in the table of FCA controlled functions; or~~
 - (b) the tables in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons); or
 - (2) the *PRA* in:
 - (a) ~~(in the table of PRA controlled functions; or~~
 - (b) the part of the *PRA*'s rulebook titled "Senior Management Functions", which specifies *controlled functions*);
- under section 59 of the *Act* (Approval for particular arrangements).
- director* (B) (in the *FCA Handbook*):
- (1) ...
 - (c) (in *SYSC*, *MIPRU 2* (Insurance mediation activity: responsibility, knowledge, ability and good repute), ~~and SUP 10 10A (FCA Approved persons) and SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) a partnership;~~

*FCA controlled
function*

(B) (in the FCA Handbook):

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

- (1) the table of FCA controlled functions; or
- (2) the tables in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons).

*FCA governing
function*

(B) (in the FCA Handbook):

any of the following FCA controlled functions:

- (1) (for UK relevant authorised persons) FCA controlled functions SMF3 and SMF13 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons);
- (2) [overseas firms to follow]; or
- (3) (for other firms) FCA controlled functions 1 to 6 in Part 1 of the table of FCA controlled functions.

*FCA required
functions*

(B) (in the FCA Handbook):

any of the following FCA controlled functions:

- (1) (for relevant authorised persons) FCA controlled functions 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) (for other firms) FCA controlled functions 8 to 11 in Part 1 or Part 2 of the table of FCA controlled functions.

*money laundering
reporting function*

(in the FCA Handbook):

- (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) (in the case of firms other than relevant authorised persons) 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*

(B) (in the *FCA Handbook*):

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

(1) the table of *PRA controlled functions*; or

(2) the part of the *PRA's* rulebook titled “Senior Management Functions”.

Annex C

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

Insert SYSC 4.5 to SYSC 4.9 as new sections. All the text is new and is not underlined.

[*Editor's note:* Square brackets have been used to show incomplete text.]

4.5 Management responsibilities maps for UK relevant authorised persons

Application

- 4.5.1 R This section applies to *UK relevant authorised persons*.
- 4.5.2 R There is no territorial limitation on the application of this section.
- 4.5.3 R This section is not limited to *regulated activities* or other specific types of activities.

General rule about the management responsibilities map

- 4.5.4 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:
 - (a) the *persons* who are part of those arrangements; and
 - (b) their responsibilities.
- (See further requirements in *SYSC 4.5.7R*.)
- 4.5.5 R The *firm's management responsibilities map* must show clearly how any responsibilities covered by a *firm's management responsibilities map* are shared or divided between different *persons*.
- 4.5.6 G (1) One purpose of the *management responsibilities map* is to help the *firm* and the *FCA* satisfy themselves that the *firm* has a clear organisational structure (as required by *SYSC*).
- (2) It also helps the *FCA* to identify who it needs to speak to about particular issues and who is accountable if something goes wrong.

Specific requirements of the management responsibilities map

- 4.5.7 R A *management responsibilities map* must include:
- (1) (a) the names of all the *firm*'s:
 - (i) *approved persons* (including *PRA approved persons*);
 - (ii) members of its *governing body* and (if different) *management body* who are not *approved persons*;
 - (iii) *senior management*; and
 - (iv) *senior personnel*; and
 - (b) details of the responsibilities which they hold;
 - (2) all responsibilities described in any current *statement of responsibilities*;
 - (3) details of the management and governance arrangements relating to:
 - (a) the functions defined as [reference to PRA's prescribed responsibilities to follow] in the part of the *PRA* rulebook titled "Allocation of responsibilities"; and
 - (b) the *FCA-prescribed senior management responsibilities*;
 including the identity of the *persons* to whom those functions are allocated;
 - (4) the reasons why (if it has done any of these things) the *firm*:
 - (a) allocates responsibility for an *FCA prescribed senior management responsibility* to more than one *person* jointly; or
 - (b) divides responsibility for an *FCA prescribed senior management responsibility* between different *persons*;
 - (5) details about the functions allocated under SYSC 4.7.5R(3) (allocation of overall responsibility for a *firm*'s activities, business areas and management functions), including:
 - (a) what those activities, business areas and management functions are;
 - (b) the management and governance arrangements relating to them;
 - (c) details about whether and how they are shared or divided up; and
 - (d) the identity of the *persons* to whom those functions are allocated;

- (6) matters reserved to the *governing body* (including the terms of reference of its committees) and, if different, the *management body*;
- (7) details of how the *firm's* management and governance arrangements fit together with those of:
 - (a) its *group*; and
 - (b) any other *person* in (8);
- (8) details of the extent to which the *firm's* management and governance arrangements are provided by or shared with other members of its *group* or others;
- (9) details of the reporting lines and the lines of responsibility (if any) between the *firm* and those who carry out functions of or in relation to it and:
 - (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);
- (10) reasonable information about the *persons* described or identified in the *management responsibilities map*, including:
 - (a) whether they are *employees* of the *firm* and, if not, by whom they are employed;
 - (b) whether they are *certification employees* of the *firm*; and
 - (c) the responsibilities they have in relation to other *group* members or any other *person* in (8); and
- (11) details of how (1) to (10) fit together and fit into the *firm's* management and governance arrangements as a whole.

Details about preparing the management responsibilities map

- 4.5.8 R SYSC 4.5.7R(1) does not require the *firm* to include the names of *approved persons* under SUP [10A.1.16BR (Appointed representatives)].
- 4.5.9 G (1) The *management responsibilities map* should be consistent with the *statements of responsibilities*.
- (2) 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*.

- 4.5.10 G The *management responsibilities map* should include functions that are included in a *PRA controlled function* under SUP 10C.9 (Minimising overlap with the PRA approved persons regime).
- 4.5.11 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 *designated senior management functions*).
- 4.5.12 G (1) This provision gives *guidance* on specific aspects of SYSC 4.5.7R.
- (2) A *firm* need only include summary details of the *persons* in SYSC 4.5.7R(1).
- (3) A *firm's SMF managers* and members of its *governing body* overlap with its *senior management* and *senior personnel*. Where this is the case, the *firm* does not have to give the same details twice.
- (4) A *firm* should include details of individuals in addition to those in SYSC 4.5.7R(1), (3) and (5) if they are needed to make the *management responsibilities map* clear. For example, it may be necessary to include these details if the same individual has responsibilities in a number of different areas of the *firm*.
- (5) A *firm* should only include summary details about *statements of responsibilities* under SYSC 4.5.7R(2). There is no need to duplicate the *statements of responsibilities*. The main aim of including material about *statements of responsibilities* is to show how they fit into the *firm's* overall governance structure and with each other.

The management responsibilities map for small firms

- 4.5.13 G (1) The *FCA* expects that the *management responsibilities map* of a small and non-complex *firm* is likely to be simple and short. It may be no more than a single sheet of paper.
- (2) A *firm* is likely to be small and non-complex for these purposes if it:
- (a) [is below a balance sheet threshold – details to follow];
- (b) conducts a limited number of simple business lines; and
- (c) does not rely on group governance arrangements .

Management responsibilities map to be a single document

- 4.5.14 R A *management responsibilities map* must be a single document.
- 4.5.15 G (1) The requirement for a *management responsibilities map* to be a single document does not mean that it has to be a single sheet of paper or

must be capable of being reproduced as one.

- (2) A *management responsibilities map* may be made up of a folder with several files or items in it.
- (3) However, a *firm* that creates a *management responsibilities map* in this way should ensure that its approach is compatible with it being a single document. In particular:
 - (a) there should be a single item that identifies every item making up the *management responsibilities map* and shows where each item can be found;
 - (b) for example, this could be a contents list of the items making up the *management responsibilities map* with electronic links to each of them;
 - (c) the *management responsibilities map* should be complete by itself and should not refer to documents not forming part of it;
 - (d) every item in the *management responsibilities map* should only contain material about the matters required by this section;
 - (e) for example, if there is relevant material in the *firm's* report and accounts, the folder should only contain the relevant parts or a link to those parts.
- (4) The folder and its contents should be easily identifiable as the *firm's management responsibilities map*.
- (5) Although a *management responsibilities map* can be large and complex, SYSC 4.5.13G explains that, for small *firms*, it may be small and simple.

The purpose of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person)

- 4.5.16 G (1) This provision explains the purpose of SYSC 4 Annex 1G.
- (2) A *firm* may use it as a checklist to see whether its *management responsibilities map* covers all its business activities.
 - (3) A *firm* may wish to prepare its *management responsibilities map* using the same split of activities.
 - (4) If a *firm* uses SYSC 4 Annex 1G to help it prepare its *management responsibilities map*, it should bear in mind that it is not comprehensive (see SYSC 4.5.20G).
- 4.5.17 G There is no direct link between SYSC 4 Annex 1G and the senior management regime for *relevant authorised persons*.

The contents of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person)

- 4.5.18 G *SYSC 4 Annex 1G sets out the main business activities and functions that the FCA thinks are likely to be relevant to most firms, although the FCA does not require firms to organise themselves in this way.*
- 4.5.19 G *Most or all of these activities and functions will normally apply to a complex firm. Many of them may not apply to a non-complex firm.*
- 4.5.20 G (1) *SYSC 4 Annex 1G is not comprehensive. While it is intended to cover most front-line business activities of a relevant authorised person, it does not cover all internal oversight and monitoring functions.*
- (2) *For example, it does not cover compliance or internal audit or the firm's governing body or its committees.*

Records

- 4.5.21 G *A firm should consider past versions of its 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.*
- 4.5.22 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).*

[Placeholder for SYSC 4.6 (overseas firms)]

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

Application

- 4.7.1 R *This section applies to UK relevant authorised persons.*
- 4.7.2 R *There is no territorial limitation on the application of this section.*
- 4.7.3 R *This section is not limited to regulated activities or other specific types of activities.*

Purpose of this section

- 4.7.4 G *The purpose of this section is to ensure that an SMF manager is responsible and accountable for every area of a firm's activities.*

General rule about allocation of responsibilities

- 4.7.5 R (1) *A firm must allocate each of the FCA prescribed senior management responsibilities (see the table in SYSC 4.7.7R) to one or more SMF managers of the firm.*
- (2) *A firm may not allocate an FCA prescribed senior management responsibility to an SMF manager who is only approved to perform the significant responsibility function, subject to (6).*
- (3) *A firm must ensure that, at all times, one or more SMF managers have overall responsibility for each of the other activities, business areas and management functions of the firm.*
- (4) *A firm must make the allocations in (1) and (3) in such a way that it is clear who has which of those responsibilities.*
- (5) Paragraph (3) does not apply to:
- (a) the functions defined as [reference to PRA’s prescribed responsibilities to follow] in the part of the *PRA* rulebook titled “Allocation of responsibilities”; or
- (b) the *FCA prescribed senior management responsibilities*.
- (6) Paragraph (2) does not apply to the *FCA prescribed senior management responsibility* in row (10) of the table in SYSC 4.7.7R (functions in relation to *CASS*). *A firm may allocate it to an SMF manager who is only approved to perform the significant responsibility function.*
- 4.7.6 R The *FCA prescribed senior management responsibilities* are set out in the table in SYSC 4.7.7R.
- 4.7.7 R Table: FCA prescribed senior management responsibilities

FCA prescribed senior management responsibility	Explanation
(1) Responsibility for the <i>firm’s</i> performance of its obligations under the senior management regime	<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>SMF managers</i> performing <i>designated senior management functions</i>, including SUP 10C (FCA senior management regime for approved persons in relevant authorised persons).</p> <p>This responsibility includes:</p> <p>(1) compliance with conditions and time limits</p>

	<p>on approval;</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) compliance by the <i>firm</i> with its obligations under section 60A of the <i>Act</i> (Vetting of candidates by relevant authorised persons).</p>
(2) Responsibility for the <i>firm's</i> performance of its obligations under the employee certification regime	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) Responsibility for compliance with the requirements of the <i>regulatory system</i> about the <i>management responsibilities map</i>	This responsibility does not include allocating responsibilities recorded in it
(4) Responsibility for: <p>(a) leading the development of; and</p> <p>(b) monitoring the effective implementation of;</p> <p>policies and procedures for the induction, training and professional development of all members of the <i>firm's governing body</i></p>	
(5) Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all persons performing <i>designated senior management functions</i> on behalf of the <i>firm</i> other than members of the <i>governing body</i> .	
(6) Responsibility for:	(A) This responsibility does not apply to a <i>firm</i> to which SYSC 6.2 does not apply

<p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of:</p> <p>the internal audit function in accordance with SYSC 6.2 (Internal Audit)</p>	<p>(B) This responsibility includes responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of:</p> <p>a person approved to perform the <i>PRA's</i> Head of Internal Audit <i>controlled function</i> for the <i>firm</i>.</p>
<p>(7) Responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of;</p> <p>the compliance function in accordance with SYSC 6.1(Compliance)</p>	<p>(A) This responsibility does not apply to a <i>firm</i> to which the compliance function requirements in SYSC 6.1 do not apply</p> <p>(B) This responsibility includes responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of;</p> <p>the person performing the <i>compliance oversight function</i> for the <i>firm</i>.</p>
<p>(8) Responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of;</p> <p>the risk function in accordance with SYSC 7.1.21R and SYSC 7.1.22R (Risk control)</p>	<p>(A) This responsibility does not apply to a <i>firm</i> to which SYSC 7.1.21R and SYSC 7.1.22R do not apply.</p> <p>(B) This responsibility includes responsibility for:</p> <p>(a) safeguarding the independence of; and</p> <p>(b) oversight of the performance of:</p> <p>a person approved to perform the <i>PRA's</i> Chief Risk <i>controlled function</i> for the <i>firm</i>.</p>
<p>(9) Overall responsibility for the <i>firm's</i> policies and procedures for countering the risk that the <i>firm</i> might be used to further <i>financial crime</i></p>	<p>(A) This includes the function in SYSC 6.3.8R (<i>firm</i> must allocate to a <i>director</i> or <i>senior manager</i> overall responsibility within the <i>firm</i> for the establishment and maintenance of effective anti-money laundering systems and controls).</p> <p>(B) The <i>firm</i> may allocate this <i>FCA prescribed senior management responsibility</i> to the</p>

	<p><i>MLRO</i> but does not have to.</p> <p>(C) If the <i>firm</i> does not allocate this <i>FCA prescribed senior management responsibility</i> to the <i>MLRO</i>, this <i>FCA-prescribed senior management responsibility</i> includes responsibility for supervision of the <i>MLRO</i>.</p>
(10) Overall responsibility for the <i>firm's</i> policies and procedures for compliance with <i>CASS</i>	<p>(A) This responsibility does not apply to a <i>firm</i> to which <i>CASS</i> does not apply.</p> <p>(B) A <i>firm</i> may include in this <i>FCA-prescribed senior management responsibility</i> whichever of the following functions apply to it:</p> <p>(a) <i>CASS 1A.3.1R (CASS operational oversight for a CASS small firm)</i>;</p> <p>(b) <i>CASS 1A.3.1AR (CASS operational oversight for a CASS medium firm or a CASS large firm)</i>;</p> <p>(c) <i>CASS 11.3.1R (CASS operational oversight for certain CASS small debt management firms)</i>; or</p> <p>(d) <i>CASS 11.3.4R (CASS operational oversight for a CASS large debt management firm)</i>;</p> <p>but it does not have to.</p> <p>(C) If the <i>firm</i> does not include the functions in (B) in this <i>FCA prescribed senior management responsibility</i>, this <i>FCA-prescribed senior management responsibility</i> includes responsibility for supervision of the person performing the functions in (B) that apply to the <i>firm</i>.</p>
(11) Responsibility for developing and overseeing the <i>firm's</i> remuneration policies and practices in accordance with <i>SYSC [19A (Remuneration Code)]</i>	This responsibility does not apply to a <i>firm</i> to which <i>SYSC [19A]</i> does not apply
(12) [Placeholder for possible whistleblowing responsibility]	

Meaning of overall responsibility

- 4.7.8 G When SYSC 4.7 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 and direct responsibility for:
 - (a) briefing and reporting to the *governing body* about that function; and
 - (b) putting matters for decision about that function to the *governing body*.
- 4.7.9 G (1) 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.
- (2) This means that SYSC 4.7.5R(3) (allocation of overall responsibility for a *firm*'s activities, business areas and management functions) does not mean that the *firm* has to allocate overall responsibility for the running of the *governing body* itself.
- 4.7.10 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.
- 4.7.11 G (1) A *person* who reports to another or is subject to oversight by 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) If:
- (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter;
 - (b) A also reports to another *person* (B) about that matter;
 - (c) neither A nor B is a member of the *governing body*; and
 - (d) B also reports directly to the *firm's governing body* about that matter;

B has overall responsibility for that matter.

- (5) A member of the *governing body* who reports to the chief executive may still have overall responsibility for a function.

- (6) If:
- (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter; and
 - (b) A's function is subject to oversight by a *non-executive director* (B) or by a committee of the *firm's governing body* chaired by B;

A (not B) has overall responsibility for that matter.

- 4.7.12 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.

Who functions should be allocated to

- 4.7.13 G The *FCA* expects a *firm* to allocate all the functions in SYSC 4.7.5R to an individual and not to a legal *person*.
- 4.7.14 G The *FCA* would not consider it unusual if a *person* who has overall responsibility for a particular function was not a member of the *governing body*. For example, in some *firms*, the head of compliance reports directly to the *governing body* even though the head compliance is not a member of the *governing body*.
- 4.7.15 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:
- (a) will be sufficiently senior and credible; and
 - (b) will have sufficient resources and authority;
- to be able to exercise his management and oversight responsibilities effectively.
- (3) In general, the *FCA* expects that a *person* to whom overall responsibility for an area of a *firm* is allocated under *SYSC* 4.7.5R(3) will be the most senior employee or officer responsible for managing that area.
- 4.7.16 G *SYSC* 4.7.15G(2) and (3) also apply to someone who has responsibility for an *FCA-prescribed senior management responsibility*.
- 4.7.17 G (1) 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.
- (2) 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.
- (3) Therefore, in a large or complex *firm*, the *FCA* expects 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*.
- 4.7.18 G (1) The *FCA* expects that normally a *firm* will allocate the *FCA prescribed senior management responsibility* in rows (6), (7) and (8) of the table in *SYSC* 4.7.7R to an *SMF manager* who is a *non-executive director* of the *firm*.
- (2) The *FCA* expects that normally a *firm* will allocate:
- (a) the *FCA prescribed senior management responsibility* in rows (9) and (10) of the table in *SYSC* 4.7.7R; and
 - (b) functions under *SYSC* 4.7.5R(3) (allocation of overall responsibility for a *firm's* activities, business areas and management functions);
- to an *SMF manager* who performs executive functions for the *firm*.
- (3) The *FCA* accepts that it may not be practical for a small *firm* (see

SYSC 4.5.13G) to comply with (1) and (2).

Dividing management functions between different people

- 4.7.19 G (1) The *FCA* expects a *firm* to divide responsibilities under *SYSC 4.7.5R* (allocation of *FCA prescribed senior management responsibilities* and overall responsibility for other activities, business areas and management functions) between its *SMF managers* so that responsibilities that should be grouped together are allocated to a single *SMF manager*.
- (2) The *firm* should make the judgement about what responsibilities should be grouped together under *SYSC 4.1.1R* (robust governance arrangements).
- (3) The *firm* should take into account the way it is organised, the business it carries out and the need not to allocate too many responsibilities to one individual (see *SYSC 4.7.17G*).
- 4.7.20 G (1) The *FCA* expects that a *firm*, as well as following *SYSC 4.7.19G*, would normally allocate an *FCA-prescribed senior management responsibility* to a single *SMF manager*.
- (2) The *FCA* expects that a *firm* will not normally split an *FCA-prescribed senior management responsibility* between several *SMF managers*, with each only having responsibility for part.
- 4.7.21 G The *FCA* expects that a *firm* would normally only allocate a responsibility under *SYSC 4.7.19G* or an *FCA-prescribed senior management responsibility* to two or more *persons* jointly if that is done as part of a job share or where departing and incoming senior managers work together temporarily as part of a handover.
- 4.7.22 G (1) A *firm* may allocate more than one *FCA-prescribed senior management responsibility* to the same *SMF manager*.
- (2) This is subject to:
- (a) *SYSC 4.7.17G* (should not give too many responsibilities to one person); and
- (b) *SYSC 4.7.19G* (what responsibilities should be grouped together).

Group management arrangements and outsourcing

- 4.7.23 G (1) *SYSC 4.7.5R(3)* (Overall responsibility for functions of the firm) requires overall responsibility for each aspect of a *firm's* affairs to be allocated to an *SMF manager*.
- (2) This requirement does not prevent a *firm* from relying on an employee

of a company in the same group to perform the function.

- (3) A *firm* has two main choices about how to fit such arrangements into the senior management regime for *relevant authorised persons*.
- (4) Firstly, 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.3.9G, an arrangement with the *firm* is one of the factors that makes the senior management regime for *relevant authorised persons* apply.
- (5) The result is that the group official will be performing a *controlled function* and will need to be approved as an *SMF manager*.
- (6) 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.
- (7) A will need to be approved as an *SMF manager*.

4.7.24 G A *firm* may rely on an employee of a company in the same group to perform an *FCA prescribed senior management responsibility*. However, SYSC 4.7.5R(1) (*Allocation of FCA prescribed senior management responsibilities*) also requires this to be arranged in such a way that the *person* performing the responsibility is approved as an *SMF manager* of the *firm*.

4.7.25 G SYSC 4.7.23G to SYSC 4.7.24G also apply to a *firm* that outsources functions to a third party.

Link between the senior management regime and this section

4.7.26 G (1) A *firm* should allocate between its *SMF managers* responsibility for every area of its activities.

(2) This is required by a mixture of:

- (a) SYSC 4.7.5R (allocation of responsibilities); and
- (b) the *PRA's* requirements about the allocation of [reference to *PRA's* prescribed responsibilities to follow] to certain types of *SMF managers*.

(3) The details of (2)(b) can be found in the part of the *PRA's* rulebook titled [“Allocation of Responsibilities”].

4.7.27 G (1) Having overall responsibility for an activity under SYSC 4.7.5R(3) requires approval as an *SMF manager*. This is because a *person* who has overall responsibility for an activity will be:

- (a) performing the *significant responsibility function*; or
- (b) approved to perform another *designated senior management*

function.

- (2) The *significant responsibility function* applies because this is the effect of SUP 10C.7.1R (definition of *significant responsibility function*).
- (3) SUP 10C.7.1R says that the *significant responsibility function* does not apply to a person who is approved to perform another *designated senior management function*.

Link between SYSC 4 Annex 1G and this section

- 4.7.28 G (1) The purpose of SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person) is to help a *firm* to prepare its *management responsibilities map* (see SYSC 4.5.16G).
- (2) There is no direct link between SYSC 4 Annex 1G and this section.
- (3) However, a *firm* may find SYSC 4 Annex 1G useful as a checklist to help it make sure that it has not failed to allocate overall responsibility SYSC 4.7.5R(3) for a particular activity of the *firm*.
- (4) If a *firm* uses SYSC 4 Annex 1G to help it check whether it has allocated overall responsibility as described in (3), it should bear in mind that it is not comprehensive (see SYSC 4.5.20G).
- 4.7.29 G SYSC 4.7.19G (a *firm* should allocate responsibility for particular areas to a single *SMF manager*) does not mean that the *FCA* expects there to be a separate *person* with overall responsibility for each individual business area in SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person).

[Placeholder for SYSC 4.8 (overseas firms)]

4.9 Handover procedures and material

Application

- 4.9.1 R This section applies to *UK relevant authorised persons*.
- 4.9.2 R There is no territorial limitation on the application of this section.
- 4.9.3 R This section is not limited to *regulated activities* or other specific types of activities.

Rules about handover material

- 4.9.4 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*:
 - (a) taking on a new job or new responsibilities; or
 - (b) whose responsibilities or job are being changed; and
- (3) anyone who has management or supervisory responsibilities for the *SMF manager* in (1) or (2);

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

- 4.9.5 R (1) A *firm* must have a policy about how it complies with SYSC 4.9.4R, including the systems and controls it uses.
- (2) A *firm* must make and maintain adequate records of the steps taken to comply with SYSC 4.9.4R.
- 4.9.6 G The information and material in SYSC 4.9.4R that should be made available includes:
- (1) details about unresolved or possible breaches of the requirements of the *regulatory system*; and
 - (2) details of any unresolved concerns expressed by the *FCA*, the *PRA* or another *regulatory body*.
- 4.9.7 G (1) The main purpose of SYSC 4.9.4R is to help the *SMF manager* with his new or revised responsibilities or job and to help the *SMF manager's* managers.
- (2) It should be a practical and helpful document and not just a record.
 - (3) The material should include an assessment of what issues should be prioritised.
 - (4) It should include judgement and opinion, not just facts and figures.

Handover arrangements and certificates

- 4.9.8 G (1) Where the responsibilities or job in SYSC 4.9.4R are being taken over from another *person*, the *firm* should have arrangements for an orderly transition.
- (2) As part of these arrangements, the *firm* should take reasonable steps to ensure that the predecessor contributes to the information and material in SYSC 4.9.4R all that it would be reasonable to expect the predecessor to know and consider relevant, including the

predecessor's opinions.

- (3) One way of doing this could be for the predecessor to prepare a handover certificate.
- (4) However the *FCA* accepts that there will be cases in which it will be impractical to ask the predecessor to prepare a handover certificate.

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

- 4.9.9 G A *firm* should consider whether to apply the procedures in this section to other parts of its management.

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

Business areas and management functions	Explanation
(1) Payment services	<p>This means:</p> <p>(1) <i>payment services</i>;</p> <p>(2) issuing and administering other means of payment (for example, cheques and bankers' drafts);</p> <p>(3) issuing <i>electronic money</i>; and</p> <p>(4) current accounts.</p>
(2) Settlement	<p>This means clearing and settlement of any transactions described in rows (3) and (6) to (9) of this annex in relation to the assets covered by (9).</p> <p>It also includes clearing and settlement of any transactions described in row (10).</p>
(3) Investment management	<p>This has the same meaning as <i>managing investments</i> with the following adjustments:</p> <p>(a) it covers all types of assets; and</p> <p>(b) the exclusions in the <i>Regulated Activities Order</i> do not apply.</p>

	It also covers fund management.
(4) Financial or investment advice	This includes <i>advising on investments</i> .
(5) Mortgage advice	This has the same meaning as <i>advising on regulated mortgage contracts</i> but is expanded to cover land anywhere in the world and to cover security of any kind over land.
(6) Corporate investments	This means acquiring, holding, managing and disposing a <i>firm's</i> investments made for its own account.
(7) 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>
(8) Retail sales	This means the <i>selling</i> of any <i>investment</i> to a <i>retail customer</i> . It includes savings accounts. It does not include the activities in (1).
(9) 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.
(10) Market making	This has the meaning in <i>MIFID</i> .
(11) <i>Investment research</i>	
(12) Origination/syndication and underwriting	Origination and syndication include: (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; and (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. A commitment or <i>investment</i> includes an economic interest in some or all of it.

	This activity also includes the provision of services relating to such transactions.
(13) Retail lending decisions	Deciding whether, and on what terms, to lend to <i>retail customers</i> . Lending includes granting credit, leasing and hire (including finance leasing).
(14) 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).
(15) Design and manufacturing of products intended for wholesale customers	Wholesale customers mean <i>persons</i> who are not <i>retail customers</i>
(16) Design and manufacture of products intended for <i>retail customers</i>	
(17) Production and distribution of marketing materials and communications	This includes <i>financial promotions</i>
(18) Customer service	This means dealing with <i>clients</i> after the point of sale, including queries and fulfilment of <i>client</i> requests
(19) Customer complaints handling	This includes the <i>firm's</i> compliance with <i>DISP</i> . It also includes: (1) 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.
(20) Collection and recovering amounts owed to a <i>firm</i> by its customers Dealing with customers in	“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 definition is extended to cover services provided by the <i>firm</i> that are not provided in the course of

arrears	carrying on a <i>regulated activity</i> or an <i>ancillary service</i> .
(21) Middle office	This means risk management and controls in relation to, and accounting for, transactions in <i>securities</i> or <i>derivatives</i>
(22) The <i>firm's</i> information technology	
(23) Business continuity planning	This means the functions described in <i>SYSC</i> 4.1.6R and <i>SYSC</i> 4.1.7R
(24) Human resources	This includes recruitment, training and competence and performance monitoring
(25) Incentive schemes for the <i>firm's</i> staff	This is not limited to schemes based on sales.
(26) <i>Providing information in relation to a specified benchmark</i>	
(27) <i>Administering a specified benchmark</i>	

Annex K

Amendments to the Supervision manual (SUP)

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

[*Editor's Note:* The material relating to forms is provisional. Square brackets have been used to show incomplete text.]

10C FCA senior management regime for approved persons in 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 *FCA-approved SMF managers* of a *relevant authorised person*.
- 10C.1.3 G The *rules* in this chapter specify descriptions of *FCA designated senior management 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]

- 10C.1.5 [To follow]
- 10C.1.6 [To follow]
- 10C.1.7 [To follow]
- 10C.1.8 [To follow]
- 10C.1.9 [To follow]
- 10C.1.10 [To follow]

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

- 10C.1.11 G There are no territorial limitations to *SUP 10C* for:
- (1) overseas branches of *UK firms*; or
 - (2) *UK firms* providing services into or out of the *United Kingdom* on a cross-border basis.

Appointed representatives

10C.1.12 [To follow]

10C.1.13 [To follow]

Insolvency practitioners

10C.1.14 R This chapter does not apply to a function performed by:

- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
- (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
- (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a *person* acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

10C.2 Purpose

10C.2.1 G The immediate purpose of *SUP* 10C.3 to *SUP* 10C.9 is to specify, under section 59 of the *Act*, descriptions of the *FCA designated senior management 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's* senior management regime for *SMF managers* in *relevant authorised persons*.

10C.2.2 G *SUP* 10C does not deal with the *PRA's* senior management regime for *relevant authorised persons*. The key parts of its regime can be found in the parts of the *PRA's* rulebook titled “Senior Management Functions” and “Allocation of Responsibilities”.

10C.2.3 G (1) 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.

(2) However, *SUP* [10C.11.1G] has material that applies to the *FCA's* policy about giving its consent to applications made to the *PRA* about conditional and time-limited approvals.

10C.2.4 G *SUP* [10C.12] (Changes to an approved person's details) applies in certain cases to *PRA-approved persons*. Where this is the case, it says so.

10.3 General material about the definition of controlled functions

Purpose

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

Types of controlled function

- 10C.3.2 G There are two types of *FCA controlled function* under the *Act*:
- (1) an *FCA-designated senior management function*; and
 - (2) an *FCA controlled function* that is not a *designated senior management function*.
- 10C.3.3 G All the *controlled functions* that the *FCA* has specified in this chapter are *designated senior management functions*. The *FCA* has not, in this chapter, used its power to specify *controlled functions* that are not *designated senior management functions*.
- 10C.3.4 G [The *FCA* has (in *SUP* 10A) specified *controlled functions* for relevant *authorised persons* that are not *designated senior management functions*. (See [*SUP* 10C.1.X to *SUP* 10C.1.X] (Appointed representatives)).]
- 10C.3.5 G
- (1) Except as described in *SUP* 10C.3.4G, in this chapter, *FCA controlled function* and *FCA designated senior management function* cover the same functions.
 - (2) Therefore a function is only covered by *SUP* 10C.4.3R (Table of *FCA controlled functions* for relevant *authorised persons*) if that function meets both the following sets of requirements:
 - (a) the requirements of *SUP* 10C.3.6R (Definition of *FCA controlled function*: arrangements); and
 - (b) the requirements of *SUP* 10C.3.10R (Definition of *FCA designated senior management function*).

Definition of *FCA controlled function*: arrangements

- 10C.3.6 R A function specified in this chapter is an *FCA controlled function* only to the extent that it is performed under an *arrangement* entered into by:
- (1) a *firm*; or
 - (2) a contractor of the *firm*;
- in relation to the carrying on by the *firm* of a *regulated activity*.

- 10C.3.7 G Section 59(1) and (2) of the *Act* provide that approval is necessary for an *FCA controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractor (typically an *appointed representative*), in relation to a *regulated activity*.
- 10C.3.8 G (1) *Arrangement* is defined in section 59(10) of the *Act* as any kind of arrangement for the performance of a function which is entered into by a *firm* or any of its contractors with another *person*.
- (2) *Arrangement* includes the appointment of a *person* to an office, a *person* becoming a *partner*, or a *person's* employment (whether under a contract of service or otherwise).
- (3) An *arrangement* need not be a written contract but could arise by conduct, custom and practice.
- 10C.3.9 G If a *firm* is a member of a group, a *person* employed elsewhere in the *group* (for example, by the *holding company*) who carries out a function in relation to the *firm* will only perform an *FCA controlled function*:
- (1) if the function is performed under an *arrangement* entered into by the *firm* (under section 59(1)); or
- (2) if:
- (a) there is a contract (under section 59(2)) between the *firm* and the relevant *group* member permitting this; and
- (b) the function is performed under an *arrangement* entered into by the contractor.

Definition of FCA designated senior management function

- 10C.3.10 R Each *FCA-designated senior management function* is one which comes within the definition of a *senior management function*.
- 10C.3.11 G Section 59ZA(2) of the *Act* says that a function is a “senior management function”, in relation to the carrying on of a *regulated activity* by a *firm*, if:
- (1) the function will require the *person* performing it to be responsible for managing one or more aspects of the *firm's* affairs, so far as relating to the activity; and
- (2) those aspects involve, or might involve, a risk of serious consequences:
- (a) for the *firm*; or
- (b) for business or other interests in the *United Kingdom*.
- 10C.3.12 G Section 59ZA(3) of the *Act* says that “managing” includes, for these purposes, taking decisions, or participating in the taking of decisions, about

how one or more aspects of the *firm's* affairs should be carried on.

The 12-week rule

- 10C.3.13 R If:
- (1) a *firm* appoints an individual to perform a function which, but for this rule, would be an *FCA-designated senior management function*;
 - (2) the appointment is to provide cover for an *SMF manager* whose absence is:
 - (a) temporary; or
 - (b) reasonably unforeseen; and
 - (3) the appointment is for less than 12 weeks in a consecutive 12-month period;
- the description of the relevant *FCA-designated senior management function* does not relate to those activities of that individual.
- 10C.3.14 G *SUP* 10C.3.13R enables cover to be given for (as an example) holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing an *FCA-designated senior management function* for more than 12 weeks, the *firm* should apply for approval.
- 10C.3.15 G See *SUP* [10C.11.7G] to *SUP* [10C.11.14G] (time-limited approvals) for more information about temporary appointments.

10C.4 Specification of functions

- 10C.4.1 R (1) Each of the functions described in *SUP* 10C.4.3R is an *FCA controlled function*.
- (2) In accordance with section 59(6A) of the *Act* (Approval for particular arrangements) the *FCA* designates each of them as a *senior management function*.
- 10C.4.2 R (1) Part 1 of the table in *SUP* 10C.4.3R applies to *UK relevant authorised persons*.
- (2) Part 2 of the table in *SUP* 10C.4.3R applies to [to follow].
- (3) Part 3 of the table in *SUP* 10C.4.3R applies to [to follow].
- 10C.4.3 R Table of FCA controlled functions for relevant authorised persons

Part One: (FCA controlled functions for UK relevant authorised persons)		
Type	SMF	Description of FCA controlled function
<i>FCA governing functions</i>	SMF 3	<i>Executive director function</i>
	SMF 13	<i>Chair of the nomination committee 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>

Part 2 ([to follow])		
Type	CF	Description of FCA controlled function

Part 3 ([to follow])		
Type	CF	Description of FCA controlled function

10C.4.4 G As described in [SUP 10C.1.X to SUP 10C.1.X] (Appointed representatives), SUP 10A specifies certain other *controlled functions* for *relevant authorised persons*.

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*.

Chairman of the nomination committee function (SMF13)

- 10C.5.2 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.5.3 G See SYSC 4.3A (CRR firms) for material about nomination committees.
- 10C.5.4 G Please note that the *chair of the nomination committee function* still applies if the *firm* is not a *CRR firm*.
- 10C.5.5 G In some *firms*, the chairman of the nomination committee is also the chairman of the *governing body*. As being chairman of the *governing body* is a *PRA controlled function*, the chairman may not need approval to perform the *chair of the nomination committee function* but instead just need *PRA* approval for being chairman of the *governing body*. (See SUP 10C.9 (Minimising overlap with the *PRA* approved persons regime) for an explanation of when *PRA* approval means that *FCA* approval is not needed.)

Insurance mediation

[To follow]

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 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) a function allocated to that *person* under SYSC 4.7.5R(3) (Allocation of certain senior management responsibilities) in

relation to the *firm*; or

(b) the *FCA prescribed senior management responsibility* in row (10) of the table in SYSC 4.7.7R (functions in relation to *CASS*) allocated to that *person* under SYSC 4.7.5R(1) (allocation of *FCA prescribed senior management responsibilities*); and

(2) does not have an approval to perform any other *designated senior management 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 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> .
(5) “A” is appointed to perform the	A needs approval to perform the

<p><i>compliance oversight function</i> for one <i>firm</i> (Firm X) in a group (which may or may not be a <i>relevant authorised person</i>) and to perform a function coming within the scope of the <i>significant responsibility function</i> for another <i>firm</i> (which is a <i>relevant authorised person</i>) in the same group (Firm Y).</p>	<p><i>compliance oversight function</i> for Firm X and the <i>significant responsibility function</i> for Firm Y .</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 (4) 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</p>

	Functions”].
Note (1): A potential <i>significant responsibility function</i> means a function that would have come within the <i>significant responsibility function</i> but is excluded by SUP 10C.7.1R(2).	
Note (2): A potential <i>significant responsibility function</i> should be recorded in A’s <i>statement of responsibilities</i> and in the <i>firm’s management responsibilities map</i> .	

- 10C.7.4 G (1) A *person* does not perform a function under SYSC 4.7.5R(3) (having overall responsibility for a business area or function) just by being a member of a *firm’s governing body*.
- (2) Therefore, for example, a *non-executive director* acting as such does not perform the *significant responsibility function*.

10.8 [Overseas Branch Senior Manager function and EEA Branch Senior Manager functions]

[To follow]

10C.9 Minimising overlap with the PRA approved persons regime

Introduction

- 10C.9.1 G SUP 10C.9 deals with how the *FCA’s* senior management regime for *relevant authorised persons* interacts with the *PRA’s* one.
- 10C.9.2 G Both the *FCA* and the *PRA* may specify a function as a *designated senior management function* in relation to a *PRA-authorised person*.
- 10C.9.3 G If a *person’s* job for a *firm* involves:
- (1) an *FCA designated senior management function*, the *firm* should apply to the *FCA* for approval;
 - (2) a *PRA designated senior management function*, the *firm* should apply to the *PRA* for approval;
 - (3) both an *FCA designated senior management function* and a *PRA designated senior management function*, the *firm* should apply to both the *FCA* and the *PRA* for approval (the purpose of SUP 10C.9 is to cut down the need for this sort of dual approval).

FCA controlled functions absorbed into PRA controlled functions

- 10C.9.4 G The *FCA* is under a duty under section 59A of the *Act* (Specifying functions as controlled functions: supplementary) to exercise the power to specify any *senior management function* as an *FCA controlled function* in a way that it considers will minimise the likelihood that approvals need to be given by both the *FCA* and the *PRA* for the performance by a *person* of *senior management functions* in relation to the same *PRA-authorised person*.
- 10C.9.5 G The *FCA* and *PRA* have coordinated their *approved person* regimes to reduce the amount of overlap.
- 10C.9.6 G (1) *SUP* 10C.9.8R applies when a *firm* is seeking approval from the *PRA* for a *candidate* to perform a *PRA controlled function* and the intention is that the *candidate* will also perform what would otherwise be an *FCA governing function* once the *PRA* gives its approval. *SUP* 10C.9.8R works by disapplying that *FCA governing function*.
- (2) Where (1) applies, the activities within that *FCA governing function* are included in the *PRA controlled function* for which the *person* has approval. [Chapter Two of the part of the *PRA*'s rulebook titled "Senior Management Functions" deals with this.]
- 10C.9.7 G (1) *SUP* 10C.9.9G gives some examples of how *SUP* 10C.9.8R works.
- (2) The examples do not cover the *significant responsibility function* because that function does not apply if the *person* holds any other *designated senior management function* for the same *firm*. See the table in *SUP* 10C.7.3G for examples of how this works.

The main rule

- 10C.9.8 R A *person* (referred to as "A" in this *rule*) is not performing an *FCA governing function* (referred to as the "particular" *FCA governing function* in this *rule*) in relation to a *PRA-authorised person* (referred to as "B" in this *rule*), at a particular time, if:
- (1) A has been approved by the *PRA* to perform any *PRA 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.9.9 G Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorized persons is reduced

Example	Whether FCA approval required	Whether PRA approval required	Comments
(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, 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</i> 10C.9.8R 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	No. A is not treated as performing the	Yes	Being a chief executive is a <i>PRA controlled function</i> . A's functions

Example	Whether FCA approval required	Whether PRA approval required	Comments
director.	<i>executive director function.</i>		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.9.8R</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 takes on the chief risk officer function and remains as a director.	Yes, when A is appointed as director.	Yes, when A takes up the chief risk officer role	When A is appointed as chief risk officer, A is still treated as carrying on the <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> for that <i>firm</i> . Later, A is appointed as an executive director with the same <i>firm</i> .	Yes, when A is appointed as an executive director.	Yes, when A takes up the chief risk officer role.	<i>SUP 10C.9.8R</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 director and chief risk officer at the same time. Later, A gives up the role as chief risk officer but remains as an	No, on A's first appointment (see example (1)). But when A gives up the role as chief risk officer,	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

Example	Whether FCA approval required	Whether PRA approval required	Comments
executive director.	<p><i>FCA approval is needed to perform the executive director function.</i></p> <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 A's fitness (<i>SUP</i> [10C.10.4D(4)])</p>		<p>because A did not need it when A was first appointed.</p> <p>The combined effect of <i>SUP</i> 10C.9.8R 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</i> chief risk <i>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</i> chief risk <i>controlled function</i> and <i>SUP</i> 10C.9.8R 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>
(9) A is appointed as the chief finance officer and a director at the same time. Later, A switches to being chief risk officer while remaining as	No	Yes	The arrangements in <i>SUP</i> 10C.9.8R continue to apply, even though A switches between <i>PRA controlled functions</i> after the <i>PRA</i> 's first approval.

Example	Whether FCA approval required	Whether PRA approval required	Comments
a director.			
(10) A is appointed chief risk officer and a director. A goes on temporary sick leave. A takes up his old job when he comes back.	No, neither on A's first appointment nor when A comes back from sick leave.	Yes	<i>SUP 10C.9.8R</i> 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.
(11) A is appointed to be chairman of the <i>governing body</i> and chairman of the nomination committee at the same time.	No. A does not need approval to perform the <i>chair of the nomination committee function</i> .	Yes, on first appointment.	Being chairman of the <i>governing body</i> is a <i>PRA controlled function</i> . Therefore, the answer for example (1) applies.
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.9.10 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.9.11 G The *PRA* cannot give its approval for the performance of a *PRA-designated senior management function* without the consent of the *FCA*. The *firm* does not need to apply to the *FCA* for that consent.

10C.9.12 G Under section 59B of the *Act* (Role of FCA in relation to PRA decisions), the *FCA* may arrange with the *PRA* that, in agreed cases, the *PRA* may give approval without obtaining the consent of the *FCA*. No such arrangements are currently in force.

[The material in SUP 10C.9 and SUP 10C.10 in FCA consultation paper CP14/13 and CP14/31 will follow]

10C.11 Conditional and time-limited approvals

[*Editor's Note:* 10C.11 may be renumbered when the rules and guidance are made]

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:
- (a) giving approval under section 59 subject to conditions or for a limited period only; and
- (a) 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 (1) The power to grant an approval subject to conditions or for a limited period only applies to *senior management functions*.
- (2) As all *FCA controlled functions* specified in this chapter are *senior management functions*, this means that this power applies to all *FCA controlled functions* specified in this chapter.
- (3) [The *FCA* has (in *SUP* 10A) specified *controlled functions* for *relevant authorised persons* that are not *designated senior management functions*. See [*SUP* 10C.1.X to *SUP* 10C.1.X] (Appointed representatives) for more about this.]
- (4) [The power to grant an approval subject to conditions or for a limited period does not apply to the *controlled functions* in (3).]

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 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 most common use of the power to give qualified approvals would be:
- (1) time-limited approvals;
 - (2) a time limitation in relation to an ongoing or prospective enforcement investigation;
 - (3) a competency-related condition; and
 - (4) a role-limited condition.

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.3.13R.
- 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 outlined below.
- (2) The head of compliance resigns unexpectedly from a *firm*. The *firm* wishes to appoint one of the deputies. The *FCA* and the *firm* believe the deputy to be capable of running the *firm*'s compliance function on a day-to-day 'business as usual basis' but the deputy has no experience developing a long-term, firm-wide strategy. The *firm* estimates that it could take up to a year to recruit a permanent head of compliance. It also believes that the deputy could be the ideal candidate if the deputy could outline a viable compliance strategy for the *firm*.
- (3) In this situation, it may be appropriate to approve the deputy as head of compliance subject to a 12-month time limit.
- (4) Before the end of that period, the deputy would have to prepare a new compliance strategy and the deputy's ability to do so would be taken into account when deciding whether to approve the deputy on a permanent basis.
- 10C.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 when the *person* with a temporary appointment has a more limited role.
- 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) an enforcement action time-limited approval (see *SUP* 10C.11.16G);
- (2) a time limitation used in conjunction with a competence condition (see *SUP* 10C.11.26G); 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 properness, but at the time

of application there are no or insufficient grounds to refuse approval. The *candidate* may or may not be a subject of that investigation.

- 10C.11.17 G The *FCA* will generally limit an enforcement action time-limited approval for a period long enough to allow the investigation to be completed so far as relevant to the *candidate*. Imposing a time limitation on approval would allow the *FCA* to look at the situation in more detail after approval, with the benefit of all the facts arising from the investigation.
- 10C.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
- (1) The *FCA* is likely only to give a qualified approval on the basis described in *SUP* 10C.11.19G in limited circumstances.
 - (2) Generally, the *FCA* would only use this power in place of rejection where the deficiency is in only a relatively small proportion of the required job competencies.
 - (3) Lack of technical knowledge is more likely to be easier to remedy than a problem with personal characteristics.
 - (4) The *FCA* is only likely to give its approval on this basis when the *candidate* has fallen short of the required standard by a reasonably small margin (a “near miss”).
- 10C.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 (1) When the *FCA* is imposing a competence related condition where there is a shortfall, approval will only be granted on the condition that the *candidate* is required to undertake training or receive mentoring to eliminate the shortfall.
- (2) See *SUP* 10C.11.39G (role-limited approval) for an example of a shortfall in competence that is not dealt with by trying to remove it.
- 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 makes 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 where a *firm* wishes to appoint someone as an executive director who has a number of 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 the proposed role with the *firm*. In this situation, it might be appropriate to attach a condition to the individual's approval requiring that person to resign from some of his 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 that individual 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
- (1) Very often it will be uncertain whether a change in circumstances will happen at all, the details may not yet be known or the timing may be uncertain.
 - (2) In that case, the *FCA* may, subject to (3), make its judgement based on the *candidate's* proposed role, without taking into account the possible change. This reflects the fact that the judgement of whether a *candidate* is fit and proper takes into account the role that they are actually going to play.
 - (3) However, to reflect the possible change, the *FCA* would give a time-limited approval that would come to an end on the occurrence of the milestone.
 - (4) The *firm* could then apply for a new and possibly unqualified approval.
- 10C.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 that *candidate* 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:
- (1) does not depend on the *candidate* being unfit without that condition or limit; and
 - (2) need not be related to the *candidate's* ability to do the job properly (see *SUP* 10C.11.28G).
- 10C.11.41 G One example of a conditional approval when the *candidate* is fit and proper and able to do the job is to support supervisory action in relation to the *firm*. So, if a *firm* is running a remedial programme, it may be a condition of the *candidate's* approval that the *candidate* takes responsibility for aspects of that programme.
- 10C.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 the role, be responsible for the *firm's* approach to dealing with particularly unusual or severe challenges in the near future. In this situation, it might be appropriate to approve the *candidate* subject to a time limit with a view to reassessing

that *candidate* for a permanent position in due course.

- 10C.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 that person receives permanent approval, eg a requirement not to introduce a new sales channel until they receive permanent approval.

Effects of a breach of condition

- 10C.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) of the *Act* 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) of the *Act* 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 *COCON*; and
 - (b) call into question the fitness of the individual.

- 10C.11.49 G 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 financial penalty.

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 (1) If a *firm* is applying for a change of the type described in *SUP* 10C.11.50G(1) or *SUP* 10C.11.50G (2) the *firm* should apply to the *FCA* if the *FCA* imposed that condition, even if the approval was given by the *PRA*.
- (2) If the *firm* is applying for the imposition of a new condition, the *firm* should apply to the *FCA* if the approval to which the application relates was given by the *FCA*.
- (3) In other cases the application should be to the *PRA*.

- 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 (1) An application by a *firm* to the *FCA* under section 63ZA of the *Act* (Variation of senior manager's approval at request of relevant authorised persons) must be made by using [Form I (SUP 10C Annex4D)].
- (2) It must be accompanied by:
- (a) a *statement of responsibilities* for the *approved person* concerned; and
 - (b) a [Form J, if this is required by *SUP* 10C.12.19D (notification of significant change to *statement of responsibilities*).]

- 10C.11.54 G [*SUP* 10C.9.6D explains how applications to vary a conditional approval should be submitted. For *credit unions*, *SUP* 10C.9.8D applies instead.]

- 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* notifying the *FCA* of its withdrawal of an application for variation of an approval must use [Form B (*SUP 10A Annex 5R*)].
- 10C.11.62 G [*SUP 10C.9.10R* explains how notifications of withdrawal of an application 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 programme (see *SUP*

10C.11.41G). If the remedial programme 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; or
 - (2) varying a condition; or
 - (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.

[The remaining material in *SUP* 10C in *FCA* consultation papers CP14/13 and CP14/31 will follow]

Appendix 2

Draft guidance on the Presumption of Responsibility

Appendix 2
[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 69 (Statement of policy);
 - (2) section 139A (Power of the FCA to give guidance);
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.

Amendments to the Enforcement Guide

- E. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument. The general guidance in EG does not form part of the Handbook.

Citation

- F. This instrument may be cited as the [Individual Accountability Instrument] 2015.

By order of the Board of the Financial Conduct Authority
[date] 2015

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

[*Editor's note:* The amendments proposed in this Annex build upon the draft Handbook text proposed by the FCA in CP14/13 *Strengthening accountability in banking: a new regulatory framework for individuals* as if it was made (and so is not shown as underlined or deleted text) even though that proposed text is subject to the outcome of consultation and may change].

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

6 Penalties

...

6.2 Deciding whether to take action

...

Action against individuals under section 66 of the Act

...

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~~ to *DEPP* 6.2.9EG apply only to action taken by virtue of section 66A(5).

...

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 a~~ An SMF manager is guilty of misconduct 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) in a contested case, the *FCA* establishes points (1) and (2), above, in any proceedings before the *RDC*, a court or a tribunal, with the *SMF manager* as a party to the action; and
- (4) 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 G 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.
- 6.2.9-C G When determining, for the purposes of section 66A(5) of the *Act*, whether an *SMF manager* was responsible for the management of any of the *firm's* activities in relation to which a contravention of a relevant requirement by the *firm* occurred, the *FCA* will consider the full circumstances of each case. A list of considerations that may be relevant for this purpose is set out below. This list is not exhaustive: there may be other considerations, not listed, that are relevant.
- (1) The *SMF manager's* statement of responsibilities, including whether the *SMF manager* was performing an executive or non-executive role.
 - (2) The *firm's* management responsibilities map.
 - (3) How the *firm* operated, and how responsibilities were allocated in the *firm* in practice.
 - (4) The *SMF manager's* actual role and responsibilities in the *firm*, to be determined by reference to, among other things, the minutes of meetings, emails, interviews, telephone recordings and organisational charts.
 - (5) The relationship between the *SMF manager's* responsibilities and the responsibilities of other *SMF managers* in the *firm*.
- 6.2.9-D G Under section 66A(6) of the *Act*, such steps as a person in the position of the *SMF manager* could reasonably be expected to take to avoid the *firm's* contravention of a relevant requirement occurring (or continuing) are:
- (1) such steps as a competent *SMF manager* would have taken;
 - (2) at that time;
 - (3) in that specific individual's position;
 - (4) with that individual's role and responsibilities;
 - (5) in all the existing circumstances.
- 6.2.9-E G When determining whether or not an *SMF manager* satisfies the *FCA* under section 66A(6) of the *Act*, that they had taken such steps as a person in their position could reasonably be expected to take to avoid the contravention of a relevant requirement by the *firm* occurring (or continuing), additional considerations to which the *FCA* would expect to have regard include, but are not limited to:
- (1) the role and responsibilities of the *SMF manager*;

- (2) whether the *SMF manager* exercised reasonable care when considering the information available to them;
- (3) whether the *SMF manager* reached a reasonable conclusion on which to act;
- (4) the nature, scale and complexity of the *firm's* business;
- (5) the knowledge the *SMF manager* had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities;
- (6) whether the *SMF manager*, where they were aware of, or should have been aware of, actual or suspected issues where these involved possible breaches by their *firm* of relevant requirements relating to their role and responsibilities, took reasonable steps to ensure that they were dealt with in a timely and appropriate manner;
- (7) whether the *SMF manager* acted in accordance with their statutory, common law and equitable obligations, including, but not limited to, those set out in the Companies Act 2006, the *Handbook* (including *CO CON*), and, if the *firm* was listed on the London Stock Exchange, the *UK Corporate Governance Code* and related guidance;
- (8) whether the *SMF manager* took reasonable steps to ensure that any delegation of their responsibilities, where this was itself reasonable, was to an appropriate person, with the necessary capacity, competence, knowledge, seniority or skill, and whether they took reasonable steps to oversee the discharge of the delegated responsibility effectively;
- (9) whether the *SMF manager* took reasonable steps to ensure that the reporting lines, whether in the UK or overseas, in relation to the *firm's* activities for which they were responsible, were clear to staff and operated effectively;
- (10) whether the *SMF manager* took reasonable steps to satisfy themselves, on reasonable grounds, that, for the activities for which they were responsible, the *firm* had appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff, to assess their suitability to fulfil their duties;
- (11) whether the *SMF manager* took reasonable steps to assess, on taking up each of their responsibilities, and monitor, where this was reasonable, the governance, operational and risk management arrangements in place for the *firm's* activities for which they were responsible (including, where appropriate, corroborating, challenging, and considering the wider implications of the information available to them), and whether they took reasonable steps to deal with any actual or suspected issues identified as a result in a timely and appropriate manner;

- (12) whether the *SMF manager* took reasonable steps to ensure an orderly transition when another *SMF manager* under their oversight or responsibility was replaced in the performance of that function by someone else;
- (13) whether the *SMF manager* took reasonable steps to ensure an orderly transition when they were replaced in the performance of their function by someone else;
- (14) whether the *SMF manager* took reasonable steps to understand and inform themselves about the *firm's* activities in relation to which they were responsible, including, but not limited to, whether they:
- (a) permitted the expansion or restructuring of the business without reasonably assessing the potential risks;
 - (b) inadequately monitored highly profitable *transactions* or business practices or unusual *transactions* or business practices or individuals who contributed significantly to the profitability of a business area or who had significant influence over the operation of a business area;
 - (c) failed to obtain independent, expert opinion where appropriate;
 - (d) failed to seek an adequate explanation of issues within a business area, whether from people within that business area, or elsewhere within or outside the *firm*, if they were not an expert in that area;
 - (e) failed to maintain an appropriate level of understanding about an issue or a responsibility that they delegated to an individual or individuals;
- (15) whether the *SMF manager* took reasonable steps to ensure that where they were involved in a collective decision affecting the *firm's* activities for which they were responsible, where it was reasonable for the decision to be taken collectively, they informed themselves of the relevant matters before taking part in the decision, and exercised reasonable care, skill and diligence in contributing to the decision;
- (16) whether the *SMF manager* took reasonable steps to follow the *firm's* procedures, where this was itself appropriate.

Annex B

Amendments to the Enforcement Guide (EG)

[*Editor's note:* The amendments proposed in this Annex build upon the draft Handbook text proposed by the FCA in CP14/13 *Strengthening accountability in banking: a new regulatory framework for individuals* as if it was made (and so is not shown as underlined or deleted text) even though that proposed text is subject to the outcome of consultation and may change].

2 The FCA's approach to enforcement

...

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. Where senior managers have failed to meet our standards, 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 individuals under section 66 of the *Act* is set out in *DEPP* 6.2.4G to *DEPP* ~~6.2.9-BG~~ 6.2.9EG. The *FCA's* policy on prohibition and withdrawal of approval is set out in chapter *EG* 9 of this guide.



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