



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Consultation Paper | FCA CP15/31\*\*  
| PRA CP36/15

# Strengthening accountability in banking and insurance: regulatory references

October 2015



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We are asking for comments on this Consultation Paper by 7 December 2015.

You can send them to us in writing to:

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

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

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

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

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This Consultation Paper proposes changes to the PRA Rulebook.

Please address responses, comments or enquiries by 7 December 2015 to:

[CP36/15@bankofengland.co.uk](mailto:CP36/15@bankofengland.co.uk)

## Abbreviations used in this document

<b>APER</b>	Statements of Principle and Code of Practice for Approved Persons (Handbook)
<b>CBA</b>	Cost benefit analysis
<b>CR</b>	Certification Regime
<b>COCON</b>	Code of Conduct sourcebook (Handbook)
<b>FCA</b>	Financial Conduct Authority
<b>FEMR</b>	Fair and Effective Markets Review
<b>FICC</b>	Fixed income, currency and commodity markets
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>KFH</b>	Key function holder
<b>NDF</b>	Non directive firm
<b>NEDs</b>	Non-executive directors
<b>PCBS</b>	Parliamentary Commission on Banking Standards
<b>PRA</b>	Prudential Regulation Authority
<b>SIMR</b>	Senior Insurance Managers Regime
<b>SMR</b>	Senior Managers Regime
<b>SoR</b>	Scope of responsibilities
<b>RAP</b>	Relevant Authorised Persons

# 1. Overview

## Introduction

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- 1.1** Employment references that pass between firms when individuals move roles (in this consultation paper 'regulatory references') are an important tool for employers in assuring themselves that they are hiring the right people. This is particularly important given the new accountability regime being introduced for banks and insurers.
- 1.2** In this consultation the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA – together 'the regulators') set out proposals for regulatory references for candidates applying for:
- Senior management functions (SMFs) under the Senior Managers Regime (SMR).
  - Significant harm functions under the Certification Regime (CR).
  - PRA senior insurance management functions (SIMF) under the Senior Insurance Managers Regime (SIMR).
  - FCA insurance controlled functions.
  - Notified non-executive director (notified NED<sup>1</sup>) roles within a Relevant Authorised Person (RAP<sup>2</sup>) or Solvency II firm.
  - Non-executive director roles in credit unions.
  - Key function holders (KFH<sup>3</sup>) and notified NED roles within an insurer.
- 1.3** The proposals include specific disclosures that must be included in such references. This consultation also includes the PRA's proposals for all KFHS at Solvency II insurers and large non-directive insurers (NDFs<sup>4</sup>) (collectively referred to as '**insurers**') on scope of responsibilities (SoR) documents, and the associated governance map.
- 1.4** The FCA and the PRA originally consulted on employer references for candidates applying for the above positions in banks, building societies, credit unions and PRA investment firms (collectively

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1 Defined as a non-executive director of a CRR firm or [insurance] firm who is not an approved person in relation to that firm. <http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/66847/23-03-2016> and <http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/67043/23-03-2016>.

2 'RAP' is short for 'relevant authorised person', the term used in section 71A of the Financial Services (Banking Reform) Act 2013 to describe deposit takers and PRA investment firms.

3 Defined as any person who is responsible for discharging a key function, which is also a defined term comprising a range of functions of 'specific importance to the sound and prudent management of the [insurance] firm'. <http://www.prarulebook.co.uk/rulebook/Glossary/Rulebook/211132/23-03-2016/K>.

4 The definition of an NDF can be found at <http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/53218/23-03-2016>

'RAPs') in FCA CP14/13<sup>5</sup> and PRA CP14/14<sup>6</sup>, and for Solvency II insurers in PRA CP26/14<sup>7</sup>. Both regulators delayed making rules in order to reflect on the recommendations of the Fair and Effective Markets Review (FEMR). Our proposals take into account these recommendations.

- 1.5** Given that the regulators have previously consulted on related proposals the consultation period for these revised proposals is two months. This will allow final rules to be in place for the start of the new accountability regime in March 2016 as recommended by the FEMR.

### Who does this consultation affect?

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- 1.6** This paper will be of primary interest to RAPs and insurers and individual candidates for roles in the SMR, CR, SIMR, including notified NEDS, NEDS in credit unions and KFHS.
- 1.7** The proposals in Chapter 3 will also be of interest to all authorised firms.
- 1.8** In general, it is expected that appointed representatives of RAPs will be affected by these proposals in the same way as appointed representatives of non-RAP firms.

### Is this of interest to consumers?

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- 1.9** This paper will be primarily of interest to firms and candidates for the roles in paragraph 1.6. Consumers may be interested in how individual accountability is being enhanced. More generally, the changes in this paper should be thought of as part of a broader initiative to try to improve the culture and governance of RAPs and insurers which should bring significant benefits to consumers.

### Context

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- 1.10** The Financial Services (Banking Reform) Act 2013<sup>8</sup> created the legislative framework that underpins the SMR and CR<sup>9</sup>. This reflected the recommendations of the Parliamentary Commission on Banking Standards (PCBS)<sup>10</sup>, which was appointed to consider and report on professional standards and culture of the UK banking sector.
- 1.11** This consultation forms part of the wider package of reforms that aim to improve accountability in RAPs and insurers.
- 1.12** The initial consultation on the introduction of the SMR and CR explained that firms seeking to appoint someone to either a senior management or a certification function must request

<sup>5</sup> FCA CP14/13/PRA CP14/14: Strengthening accountability in banking: a new regulatory framework for individuals

<sup>6</sup> <http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1414.pdf>

<sup>7</sup> <http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp2614.pdf>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2013/33/contents/enacted>

<sup>9</sup> The Treasury laid secondary legislation in Parliament on 20 July 2015 extending the regime to incoming branches of non-UK banks and investment firms and is currently subject to approval by Parliament. This consultation includes proposals that apply to incoming branches in anticipation of that legislation.

<sup>10</sup> Changing banking for good: Report of the Parliamentary Commission on Banking Standards  
<http://www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf>

a reference from all previous employers covering the past five years' employment. Where this included another RAP, the reference should include any facts that led the employer to conclude that the candidate breached a Conduct Rule and a description of the basis and outcome of disciplinary action taken in relation to any such breach.

- 1.13** Earlier this year, the FEMR<sup>11</sup> review published a series of recommendations aiming to raise standards in fixed income, currency and commodity (FICC) markets. Central to its recommendations is the potential for expansion of the SMR and CR to these markets. FEMR recommended that "the FCA and the PRA should consult on a mandatory form for regulatory references, to help firms prevent the 'recycling' of individuals with poor conduct records between firms, with a view to having a template ready for the commencement of the Senior Managers and Certification Regimes in March 2016".
- 1.14** The FCA and the PRA have accepted this recommendation and this consultation sets out proposals for how the recommendation will be met in respect of RAPs and insurers. For the new regime to work effectively, the FCA and the PRA believe it is vital that both RAPs and insurers can and do embrace their obligations to obtain and provide references for persons who apply for jobs involving senior management, certification, notified NED, credit union NED or KFH functions at other RAPs or insurers.
- 1.15** This consultation builds on our original proposals as set out in FCA CP14/13 and PRA CP14/14 for RAPs, and as set out in PRA CP 26/14 for Solvency II insurers, and PRA CP 12/15<sup>12</sup> for those large insurers that are out-of scope of Solvency II.

### Summary of our proposals

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- 1.16** In this paper the regulators set out combined proposals for RAPs and insurers. The main proposals are:
- Requiring these firms to request regulatory references from former employers of candidates applying for SMFs, and certification functions in RAPs, along with SIMFs at insurers, going back six years.
  - The PRA propose a similar requirement for RAPs and insurers in respect of candidates applying for a KFH, notified NED, or credit union NED role.
  - Modifying certain prescribed responsibilities for Senior Managers in RAPs and insurers to include compliance with the regulatory reference rules.
  - Mandating the inclusion of concluded breaches of the conduct requirements of FCA Conduct Rules (COCON), PRA Conduct Rules or Conduct Standards, and Statements of Principle and Code of Practice for Approved Persons (APER) going back six years.
  - Requiring disclosures by RAPs and insurers in a standard format, including the need to confirm where there is no relevant information to disclose.

<sup>11</sup> <http://www.bankofengland.co.uk/markets/Documents/femrjun15.pdf>

<sup>12</sup> <http://www.bankofengland.co.uk/pr/ Documents/publications/cp/2015/cp1215.pdf>

- Requiring RAPs and insurers to update previous references given in the past six years, where they become aware of matters that would cause them to draft that reference differently if they were drafting it now.
- 1.17** The proposals applicable to all authorised firms can be summarised as follows:
- Clarifying that a firm must not enter into any arrangements or agreements that limit their ability to disclose relevant information.
  - Enhancing systems and controls requirements relating to the retention of records and the policies and procedures for both requesting and providing regulatory references.
- 1.18** The existing requirement for firms to disclose all relevant information in references remains. Firms should exercise judgement on what should be disclosed, including outside of the mandated information. In doing so the reference should meet the firm's legal obligations to ensure that it is clear, accurate and fair. Currently the requirement to provide a reference on request (under SUP10A) is actionable for damages. Consistent with that approach, FCA proposes that the requirement to provide a reference and the new requirement to obtain a reference under FCA's rules should be actionable for damages and we would welcome views on this.
- 1.19** The FCA and the PRA will consider in due course, alongside any wider reform of the Approved Persons Regime, whether the specific proposals for RAPs and insurers should be extended to all authorised firms. This will include consideration of specific, mandatory disclosures and the use of a template. Subsequent reforms will be consulted upon as normal.
- 1.20** The PRA is also setting out in this consultation its proposals for all KFJs at insurers to have an up-to-date and agreed document setting out their scope of responsibilities (SoR), and for these insurers to retain these SoR documents along with the associated governance map for ten years for Solvency II insurers, and six years for NDFs.

### Equality and diversity considerations

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- 1.21** We have considered the equality and diversity issues that may arise from the proposals in this consultation. Overall, we do not consider that the proposals in this consultation raise concerns with regards to equality and diversity issues. We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input to this consultation on such matters.

### Next steps

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#### What do you need to do next?

- 1.22** The FCA and the PRA want to know what you think of our proposals. Please send us your comments by 7th December 2015.

**How?**

- 1.23** Use the online response form on the FCA website or write to FCA at the address on page 2. You can also email your response to the email addresses on page 2. The regulators will share responses with each other and publically, unless you specifically ask for them to remain confidential.

**What will the FCA and PRA do?**

- 1.24** The FCA and the PRA will consider your feedback and publish our rules in a Policy Statement in early 2016, ahead of the start of the new accountability regime on 7 March 2016.

## 2. Improving disclosure between RAPs/insurers

- 2.1** There is a risk to the financial system if individuals with poor conduct records move from firm to firm without relevant information about them being disclosed to future employers<sup>13</sup>. This chapter sets out proposals for RAPs and insurers to seek and provide regulatory references to help prevent this from happening.
- 2.2** The requirement to provide a reference in respect of candidates applying for a controlled function already exists for all firms. These proposals extend that requirement to candidates of a certification function, and for candidates applying for notified NED, credit union NED, or KFH roles. This is to enhance the quality of fit and proper assessments undertaken by firms for these roles, before appointment.

### Requesting references

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- 2.3** The FCA and the PRA propose to make rules requiring RAPs seeking to appoint someone to either an SMF or certification function, and insurers seeking to appoint someone to become a SIMF (or other controlled function), to request a reference covering the candidate's employment in the preceding six years. This is regardless of whether the past employers are authorised entities or not. The PRA also propose to apply this requirement to firms seeking to appoint someone to a KFH, notified NED, or credit union NED role.
- 2.4** Firms may need to seek a reference even where they are recruiting an individual from within their own firm, or from another group company, when the individual has employment history at other organisations within the past six years. This will be most relevant the first time an individual takes on a senior manager, certification, KFH, notified NED, or credit union NED roles and will ensure that conduct at their past employers is taken into account as appropriate. Once a firm has a reference on record that covers the required time period, it can where appropriate choose to rely on this for subsequent moves within a firm or a group.
- 2.5** In some instances firms will be hiring from firms that are either not regulated in the UK, or from outside the regulated financial sector entirely. In these instances hiring firms should still make reasonable efforts to secure a reference as part of their assessment of the fitness and propriety of prospective candidates.

### Disclosing relevant information

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- 2.6** The existing obligation on all firms, upon receipt of a request for a reference, is to provide all information relevant to the fit and proper assessment of the hiring firm. It is important that

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<sup>13</sup> The reference to employers here should be read to include organisations engaging the services of the individual.

when providing a reference firms exercise judgement taking account of their duty under general law to exercise due skill and care in the preparation of the reference, on their knowledge of the candidate and the role they are being considered for, to inform what they disclose. In addition to this, the FCA and the PRA believe it is necessary to specify a subset of information that must be disclosed to improve disclosures between regulated firms. The specific disclosures do not replace the overarching obligation to exercise judgement; they support it by providing a strong base of minimum disclosure. What is relevant will depend on both the individual's employment record and the role they are proposing to move into.

**2.7** Therefore, the FCA and the PRA propose that where a RAP or an insurer receives a request for a reference, they must provide a reference which includes, as a minimum:

- Details of any certification function or controlled function (including being an SMF or SIMF) or of any notified NED, or credit union NED or KFH role held, and summarise what the role involved and its responsibilities.
- Details of any other roles performed while an employee of the firm, or as an employee of any firms within the same group, in the last six years.
- Where the firm has concluded at any point in the six years before the request for a reference, that the candidate was in breach of COCON or APER, or breaches of a PRA Conduct rule, or a Conduct Standard that they were required to observe, and the facts which led the firm to that conclusion.
- Where the firm has concluded, at any point in the six years prior to the request for a reference, that the candidate was not fit and proper to perform a function, and the facts which led the firm to that conclusion.
- Details of the basis for and outcome of any disciplinary action as a result of the two preceding points above (including details such as whether formal warnings were issued or any adjustment to the individual's remuneration as part of the disciplinary action).

**2.8** The FEMR report set out respondents' views (Box 13) on specific information for possible inclusion in a regulatory reference. The FCA and the PRA have considered this feedback to the FEMR. The regulators have concluded that certain categories of information should be disclosed as a minimum but that regulatory references should focus on regulatory matters only, such as issues relevant to fitness and propriety or confirmed misconduct.

**2.9** For example, FEMR respondents suggested that regulators compel firms to disclose any adjustment or reduction in an individual's remuneration as part of a reference. However, in many cases individuals have their remuneration altered for purely commercial reasons unrelated to their fitness and propriety. As such, where changes are not directly attributable to the fitness and propriety of an individual, it would be inappropriate for regulators to compel the disclosure of these commercial adjustments. The FCA and the PRA have proposed that where adjustments or reductions in remuneration are the result of concluded misconduct investigations, this should be disclosed, as it is clearly relevant to fitness and propriety.

**2.10** FEMR respondents also suggested disclosures that, on reflection, the regulators consider are better addressed to candidates directly, rather than former employers, for example training and qualifications. Such matters are likely to form part of the recruiting firm's due diligence, and may well be relevant to the candidate's competence, but it is unlikely that the recruiting firm could or should rely on the previous employer to confirm training or qualifications in a

reference. Instead, firms should look to the candidate, and perhaps other third parties such as professional bodies.

- 2.11** COCON and the PRA Conduct Rules and Conduct Standards will replace the conduct requirements of APER for RAPs and insurers from 7 March 2016. Given that there is significant overlap in the substance of the two sets of rules and in the light of the FEMR recommendation, the FCA and the PRA believe it is important during the transition that, where they exist, confirmed breaches of the conduct requirements in APER should be disclosed in the reference. This does not require firms to revisit past misconduct or 'reinvestigate' past disciplinary issues. Disclosure should be based on the records as they stand, providing that the records are accurate and fair.
- 2.12** Outside of the mandatory disclosure requirements the regulators expect firms to exercise judgement, bearing in mind the importance of disclosing information relevant to the hiring firm alongside the need to be fair to former employees and comply with any relevant legal obligations.
- 2.13** FEMR respondents also suggested that any mandated disclosure period go back significantly beyond five or six years, in some cases to over ten. The regulators have considered this but concluded that a mandatory period of six years is sufficient to meet our policy aims. Respondents are requested to indicate how much of a burden moving from five years to six would represent. The proposed approach also ensures that there is no discrimination against individuals who have been employed by the same firm for a long time.

**Q1: Do you agree with the proposal to require RAPs to request a reference from previous employers in the past six years for candidates of an SMF and certification functions, or notified NED, credit union NED, credit union NED roles and to require insurers to request references for candidates for a SIMF, or for becoming a key function holder?**

**Q2: Do you agree with mandating the proposed specific disclosure requirements for RAPs and insurers?**

### **Mandatory template**

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- 2.14** The FEMR report recommended that regulators consult on a mandatory template for regulatory references, to increase the consistency of disclosure. It is important to note that, as the consultation contains detailed rules that mandate specific types of disclosure, a template does not change what is actually required to be disclosed. There are benefits to having a standard format, as this will increase the consistency of references across RAPs and insurers. Therefore the regulators propose a standard template, at Appendix 4, based on the proposed specific disclosures set out in the previous section.
- 2.15** The regulators also propose that the RAP or insurer providing the reference must respond to each question explicitly. Where the firm has no relevant information to disclose, this must be clearly stated against the relevant question(s) in the template to avoid any uncertainty as to whether 'silence' means that there is no relevant information to disclose.

**Q3: Do you agree with the proposal to require RAPs and insurers to provide a reference in a standard template (as appended in Appendix 4 of this consultation)?**

**Updating references**

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- 2.16** The FCA and the PRA propose a continuing obligation on RAPs and insurers to revise a regulatory reference they have given in the past six years where they become aware of matters that would cause them to draft that reference differently, if they were drafting it now. The requirements to update a reference do not apply to references provided before 7 March 2016, and cover the same specific disclosures and time requirements as those set out earlier in this chapter. This means updates are likely to be limited to findings of breaches of fitness and propriety and concluded breaches of FCA Conduct Rules, APER, and PRA Conduct Rules or Conduct Standards in the previous six years. In practice, this is likely to be limited to circumstances where possible misconduct comes to light after an employee has left the firm, and that firm subsequently concludes that misconduct and a breach of the relevant rules or standards has occurred.
- 2.17** Although this is likely to be relevant in only a limited set of circumstances, the regulators consider that such an obligation could be an important tool in ensuring that RAPs and insurers have the necessary information with which to inform decisions of fitness and propriety. However, this does place burdens on firms and so we welcome feedback on how onerous this obligation may be in practice.

**Q4: Do you agree with the proposal to require RAPs and insurers to, where appropriate, issue an updated reference to RAPs and insurers to whom it has sent a reference in the past six years?**

**Modifying prescribed responsibilities**

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- 2.18** The new accountability regime includes a number of prescribed responsibilities RAPs and insurers must allocate amongst their approved senior managers. Among the prescribed responsibilities are:
- The responsibility for the firm/branch's performance of its obligations under the SMR.
  - The responsibility for the firm/branch's performance of its obligations under the employee CR.
  - The responsibility for ensuring that persons who perform key functions at insurers are fit and proper.
- 2.19** The regulators propose to clarify that compliance with the regulatory reference, fitness and propriety rules (for both requesting and providing references) form part of each of these prescribed responsibilities.
- 2.20** Whilst the prescribed responsibilities do not apply to EEA branches, the proposed requirements to seek and provide a reference under certain circumstances will apply to EEA branches in the same way as they do for other relevant firms.

**Q5:** Do you agree with the proposal to modify prescribed responsibilities to include compliance with regulatory reference requirements?

### 3.

## Regulatory reference proposals for all firms

- 3.1** The FEMR report said “Firms should provide as complete a picture of an individual’s conduct record as possible to new employers, seeking wherever feasible to conclude investigative procedures before employees depart, and avoid giving any legal undertakings to suppress or omit relevant information in order to secure a negotiated release. The regulators will expect firms to demonstrate how they meet these standards and will consider how firms comply with the requirements under the new regime through supervisory assessments. Senior managers will need to have in place policies, procedures and practices which deliver clear and accurate references.”
- 3.2** Existing guidance states that the rules on references apply despite any agreement entered into by a firm and an employee upon termination of the individual’s employment. Furthermore, a firm should not enter into any such arrangements or agreements that could conflict with their disclosure obligations. Feedback to our previous consultation and to FEMR indicates that, despite this guidance, there remains inconsistency in the information disclosed as ‘relevant’.
- 3.3** To clarify the policy intention, the regulators now propose an explicit rule that firms must not enter into arrangements that conflict with the regulatory reference rules. The proposed rule will apply to resignations as well as terminations.
- 3.4** The regulators also propose requiring firms to retain records of ex-employees’ conduct and fit and proper information for a period of six years following their termination or resignation from a firm. Furthermore, the regulators propose a specific new requirement on firms to establish and maintain adequate policies and procedures to comply with regulatory reference requirements.
- 3.5** References should cover all relevant information concerning a person bearing in mind the employer’s duty under the general law to exercise due skill and care in the preparation of the reference. It is not uncommon for individuals to be contractually employed by one firm, but to perform a function on behalf of more than one firm in a group. The regulators propose that relevant information extends to roles an individual performed under their ‘employment’ in the wider sense. This could extend to services provided or functions performed on behalf of more than one regulated firm in a group.
- 3.6** In instances like this, hiring RAPs and insurers should ask the individual to specify at which regulated firms they had worked. The regulated firm providing the reference would then collect the relevant information from the other entities within their group for whom the individual had worked. Each regulated firm for whom the individual had worked would need to provide references, although in practice it is likely that these could be consolidated into a single document. RAPs and insurers will also need to consider this when updating a reference (as set out in paragraphs 2.16 and 2.17).

**3.7** For incoming branches of EEA and non-EEA firms the obligation to provide a reference would only apply to employees performing a function in relation to the UK branch activities.

**Q6:** Do you agree with the proposals to introduce a requirement on the retention of records, and the requirement to have adequate policies and procedures in place to comply with regulatory reference requirements?

**Q7:** Do you agree that it would be helpful to clarify in a rule that firms should not enter into arrangements that conflict with their obligations to disclose all relevant information?

## 4. PRA proposals on Scope of Responsibility (SoR) documents and governance maps

- 4.1** The PRA has included rules for Solvency II Insurers in PS 22/15 that require firms to have and maintain a governance map, which includes a summary of the significant responsibilities allocated to each KFH.
- 4.2** The FCA included rules in PS 15/21 that likewise require Solvency II insurers to maintain this governance map. It also extended the required contents of this map to cover all approved persons performing a significant influence function. These rules require firms to keep an up-to-date record of the scope of responsibilities (SoR) for each such person. This record must be signed by both the relevant individual and a representative of the firm. The FCA also included a rule requiring that this SoR document, along with the governance map, should be retained for ten years.
- 4.3** As indicated in paragraph 3.20 of PS 22/15, the PRA proposes now to have a similar rule that will apply to all KFHs. It will require insurers to:
- Keep an up-to-date record of the scope of responsibilities (SoR) for each KFH.
  - Have this SoR record signed by both the relevant individual and a representative of the firm.
  - Have this SoR document, along with the governance map, retained for ten years by Solvency II insurers or six years by large NDFs.
- 4.4** This proposal will ensure that a consistent approach is taken by both regulators on the maintenance and retention of SoR documents and governance maps in relation to all approved persons and KFHs.

# Annex 1:

## List of questions

- Q1:** Do you agree with the proposal to require RAPs to request a reference from previous employers in the past six years for candidates of an SMF and certification functions, or notified NED, credit union NED, credit union NED roles and to require insurers to request references for candidates for a SIMF, or for becoming a key function holder?
- Q2:** Do you agree with mandating the proposed specific disclosure requirements for RAPs and Insurers?
- Q3:** Do you agree with the proposal to require RAPs and insurers to provide a reference in a standard template (as appended in Appendix 4 of this consultation)?
- Q4:** Do you agree with the proposal to require RAPs and insurers to, where appropriate, issue an updated reference to RAPs and insurers to whom it has sent a reference in the past six years?
- Q5:** Do you agree with the proposal to modify prescribed responsibilities to include compliance with regulatory reference requirements?
- Q6:** Do you agree with the proposals to introduce a requirement on the retention of records, and the requirement to have adequate policies and procedures in place to comply with regulatory reference requirements?
- Q7:** Do you agree that it would be helpful to clarify in a rule that firms should not enter into arrangements that conflict with their obligations to disclose all relevant information?
- Q8:** Do you agree with our analysis of compliance costs for RAPs, insurers and other firms?

## Annex 2: FCA Cost Benefit Analysis

1. We are required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 138L FSMA refer). The FCA considers additional incremental costs as a result of these proposals to be minimal and so as such we have not quantified these costs in the CBA (in line with sections 138I and 138L FSMA). We consider that the cost benefit analysis (CBA) set out below meets the FSMA CBA requirements.
2. This CBA builds on the original research carried out by Europe Economics (EE) in CP 14/13 and provides additional clarity around the new requirements. That analysis noted that the requirement to seek and provide regulatory references going back five years is not notably different to current practice, particularly in larger banks. Any additional one-off and ongoing costs are considered minimal. Smaller banks did envisage some cost entailed in setting up processes to request and provide more detailed references. We consider that the CBA for insurers will be comparable to that of RAPs. Please refer to the EE analysis for full detail.
3. The new proposed requirements i.e. in addition to those consulted on in CP14/13 and that build on the current regime, are as follows:
  - Requirement to request regulatory references going back six years rather than five years.
  - Requirement to update regulatory references.
  - Determined six-year APER breaches to be included.
  - Standard template for references.
  - Clarifying that a firm must not enter into any arrangements or agreements that limit their ability to disclose relevant information.
  - Insurers in scope.
4. **Market Failure Analysis**

Firms are not currently fully disclosing relevant information in employee references for fear of legal action. This point was highlighted in the FEMR Review and in feedback to previous FCA/PRA consultations. Issues around excessive risk taking and misconduct are also highlighted in the EE "Overview of the Main Failures" chapter. The proposals outlined in this consultation aim to address this market failure.

## Compliance costs for Relevant Authorised Persons (RAPs)

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### *Requirement to request regulatory references going back six years*

5. CP14/13 proposed a five-year reference period. This consultation proposes extending to six years, as stated at paragraph 2.13 in the main body of the consultation. The impact of increasing costs from five to six years was considered for the purposes of the CBA. We conclude that the extension of one year will result in minimal incremental costs.

### *Updating regulatory references*

6. We acknowledge that there will be costs associated with this requirement but this obligation is based on the threshold for the original reference request and so policies and procedures would already be in place in firms. The obligation to update a reference would apply only if new and relevant issues come to light once the individual has left and where the firm can conclude that a breach has occurred. This proposal would require an extension to firms' policies and procedures but we expect this to result in minimal incremental costs.

### *Determined six-year APER breaches*

7. For relevant firms there will be a transition where records of any APER breaches will over time be replaced by records of any Conduct Rule breaches. So over time the proposed requirement to disclose determined APER breaches will fall away.
8. There are existing requirements on firms to notify regulators of serious misconduct and material changes in fitness and propriety.<sup>14</sup> Given this, and that the proposals are only to disclose determined breaches, we envisage minimal incremental costs to firms from this proposal.

### *Standard template for references*

9. FEMR recommended that "the FCA and PRA consult on a mandatory form for regulatory references, to help firms prevent the 'recycling' of individuals with poor conduct records between firms".
10. Firms are currently obliged to provide a reference when it is requested in certain circumstances. The proposed new obligation is on RAPs and insurers to provide a reference, including mandatory disclosures, in a set format. The template (Appendix 4) could be attached to a standard reference but equally, firms could incorporate it into their own mechanisms for issuing references. There may be some initial outlay for some firms and ongoing monitoring costs to incorporate the questions into policies and procedures and completing these questions, but the incremental costs are expected to be minimal.

## Compliance costs for Insurers

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11. PS15/21 details the changes to the Approved Persons regime for Solvency II firms. This includes an obligation on firms to seek and provide regulatory references going back five years. While there will be some incremental costs for insurers from the proposed additional referencing requirements, these are expected to be minimal given the referencing obligations confirmed in PS15/21 for insurers.

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<sup>14</sup> For example, SUP 10A.14.17R and SUP 15.3.17R.

### Other compliance costs

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12. While we propose that the enhanced referencing regime will apply to RAPs and insurers only, there are some changes that would directly impact all firms:
- Systems and control requirements on record-keeping.
  - Clarification on compromise agreements.
  - Provision of regulatory references for candidates applying for Certification roles.
13. The essence of these changes is to build on existing systems and controls and to clarify existing intentions, therefore we expect minimal incremental costs from the proposals.

**Q8: Do you agree with our analysis of compliance costs for RAPs, insurers and other firms?**

### Benefits

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14. The proposals should provide firms with effective tools to assess better an individual's fitness and propriety. This in turn should help to ensure that individuals take responsibility for their own conduct.
15. Regulatory references will be particularly important for Certification roles as the assessment of individuals' fitness and propriety will rest solely with firms. While we understand that the loss of regulator pre-approval is a concern, the overall enhanced oversight firms will be able to exercise through our proposed enhanced disclosure rules should lead to greater accountability, diminished conduct breaches and risk taking.
16. Enhancing individual accountability through these proposed measures should have a positive impact on individual behaviour and the general culture within firms. This should, in turn, contribute to the advancement of both regulators' objectives.

### FCA costs

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17. The proposals contained in this consultation will impact firms but are likely to have a minimal impact on our existing authorisations, supervision and enforcement processes and systems.

## Annex 3: PRA Cost Benefit Analysis

### Regulatory References Cost-Benefit Analysis

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1. The PRA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 138J refer). The PRA considers that the CBA set out below meets the FSMA CBA requirements.
2. This CBA builds on the analysis provided in PRA CP14/14 *Strengthening accountability in banking: a new regulatory framework for individuals (CP14/14)* and PRA CP26/14 *Senior Insurance Managers Regime: a new regulatory framework for individuals (CP26/14)*. Further analysis is provided for the new proposals.
3. These proposals include requirements for:
  - Relevant firms to request regulatory references from former employers of candidates for Senior Management and certification functions, as well as notified non-executive directors at Relevant Authorised Persons (RAPs), and Senior Insurance Management Functions and Key Function Holders at insurers going back six years.
  - Mandating the inclusion of determined breaches of the conduct requirements of PRA Conduct Rules or standards and Statements of Principle and Code of Practice for Approved Persons (APER) going back six years.
  - The disclosure in a standard format, including the need to confirm where there is no relevant information to disclose.
  - RAPs and insurers to update previous references given in the past six years, where they become aware of matters that would have changed their original assessment if they were providing that reference now, in the light of the new matters.
4. These proposals will give firms the information that they need to better assess the fitness and propriety of candidates for these important roles. For Certification roles, the assessment of an individual's suitability will be made solely by the firm, so these requirements will be particularly useful. Although firms may be concerned about the loss of pre-approval of individuals by the regulator, the proposed disclosure rules should allow greater accountability and personal responsibility, leading to few conduct breaches and better behaviour within the industry.
5. The new requirements that would build on earlier consultations and the existing regime are:
  - A requirement to request references going back six years
  - Requirement to request references for notified NED, credit union NEDs and KFHS
  - Updating regulatory references

- Determined six-year APER breaches to be included
- Standard templates for references
- PRA proposals on Scope of Responsibility documents and governance maps in insurers

**A requirement to request references going back six years**

6. A five year reference period was proposed in CP 14/14 and CP26/14. These new proposals would increase this to six years. As firms will already be putting in place systems for providing references for individuals for the previous five years, requiring details for one more year is unlikely to significantly increase costs as set out in earlier consultation papers.

**Requirement to request references for notified NEDs and KFHS**

7. As well as requiring that regulatory references should be requested for SMFs, SIMFs and individuals performing Certification roles, as set out in CP14/14 and CP26/14 firms will also be required to request regulatory references for notified NEDs and KFHS. While this may well involve additional costs as firms will need to record this information for a larger group of employees, as systems to record this would need to have been in place for SMFs, SIMFs and those in Certification roles these costs will not be significant.

**Updating regulatory references**

8. Firms will only need to update regulatory references that they have provided for employees if new/additional information comes to light of the type that would make it into that reference if that reference were being given now. This would include where they conclude that breaches of fitness and propriety, Conduct Rules or Standards have occurred where the firm has concluded the investigation in the previous six years. As a result, it is likely to be relatively rare that references need to be updated. Firms will need to maintain information their staff for six years after they leave, so the cost of updating this information should not be significant.

**Determined six-year APER breaches to be included**

9. Firms are already required to inform regulators about serious conduct and material changes in fitness and propriety. As these proposals only require firms to disclose determined and reportable breaches, this should not cause significant additional cost.
10. There will be a transition period for relevant firms as records of APER breaches will be replaced over time by records of Conduct Rule or Standard breaches. This means that disclosing determined APER breaches will gradually cease to be a burden for firms.

**Standard templates for references**

11. There is already an obligation on firms to provide references when they are requested. There is flexibility in how firms provide the answers to the questions in the template form (Appendix 4), as long as the relevant information is provided. Depending on how firms choose to implement these requirements there may be some costs to establishing processes to record this required information. There will also be on-going monitoring costs to ensure that the information remains up to date.

**PRA proposals on Scope of Responsibility documents and governance maps in insurers**

12. Policy statement 22/15 made rules that require firms to maintain a governance map, which includes information on the scope of responsibilities for each key function holder. The FCA's PS 15/21 made a similar rule on governance maps which required each version of this map to be retained for 10 years, and also required firms to establish and retain for 10 years an agreed and signed scope of responsibilities record for each individual in a 'significant-influence

function'. This consultation proposes extending this requirement in relation to establishing and retaining an agreed scope of responsibilities record, to encompass all key function holders. As firms are already required to establish and retain a governance map which includes a summary of these responsibilities, we believe that this extension will result in minimal incremental costs.

- 13.** Clarity on the full scope of responsibilities for each individual should facilitate effective governance arrangements, as well as enhancing individual accountability; and this should have a positive impact on individual behaviour and the general culture within firms. This should, in turn, contribute to the advancement of both regulators' objectives.

## Annex 4: FCA Compatibility statement

### Compatibility with the FCA's general duties

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1. Section 1381 FSMA requires the FCA to explain why we believe our proposed rules would be compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA.
2. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty, so far as is compatible with acting in a way which advances the consumer protection or market integrity objectives, to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA).
4. For an assessment of the equality and diversity implications of these proposals, see Paragraph 1.21.

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

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5. The proposals set out in this consultation are compatible with our strategic objective of ensuring that the relevant markets function well. They will provide RAPs and insurers with more effective means to assess the fitness and propriety of prospective employees and help to avoid the issue of employees who are not fit and proper or have engaged in unacceptable conduct moving from one firm to another. This should, over time, have a positive impact on individual behaviour and the general culture within firms. This should, in turn, contribute to the advancement of both regulators' objectives.
6. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

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

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7. While individuals carrying out Senior Manager functions will be approved by the regulator, firms will have had to prepare robust submissions so that candidates are approved. This reduces

the regulatory burden on the FCA as much of the early investigative due diligence will have been carried out by firms.

8. The introduction of the Certification Regime removes a large number of individuals from the regulatory approval process. As well as placing more responsibility on relevant firms for the fitness and propriety of their staff, this also frees up more regulatory resource to focus on the key decision-makers in the SMR.

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

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9. The proposals set out in this consultation paper are intended to enhance individual accountability and so advance our strategic objective and operational objectives. The proposals are intended to result in beneficial changes in behaviour and reduce non-compliance, misconduct and excessive risk taking. Firms are likely to incur some compliance costs, but our cost benefit analysis shows that these are not excessive and will lead to improved conduct. We therefore believe the proposals in this consultation paper are proportionate to the benefits.

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

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10. Our proposals have regard to the desirability of sustainable growth in the medium and long term. The proposed changes are intended to have a positive impact on behaviour in relevant firms, which will advance this objective.

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

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11. Our proposals will impact staff and prospective staff in relevant firms only. Consumers can be confident that the rules will apply across RAP firms and insurers.

#### **The responsibilities of senior management**

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12. Our proposals will ensure that Senior Managers will be responsible for regulatory references as part of the firm's Prescribed Responsibilities. This includes references for Certified Persons roles where responsibility for the assessment of fitness and propriety rests with the firm.

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

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13. The regulatory references requirements apply in different ways to different types of firms.

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

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14. As set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter, or any of our findings or conclusions of an investigation except as described in chapter 6 of the Enforcement Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.

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

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15. We are an open and transparent regulator. The FCA consulted in July 2014 (CP 14/13) and this was followed by the FEMR recommendations in July 2015, which set out specific recommendations for regulatory references. This consultation proposes amendments to the initial proposals issued in July 2014 to take account of those views. We will continue to actively engage with relevant stakeholders throughout the consultation process.

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

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#### **Consumer protection and market integrity**

16. The objective of the proposals contained in this consultation paper is to ensure that firms are provided with effective tools to assess employees' fitness and propriety. This should reduce conduct rule breaches and instances of excessive risk-taking. This is intended to create a structure that will make it more likely that individuals and roles are appropriately matched and that high standards of conduct are observed. We therefore consider that these aims and objectives support our consumer protection and market integrity objectives.

#### **Promoting competition**

17. We believe our proposals do not adversely affect the promotion of competition.

# Annex 5:

## PRA Compatibility statement

### Regulatory references compatibility statement

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1. These proposals are compatible with the PRA's statutory objectives under the Financial Services and Markets Act 2000 (FSMA): to promote the safety and soundness of PRA-authorised firms;<sup>15</sup> and in the context of insurance, to contribute to policyholder protection.<sup>16</sup> These proposals will better allow firms to assess the fitness and propriety of individuals they hire to carry out important roles, as well as increasing individual accountability. Over time these proposals should identify individuals that have engaged in unacceptable behaviour, and prevent them moving from firm to firm and, as such, improve the safety and soundness of the firms to which they apply.
2. When discharging its general rule-making function, the PRA is legally required, so far as is reasonably possible, to facilitate effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.<sup>17</sup> The PRA has assessed the proposals and is confident that they will not reduce competition. The proposals should lead to improved governance in RAPs and insurers.
3. The PRA is required to perform an analysis of the economic impact in respect of proposed rules. This analysis can be found in the CBA in annex 3.
4. In making its rules and establishing its practices and procedures, the PRA must have regard to the Regulatory Principles as set out in FSMA<sup>18</sup>. The PRA may not act in an unlawfully discriminatory manner. It is required, under the Equalities Act 2010, to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.<sup>19</sup> To meet this requirement, the PRA has performed an assessment of the policy proposals and does not consider that the proposals give rise to equality and diversity implications.
5. FSMA requires that the PRA assesses whether, in its opinion, the impact of the proposed rules on mutuals will be significantly different from the impact on other firms.<sup>20</sup> The PRA does not think that this will affect mutuals disproportionately to other firms. It is in the interests of mutuals to prevent the circulation of improper individuals just as much as other firms.
6. This consultation closes on December 7th. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP36/15@bankofengland.co.uk.

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<sup>15</sup> See s.2B(1) and s.2B(2) FSMA.

<sup>16</sup> See s.2C FSMA.

<sup>17</sup> See s.2H FSMA.

<sup>18</sup> See s.2H and s.3B FSMA.

<sup>19</sup> Equalities Act 2010, section 149(1).

<sup>20</sup> Section 138K of FSMA.

# Appendix 1: Draft Handbook text

**INDIVIDUAL ACCOUNTABILITY (REGULATORY REFERENCES)  
INSTRUMENT 201[]**

**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 60 (Applications for approval);
  - (2) section 60A (Vetting candidates by relevant authorised persons);
  - (3) section 63F (Issuing of certificates);
  - (4) section 137A (The FCA’s general rules);
  - (5) section 137T (General supplementary powers);
  - (6) section 138D (Actions for damages); and
  - (7) 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 modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Supervision manual (SUP)	Annex C

**Citation**

- E. This instrument may be cited as the Individual Accountability (Regulatory References) Instrument 201[].

By order of the Board  
[date]

## Annex A

## Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical place. The text is not underlined.

*full scope regulatory reference firm* (for the purpose of SYSC 22 (Regulatory references) and as defined in SYSC 22.1.8R:

- (a) a *relevant authorised person*;
- (b) a *Solvency II firm*; or
- (c) a *large non-Directive insurer*.

Amend the following definitions as shown.

*employee* ...

(3) (for the purposes of SYSC 5.2 (Certification regime) and the definition of *certification employee*) has the meaning in section 63E(9) of the *Act* (Certification of employees by relevant authorised persons) which, in summary, says an employee of a *person* (the 'employer' "A") includes a reference to a *person* who:

- (a) personally provides, or is under an obligation personally to provide, services to ~~A~~ the employer under an arrangement made between ~~A~~ the employer and the *person* providing the services or another *person*, and
- (b) is subject to (or to the right of) supervision, direction or control by ~~A~~ the employer as to the manner in which those services are provided.

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

(a) ...

(b) ...

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

(a) is an approved person of a firm (the 'employer'); or

(b) performs a function of a firm (the 'employer') under an arrangement entered into by the employer or a contractor of the employer; or

(c) performs any service or function for a firm (the 'employer') in their capacity as an employee of another member of the employer's group.

For the purpose of (c) an employee of another member of the employer's group means:

(d) an employee of that group member as defined in paragraph (3); or

(e) an approved person of that group member; or

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

*Employer*

(1) (for the purposes of SUP 15.11 (Notification of conduct rule breaches and disciplinary action), ~~SYSC 5.3 (References and accurate information)~~ and COCON, and as defined in more detail in section 64A of the Act (Rules of conduct)), the person described as the “employer” in paragraph (4) of the Glossary definition of *employee*.

(2) (for the purposes of SYSC 22 (Regulatory references)) the person described as the “employer” in paragraphs (3) and (5) of the Glossary definition of employee.

## Annex B

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

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

[Editor's Note: The amendments to SYSC 4.8 in this Annex are based on proposed changes contained in FS15/3 (Strengthening accountability in banking: UK branches of foreign banks – Feedback on \*\*\*FCA CP15/10 / PRA CP9/15) and assume that the Handbook text in that CP is made by the Board in the form proposed in the CP.]

#### 1.1A Application

...

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter

Type of firm	Applicable chapters
<i>Insurer</i>	Chapters 2, 3, 12 to 18, 21 , <u>22</u>
<i>Managing agent</i>	Chapters 2, 3, 11, 12, 18, 21 , <u>22</u>
<i>Society</i>	Chapters 2, 3, 12, 18, 21 , <u>22</u>
Every other <i>firm</i>	Chapters 4 to 12, 18, 19D, 21 , <u>22</u>

...

- 1.1A.1AA G The application of this sourcebook to *firms* that are not *PRA-authorised persons* is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

...

#### 1.4 Application of SYSC 11 to SYSC ~~21~~22

##### Action for damages

- 1.4.2 R A contravention of a rule in SYSC 11 to SYSC 21, SYSC 22.5.3R or SYSC 22.6 does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

Type of firm	Applicable chapters
<i>Full-scope UK AIFM</i>	<del>Chapter</del> <u>Chapters 19B, 21, 22</u>
<i>BIPRU firm (including a third-country BIPRU firm)</i>	Chapters 4 to 10, 12, 18, 19C, 21, <u>22</u>
<i>IFPRU investment firm (including an overseas firm that would have been an IFPRU investment firm if it had been a UK domestic firm)</i>	Chapters 4 to 10, 12, 18, 19A, 21, <u>22</u>

1.1A.2 G ...  
...

(3) For *Solvency II firms*, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18, ~~and 21~~ and 22 of SYSC are not inconsistent with:

...

...

**1 Annex 1 Detailed application of SYSC**

...

<b>Part 2</b>		<b>Application of the common platform requirements (SYSC 4 to 10)</b>
...		
2.13D	R	<i>SYSC 4.5</i> (Management responsibilities maps for relevant authorised persons), <i>SYSC 4.7</i> (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), <i>SYSC 4.9</i> (Handover procedures and material), <u>and</u> <i>SYSC 5.2</i> (Certification regime) <del>and SYSC 5.3 (References and accurate information)</del> also:

...		
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> in relation to activities carried on by it from an establishment in the <i>United Kingdom</i> . However, SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material), <u>and SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information)</u> apply in accordance with the <i>rules</i> in those sections.
...		
2.18	R	The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> (other than an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> ) with respect to activities wherever they are carried on. However, SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material), <u>and SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information)</u> apply in accordance with the <i>rules</i> in those sections.
...		

...

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

	as <i>guidance</i> .			
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...

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

...

4.7.7 R Table: FCA-prescribed senior management responsibilities

<b>FCA-prescribed senior management responsibility</b>	<b>Explanation</b>	<b>Equivalent PRA-prescribed senior management responsibility</b>
Part One (applies to all firms)		
(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 <i>SUP 10C</i> (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 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); <del>and</del></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) ; <u>and</u></p>	<i>PRA-prescribed senior management responsibility</i> 4.1(1)

	<u>(4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory references).</u>	
(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:  (1) <i>SYSC 5.2</i> (Certification Regime);  (2) <u>the requirements in SYSC 22 (Regulatory references)</u> ; and  (3) the corresponding <i>PRA</i> requirements.	<i>PRA-prescribed senior management responsibility</i> 4.1(2)
...		

...

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

...

4.8.9 R Table: FCA-prescribed senior management responsibilities for third-country relevant authorised persons.

<b>FCA-prescribed senior management responsibility in relation to the branch</b>	<b>Explanation</b>	<b>Equivalent PRA-prescribed UK branch senior management responsibility</b>
(1) Responsibility for the <i>firm's</i> performance of its obligations under the senior management regime	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 <i>SUP 10C</i> ( <i>FCA</i> senior management	<i>PRA-prescribed UK branch senior management responsibility</i> 6.2(1)

	<p>regime for approved persons in relevant authorised persons).</p> <p>This responsibility includes:</p> <p>(1) compliance with conditions and time limits 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); <del>and</del></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)-; <u>and</u></p> <p><u>(4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory references).</u></p>	
<p>(2) Responsibility for the <i>firm's</i> performance of its obligations under the employee certification regime</p>	<p>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:</p> <p><u>(1) SYSC 5.2 (Certification Regime);</u></p> <p><u>(2) the requirements in SYSC 22 (Regulatory references);</u> and</p> <p><u>(3) the corresponding PRA requirements.</u></p>	<p><i>PRA-prescribed UK branch senior management responsibility 6.2(2)</i></p>
<p>...</p>		

....

## 5.2 Certification regime

...

- 5.2.9 G SYSC 22 5.3 (Regulatory references ~~References and accurate information~~) deals with obtaining references from a previous *employer* when a *firm* is planning to appoint someone to perform a *specified significant-harm function* as part of its assessment of whether that *person* is fit and proper.

...

After SYSC 21 insert the following new chapter. The text is not underlined.

## **22 Regulatory references**

### **22.1 Application**

#### General application

- 22.1.1 R (1) This chapter applies to all *firms*.  
(2) This is subject to SYSC 22.1.5R.

#### Activities covered

- 22.1.2 G This chapter is not limited to *regulated activities* or other specific types of activities.

#### Territorial scope and overseas firms

- 22.1.3 R There is no territorial limitation on the application of this chapter, subject to SYSC 22.1.5R and SYSC 22.1.6R.
- 22.1.4 G One effect of SYSC 22.1.3R is that the obligation to provide a reference can apply even if the *employee* worked in an overseas office of the *employer*.
- 22.1.5 R This chapter does not apply to an *overseas firm* that does not have an establishment in the *United Kingdom*.
- 22.1.6 R (1) For an *incoming firm* or any other *overseas firm*, SYSC 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question (defined as “P” in SYSC 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom*.  
(2) For the purpose of (1), paragraph (5)(c) of the definition of *employee* (someone employed elsewhere in the *group*) does not apply.

#### Types of firm

- 22.1.7 G Many of the obligations in this chapter only apply to *full scope regulatory reference firms*.

22.1.8 R In this chapter, a *full scope regulatory reference firm* means:

- (1) a *relevant authorised person*<sup>1</sup>; or
- (2) a *Solvency II firm*; or
- (3) a *large non-Directive insurer*.

## 22.2 Getting, giving and updating references: the main rules

### Obligation to obtain references

- 22.2.1 R (1) If a *full scope regulatory reference firm* (A) is considering:
- (a) permitting or appointing someone (P) to perform a *controlled function*; or
  - (b) issuing a certificate under the certification regime for P;
- (as explained in more detail in row (A) and (B) of the table in SYSC 22.2.4R), A must take reasonable steps to obtain appropriate references from P's current or previous *employers* covering the past six years.
- (2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in SYSC 22.2.4R.
  - (3) A must in particular request:
    - (a) the information in SYSC 22.2.2R(1) (all information of which the current or previous *employer* is aware that is relevant to A's assessment of whether P is fit and proper); and
    - (b) (if P's current or previous *employer* is also a *full scope regulatory reference firm*) the information in Part One of the table in SYSC 22.2.5R.
  - (4) When deciding what information to request under (1), A must have regard to the factors in Part Two of the table in SYSC 22.2.5R.

### Obligation to give references

- 22.2.2 R (1) If a *firm* (A):
- (a) is considering:

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<sup>1</sup> Note: on 20<sup>th</sup> July 2015, the Treasury laid draft secondary legislation extending the definition of relevant authorised person under section 71A of the Act to incoming branches of overseas firms. Subject to approval by Parliament, it is due to come into force on 9<sup>th</sup> November 2015.

- (i) permitting or appointing someone (P) to perform a *controlled function*; or
- (ii) issuing a certificate under the certification regime for P; or
- (iii) appointing P to another position in the table in SYSC 22.2.4R;

(as explained in more detail in the table in SYSC 22.2.4R);

- (b) makes a request, for a reference or other information in respect of P from a *firm* (B), in B’s capacity as P’s current or former *employer*; and
- (c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, provide a reference and disclose to A in the reference all information of which B is aware that is relevant to A’s assessment of whether P is fit and proper.

- (2) If B is a *full scope regulatory reference firm*, B must in particular disclose the information in Part One of the table in SYSC 22.2.5R (whether or not A is a *full scope regulatory reference firm*).
- (3) When giving information to A under (1), B must have regard to the factors in the table in Part Two of the table in SYSC 22.2.5R.
- (4) Part One of the table does not apply if A is considering appointing P to be a notified non-executive director, credit union non-executive director or Solvency II Directive key function holder (as defined in the *PRA’s* Rulebook) (*PRA* requirements apply instead).

22.2.3 R If a *full scope regulatory reference firm* giving a reference has nothing to disclose for a particular item in Part One of the table in SYSC 22.2.5R, the reference must specifically state this.

22.2.4 R Table: What positions need a reference

Position	When to obtain reference	Comments
(A) Permitting or appointing someone to perform an <i>FCA controlled function</i> or a <i>PRA controlled function</i> .	Before application for approval is made to the <i>FCA</i> or <i>PRA</i>	
(B) Issuing a certificate under section 63F of the <i>Act</i> (Certification of	Before the certificate is issued	

<p>employees by relevant authorised persons).</p> <p>This includes renewing an existing certificate.</p>		
<p>(C) Appointing someone as a notified non-executive director as defined in the <i>PRA Rulebook</i>.</p>	<p>Not applicable</p>	<p><i>SYSC 22.2.1R</i> (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1).</p> <p>However <i>SYSC 22.2.2R</i> (obligation to give a reference) does apply to a <i>firm</i> asked to give a reference to a <i>firm</i> appointing someone to the position in column (1).</p>
<p>(D) Appointing someone as a credit union non-executive director as defined in the <i>PRA Rulebook</i>.</p>	<p>Not applicable</p>	<p><i>SYSC 22.2.1R</i> (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1).</p> <p>However <i>SYSC 22.2.2R</i> (obligation to give a reference) does apply to a <i>firm</i> asked to give a reference to a <i>firm</i> appointing someone to the position in column (1).</p>
<p>(E) Appointing someone as a <i>Solvency II Directive</i> key function (as defined in the <i>PRA Rulebook</i>) where there is no <i>controlled function</i>.</p>	<p>Not applicable</p>	<p><i>SYSC 22.2.1R</i> (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1).</p> <p>However <i>SYSC 22.2.2R</i> (obligation to give a reference) does apply to a <i>firm</i> asked to give a reference to a <i>firm</i></p>

		appointing someone to the position in column (1).
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22.2.5 R Table: What has to be included in a reference

Part One (Information that must be included in a reference) (Only applies to references given by full scope regulatory reference firm)	
Information	Comments
<p>(A) Whether P:</p> <p>(1) is performing or has at any time performed a <i>specified significant harm function</i> for B; or</p> <p>(2) is or has any time been B's <i>approved person</i>.</p>	
<p>(B) Whether P is or has at any time performed any of the following roles in relation to B:</p> <p>(1) notified non-executive director;</p> <p>(2) credit union non-executive director; or</p> <p>(3) <i>Solvency II Directive</i> key function holder (other than where that function is a <i>controlled function</i>).</p>	Note (6) applies.
<p>(C) If the answer to (A) or (B) is Yes, details of each position or positions held, including:</p> <p>(1) what the <i>controlled function, specified significant-harm function, credit union or notified non-executive director function, or Solvency II Directive key function</i> was;</p>	<p>Potential <i>FCA governing function</i> are included in a <i>PRA controlled function</i> under the following parts of the <i>PRA Rulebook</i>:</p> <p>(a) Part 2 of "Senior management functions";</p>

<p>(2) (in the case of a <i>controlled function</i>) whether the approval was at any time subject to a condition, suspension, limitation, restriction or time limit and if so, details about it;</p> <p>(3) summary details of the role and P’s responsibilities in performing that role;</p> <p>(4) whether any potential <i>FCA governing function</i> was included in a <i>PRA controlled function</i>; and</p> <p>(5) the dates during which P held the position.</p>	<p>(b) Part 2 of “Insurance - Senior Insurance Management Functions”; or</p> <p>(c) Part 6 of “Solvency II Firms: Senior Insurance Managers Regime - Transitional Provisions”</p> <p>(d) Part 6 of “Non-Solvency II Firms: Large Non-Solvency II Firms - Senior Insurance Managers Regime - Transitional Provisions.</p>
<p>(D) Whether P is performing or has performed any other role or responsibility as an <i>employee</i> of B other than the ones in (A) and (B) at any time:</p> <p>(1) in the six years before the request for a reference; or</p> <p>(2) between the date of the request for the reference and the date of the reference.</p>	<p>If ‘yes’, include summary details of each of the roles or responsibilities</p>
<p>(E) Where:</p> <p>(1) B has concluded that P was in breach of any individual conduct requirements (see Note 5); and</p> <p>(2) B has reached that conclusion:</p> <p>(a) in the six years before the request for a reference; or</p> <p>(b) between the date of the request for the reference</p>	<p>Note (7) applies</p>

<p>and the date of the reference;</p> <p>the facts which led B to that conclusion.</p>	
<p>(F) Where:</p> <p>(1) B has concluded that P was not fit and proper to perform a function; and</p> <p>(2) B reached that conclusion:</p> <p>(a) in the six years before the request for a reference; or</p> <p>(b) between the date of the request for the reference and the date of the reference;</p> <p>the facts which led B to that conclusion.</p>	<p>Note (4) applies.</p>
<p>(G) Where:</p> <p>(1) B has found that P was:</p> <p>(a) in breach of any individual conduct requirements (see Note 5); or</p> <p>(b) not fit and proper to perform a function;</p> <p>(2) following that finding, B has taken disciplinary action; and</p> <p>(3) B took that disciplinary action:</p> <p>(a) in the six years before the request for a reference; or</p> <p>(b) between the date of the request for the reference and the date of the reference;</p> <p>a description of the basis for, and outcome of, the disciplinary action.</p>	<p>(1) Disciplinary action means:</p> <p>(a) the issue of a formal written warning; or</p> <p>(b) the suspension or dismissal of P; or</p> <p>(c) the reduction or recovery of any of P's remuneration.</p> <p>(2) Notes (4) and (8) apply.</p>

Part Two (Matters to take into account when asking for or giving a reference)	
Matters to take into account	Comments
(A) Any outstanding liabilities of that person from commission payments	
(B) Any relevant outstanding or upheld complaint from an <i>eligible complainant</i> against P	
(C) Section 5 of the relevant Form A in <i>SUP 10A Annex 4</i> (Application to perform controlled functions under approved persons regime) or <i>SUP 10C Annex 2</i> (Application to perform senior management functions)	
(D) <i>FIT 2</i> (Main assessment criteria)	
(E) The persistency of any life policies sold by P	This only applies if <i>SUP 16.8.1G(1)</i> (Persistency reports from insurers) applies to B.
Notes:	
(1)	B refers to the <i>employer</i> or <i>ex-employer</i> giving the reference
(2)	P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given
(3)	B and P are defined in more detail in <i>SYSC 22.2.1R</i> and <i>SYSC 22.2.2R</i>
(4)	When this table refers to a finding or conclusion by B that P was not fit and proper to perform a function, it refers to a conclusion by B in the following circumstances:
(a)	B assesses the continuing fitness and propriety of P as an <i>approved person</i> , including when carrying out this assessment under section 63(2A) of the <i>Act</i> (annual assessment of <i>approved persons</i> by a <i>relevant authorised person</i> ); or
(b)	B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the <i>Act</i> (Certification of employees by relevant authorised persons) for P.
	Paragraph (b) of this Note applies whether the certificate is being issued for

	the first time or is being renewed.	
(5)	Individual conduct requirements mean any of the following:	
	(a)	<i>COCON</i> ;
	(b)	<i>APER</i> ;
	(c)	the <i>PRA</i> 's Individual Conduct Standards or Senior Insurance Manager Conduct Standards (in Chapter 3 of the Part of the <i>PRA</i> 's <i>Rulebook</i> called Solvency II Firms: Insurance – Conduct Standards and Chapter 3 of the Part of the <i>PRA</i> 's <i>Rulebook</i> called Non-Solvency II Firms: Large Non-Solvency II Firms – Conduct Standards); or
	(d)	the <i>PRA</i> 's Individual Conduct Rules or Senior Manager Conduct Rule (in Chapters 2 and 3 of the Part of the <i>PRA</i> 's <i>Rulebook</i> called CRR Firms and Non-CRR Firms: Conduct Rules), and the <i>PRA</i> 's Conduct Standards (in Chapter 3 of the Part of the <i>PRA</i> 's <i>Rulebook</i> called CRR Firms and Non-CRR Firms: Fitness and Propriety).
(6)	Notified non-executive director, credit union non-executive director and Solvency II Directive key function holder have the same meaning as they do in the <i>PRA</i> 's <i>Rulebook</i> .	
(7)	If:	
	(a)	the conclusion in paragraph (1) of item E was reached by another member of B's <i>group</i> (X) with the authority over P to do so; and
	(b)	the conclusion relates to conduct by P relating to the carrying on of activities (whether or not <i>regulated activities</i> ) by B;
	item (E) includes the facts which led X to that conclusion.	
(8)	If:	
	(a)	one or both of the following applies:
		(i) the finding in paragraph (1) of item G; or
		(ii) the disciplinary action in paragraph (2) of item G;
		was reached or taken by another member of B's <i>group</i> with the authority to do so; and
	(b)	the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not <i>regulated activities</i> ) by B;
	item (G) includes a description of the basis for, and outcome of, the disciplinary action.	

## Obligation to revise references

- 22.2.6 R (1) If at any time:
- (a) a *full scope regulatory reference firm* (B) has given a reference under SYSC 22.2.2R to another *firm* (A) about an *employee* or *ex-employee* of B (P);
  - (b) B is aware of matters or circumstances that mean that if B was giving that reference now, this chapter would require B to draft it differently; and
  - (c) the differences in (b) are significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;
- B must give A details of those differences in writing as soon as reasonably practicable.
- (2) This *rule* does not require B to disclose anything of which it becomes aware more than six years after it gave the reference.
- (3) This *rule* applies even if P is no longer *employed* by A.

## Form of request for a reference

- 22.2.7 G (1) A *firm* (A) asking another *firm* (B) for a reference about someone should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply.
- (2) As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is because (as explained in SYSC 22.2.13G) B should include that information even though B is not specifically asked to include it.
- 22.2.8 G A *firm* asking for a reference under this chapter from a current or former *employer* that is not a *firm* will normally need to specify what information it would like.

## Form of reference: Full scope regulatory reference firms

- 22.2.9 R (1) A *full scope regulatory reference firm* must use the template in SYSC 22 Annex 1R when giving a reference under this chapter to a *firm* (A).
- (2) The template in SYSC 22 Annex 1R asks for the information in Items A to G of Part One of the table in SYSC 22.2.5R and the template should be read with that table and notes at the end of it.
- (3) This *rule* applies even if A is not a *full scope regulatory reference*

*firm.*

- 22.2.10 R (1) The parts of SYSC 22 Annex 1R (which are *PRA* requirements) set out in this *rule* are not requirements of the *FCA* under SYSC 22.2.9R.
- (2) The following questions in the template in SYSC 22 Annex 1R are not requirements of the *FCA* under SYSC 22.2.9R.
- (a) Question E (1)(b);
- (b) Question G (1)(a)(ii).
- 22.2.11 G (1) SYSC 22 Annex 1R is designed so that a *firm* may give a reference in accordance with both *FCA* and *PRA* requirements in a single document, even though the regulators' requirements are not identical in all respects. Including something in a reference that is required by the *PRA*'s Rulebook will not breach the requirements of this chapter.
- (2) An example of this is SYSC 22.2.10R. The questions listed in SYSC 22.2.10R(2) are not included in the list of questions in Part One of the table in SYSC 22.2.5R. They are *PRA* requirements and are derived from the *PRA Rulebook*. However they are included in SYSC 22 Annex 1R in order to show:
- (a) how the *PRA* requirements about references should be combined with the *FCA*'s requirements; and
- (b) that the answers to those questions should be included in accordance with the *PRA*'s requirements and not under Question (H) (additional relevant information).
- 22.2.12 G (1) SYSC 22.2.9R does not stop a *full scope regulatory reference firm* including matters in the reference not required by the template in SYSC 22 Annex 1R.
- (2) A *full scope regulatory reference firm* may include the material required by the template and additional material in the same document.
- (3) Any additional material should not alter the scope of any of the headings in the templates.

Form of reference: All firms

- 22.2.13 G (1) The obligation to supply the information in SYSC 22.2.2R applies even if the *firm* asking for the reference does not specifically ask for that information.
- (2) A *full scope regulatory reference firm* should use the template in SYSC 22 Annex 1R even if the *firm* asking for the reference does not specifically ask it to.

## 22.3 Giving references: additional rules and guidance

### Accuracy

- 22.3.1 G A *firm* should, when giving a reference under this chapter, provide as complete a picture of an *employee's* conduct record as possible to new *employers*, seeking wherever feasible to conclude investigative procedures before the *employee* departs.
- 22.3.2 G References should be true, accurate, fair and based on documented fact.
- 22.3.3 G (1) A *firm* may decide not to disclose in a reference its conclusion that an *employee* or former *employee* has breached *COCON* or *APER* if it later becomes aware of facts or matters causing it to revise its conclusions.
- (2) This applies to the information in items (E) and (G) in Part One of the table in *SYSC 22.2.5R* as well as to the general obligation in *SYSC 22.2.2R(1)*.
- 22.3.4 G (1) A *firm* supplying a reference in accordance with this chapter owes a duty under the general law to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.
- (2) The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

### Outsourcing

- 22.3.5 G The requirements in this chapter for a *firm* (B) to give a *firm* (A) a reference also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

### Circumstances in which ex-employee left

- 22.3.6 G The obligation to give a reference for an ex-*employee* applies however the *employment* ended or is going to end. For example, it applies whether it ended through resignation, leaving under a negotiated exit, redundancy, dismissal or fixed term or temporary work coming to an end.

### All relevant information

- 22.3.7 G (1) *SYSC 22.2.2R(1)* (obligation to disclose all information relevant to an assessment of whether an *employee* is fit and proper) may require a *full scope regulatory reference firm* to disclose information that goes beyond the mandatory minimum information in Part One of the table in *SYSC 22.2.5R*.

- (2) For instance, SYSC 22.2.2R(1) may in some cases require disclosure of a conclusion that an *employee* or former *employee* has breached *COCON* or *APER* where that conclusion was reached more than six years before the request for a reference (“older breaches”).
- (3) However, older breaches may become irrelevant to the assessment of fitness and propriety over time.
- 22.3.8 G (1) In determining whether it is necessary to disclose older breaches, the key question is whether or not the information is still relevant for the requesting *firm*’s assessment of P’s fitness for the function that P is going to perform.
- (2) *Full scope regulatory reference firms* will need to exercise judgement, in determining what information beyond the mandatory minimum, if any, may be relevant for that purpose.
- (3) In considering what is relevant, *full scope regulatory reference firms* must, in particular, have regard to:
- (a) their duty under the general law to its former *employee* and to the recipient of the reference (see SYSC 22.3.4G);
- (b) the *guidance* in SYSC 22.3.2G (References should be true, accurate, fair, and based on documented fact).
- 22.3.9 G (1) SYSC 22.3.10G to 22.3.11G provide *guidance* on some of the factors which the *FCA* considers *full scope regulatory reference firms* should take into account when determining whether older breaches may still be relevant.
- (2) Other *firms* may also find the *guidance* SYSC 22.3.10G to 22.3.11G, together with the six year periods in Part One of the table in SYSC 22.2.5R, useful as a guide when considering whether breaches of *APER* or a finding in relation to P’s fitness and propriety may be relevant.
- 22.3.10 G (1) The *FCA* considers that the *full scope regulatory reference firm* (B) giving the reference will not be required to disclose older breaches unless there is a good reason for doing so.
- (2) When considering whether to disclose older breaches, the *FCA* considers that B should normally take account of the following factors:
- (a) The seriousness and impact of the breach. This includes whether the breach was deliberate or involved dishonesty.
- (b) When the breach occurred. In general, the longer ago the breach occurred, the less likely it is that the breach will still be relevant to an assessment of fitness and propriety.

- (c) When B reached its conclusion about the breach. The fact that B reached this conclusion recently, may increase the likelihood that B should disclose it. That is because:
    - (i) in reviewing P’s employment history with B it will be relevant for the requesting firm (A) to know that for some or all of that period B did not know of the breach.
    - (ii) For example, a history of steady career progression by P with B will look different if B did not know of the breach during part of that period.
  - (d) Whether the older breaches and the newer ones form part of a single course of conduct or are otherwise connected. The fact that that is the case, may increase the likelihood that all of them should be disclosed. In particular, B should avoid giving an incomplete account of the breaches that have to be disclosed under Part One of the table in SYSC 22.2.5R.
  - (e) Whether the breaches or other misconduct are frequent or regular and whether they show a pattern of non-compliance. The fact that breaches were frequent or regular may increase the likelihood that they should be disclosed since the breaches may-show a pattern of non-compliance.
  - (f) The firm should also take into account other misconduct for the purpose of (e). The complete previous compliance history of the *employee* is relevant to whether there should be disclosure under SYSC 22.2.2R(1).
  - (g) The reasons for the breach. In particular, where the older breach was caused by lack of experience which has been remedied by training or further experience, it is less likely that the older breach will still be relevant.
- 22.3.11 G (1) SYSC 22.3.11G(2) to (5) gives examples of how the factors above might operate in practice.
- (2) B will not normally have to disclose older breaches if:
    - (a) they were caused by a lack of experience; and
    - (b) this has been remedied by training or further experience.
  - (3) If:
    - (a) there are older breaches; and
    - (b) B is required to disclose other *COCON* breaches under Part One of the table in SYSC 22.2.5R;

that may increase the likelihood that B will be required to disclose the older breaches.

- (4) If:
- (a) there are older breaches which are not serious; and
  - (b) B is not required to disclose other *COCON* breaches under Part One of the table in *SYSC 22.2.5R*;

it is more likely that B will be not required to disclose the older breaches.

- (5) If:
- (a) *SYSC 22.3.11G(3)* does not apply; and
  - (b) the time when B established that the older breach had occurred was more than ten years before the request for the reference;

B will not normally need to disclose the older breach unless it is exceptionally serious.

What can be included

- 22.3.12 G (1) This chapter sets out minimum requirements for a reference. It does not prevent a *firm* from including more than is required.
- (2) For example, a *firm* (B) may think that an *employee* (P) could be responsible for misconduct. B may then negotiate an agreed exit with P before disciplinary proceedings are complete or before they have started. Thus B is unable to establish whether P actually was responsible.
- (3) The table in *SYSC 22.2.5R* does not require B to include in a reference the fact that P left while disciplinary proceedings were pending or had started.
- (4) It is unlikely that *SYSC 22.2.2R(1)* (obligation to disclose all information relevant to an assessment of whether an *employee* is fit and proper) will require this to be disclosed in the example in (2). This is because B will not have been able to complete its investigations into whether P was responsible. This chapter does not require B to disclose information that has not been properly verified.
- (5) However, nothing in this chapter prevents B from disclosing that information. If B does disclose more than is required by this chapter the reference should still meet B's duties under general law to its former *employee* and the recipient (see *SYSC 22.3.4G*).

- 22.3.13 G Nothing in this chapter prevents a *firm* from disclosing material outside the time limits under this chapter.

Agreements not to disclose information

- 22.3.14 R A *firm* must not enter into any arrangements or agreements with any *person* that limit its ability to disclose information under this chapter.

- 22.3.15 G SYSC 22.3.14R covers all types of agreements and arrangements. For example:

- (1) it is not limited to an agreement or arrangement entered into when the *employee* leaves;
- (2) it applies however the *employment* ends (see SYSC 22.3.6G); and
- (3) it covers a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS).

- 22.3.16 G A *firm* should not give any undertakings to suppress or omit relevant information in order to secure a negotiated release.

- 22.3.17 G The obligation to supply information to another *firm* under this chapter will apply notwithstanding any agreement prohibited by SYSC 22.3.14R.

## 22.4 Getting references: additional guidance

Who should be asked to give a reference

- 22.4.1 G The *Glossary* definition of *employer* covers more than just a conventional employer and so it may not always be obvious who a *person's employer* is. Therefore a *full scope regulatory reference firm* appointing someone to a position that requires a reference may have to obtain the *employee's* help in identifying their previous *employers*.

- 22.4.2 G (1) SYSC 22.2.1R (Obligation of a full scope regulatory reference firm to try to obtain a reference) applies even if the *ex-employer* is not a *firm*.
- (2) A *full scope regulatory reference firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the *FCA* accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

- 22.4.3 G (1) SYSC 22.2.1R (Obligation of a full scope regulatory reference firm to try to obtain a reference) applies even if the *employer* has already got a reference for the *employee*. For example:

- (a) a *relevant authorised person* should have a reference whenever it renews the certificate of a *certification employee*; and
- (b) changing jobs within the same *full scope regulatory reference firm* may require a reference.

(2) However, the *full scope regulatory reference firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose. SYSC 22.4.4G to SYSC 22.4.6G give examples of this.

22.4.4 G If a *relevant authorised person* (A):

- (1) appoints someone (P) to a *specified significant-harm function* position;
- (2) obtains a reference from an *ex-employer*; and
- (3) later wishes to renew P's certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that *ex-employer* or ask for it to be reissued.

22.4.5 G (1) If a *full scope regulatory reference firm* (A):

- (a) appoints someone (P) to a *specified significant-harm function* or an *approved person* position;
- (b) obtains a reference from an *ex-employer*; and
- (c) later wishes to:
  - (i) appoint P to another *specified significant-harm function* or *approved person* position; or
  - (ii) move P from a *specified significant-harm function* to an *approved person* position or vice versa;

A should consider whether to ask that *ex-employer* to reissue or amend its reference.

- (2) A may decide that it is not necessary to ask the *ex-employer* to reissue or amend its reference. For example, A may decide that:
  - (a) the existing reference already covers everything necessary; or
  - (b) (where the *ex-employer* is not a *firm*) the *ex-employer* will not give any further information.

22.4.6 G If:

- (1) a *full scope regulatory reference firm* (A) appoints someone (P) to a *specified significant-harm function* or *approved person* position;
- (2) A obtains a reference from an *ex-employer* (B);
- (3) later P transfers to a *specified significant-harm function* or an *approved person* position with another *full scope regulatory reference firm* in A's group (C);
- (4) B's reference is:
  - (i) addressed to all *firms* in A's group; or
  - (ii) otherwise drafted so that it is clear that C may rely on it; and
- (5) it is not necessary for C to ask for the reference to be reissued or amended, taking account of SYSC 22.4.3G to SYSC 22.4.5G;

C may be able to rely on that reference without asking B to give another one.

#### When references are to be obtained

- 22.4.7 G If a *full scope regulatory reference firm* is unable to obtain a reference by the time in column two of the table in SYSC 22.2.4R, it should still try to obtain the reference as soon as possible afterwards.
- 22.4.8 G (1) Where a *relevant authorised person* needs to fill a vacancy for a *specified significant-harm function* which could not have reasonably been foreseen, the *FCA* recognises that it may not be reasonable to expect the *relevant authorised person* to obtain references prior to issuing a certificate.
- (2) In such cases, the *relevant authorised person* should take up the reference as soon as reasonably possible.
- (3) If a reference obtained later raises concerns about the person's fitness and propriety, the *relevant authorised person* should revisit its decision to issue the person with a certificate.

#### Time limits for references

- 22.4.9 G (1) The obligation in SYSC 22.2.1R(1) to obtain references covering the last six years requires the *full scope regulatory reference firm* to try to obtain references from all the *employers* by whom the *employee* has been *employed* during that six year period.
- (2) That six year period does not refer to the period to be covered by the reference.

## 22.5 Additional rules and guidance for getting and giving references

### Breach of APER

- 22.5.1 G (1) The table in SYSC 22.2.5R requires certain breaches of *APER* to be disclosed by a *full scope regulatory reference firm*.
- (2) *APER* has not applied to *full scope regulatory reference firms* since March 2016 (except for *approved persons* in *appointed representatives* of *relevant authorised persons*). So in practice disclosures about *APER* will relate to periods before then.
- (3) SYSC 22.3.2G states that references should be true, accurate, fair and based on documented fact. Where a *full scope regulatory reference firm*'s records do not record whether previous conduct subject to disciplinary action amounted to a breach of *APER*, it does not have to re-assess that disciplinary action to determine retrospectively if a breach of *APER* has occurred.
- 22.5.2 G (1) An example of information that may be relevant under SYSC 22.2.2R(1) (obligation to disclose all information relevant to an assessment of whether an *employee* is fit and proper) is the fact that the *employee* has breached a requirement in *APER*.
- (2) This means that a *firm* that is not a *full scope regulatory reference firm* should also consider whether it needs to disclose a breach of *APER* when giving a reference under this chapter.

### Policies and procedures

- 22.5.3 R A *firm* must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.

### Appointed representatives: Relevant authorised persons

- 22.5.4 R When a *relevant authorised person* is permitting or appointing someone to perform a *controlled function* whose approval is to be under SUP 10A.1.15R or SUP 10A.1.16R (appointed representatives of relevant authorised persons), the requirements of this chapter for *firms* that are not *full scope regulatory reference firms* apply in place of the requirements that only apply to *full scope regulatory reference firms*.

### Appointed representatives: All types of firm

- 22.5.5 G (1) A *principal* should ensure its *appointed representatives* comply with the requirements of this chapter:
- (a) when appointing an *approved person* under SUP 10A.1.15R to SUP 10A.1.16BR (Appointed representatives) where the *arrangement* involves the *firm* (see paragraph (2)); and

- (b) about giving references (subject to paragraph (3)).
- (2) Section 59(2) of the *Act* (Approval for particular arrangements) covers a *person* who performs a *controlled function* under an *arrangement* entered into by a contractor ("X") of a *firm* ("Y"). Y is the *principal* and X is the *appointed representative* in paragraph (1).
- (3) A *firm* is not responsible for its *appointed representative's* giving references if another *principal* has accepted responsibility for this.

#### Employment in a group

- 22.5.6 G If:
- (1) a *firm* (A) is thinking of appointing someone (P) to a position that requires A to obtain a reference;
  - (2) P was *employed* by a group services company that is not a *firm*; and
  - (3) P (in their capacity as an *employee* of the group services company) performed any function or services for a *firm* (B) in the same group as the group services company such that P was also an *employee* of B;
- then:
- (4) A should ask both B and the group services company for a reference;
  - (5) B is obliged to give the reference;
  - (6) B should ask the group services company to provide it with the information needed to provide a reference in accordance with this chapter;
  - (7) the group services company may give a reference but (as it is not a *firm*) it is not obliged to; and
  - (8) the group services company and B may give a single joint reference.
- 22.5.7 G If:
- (1) a *firm* (A) is thinking of appointing someone (P) to a position that requires A to obtain a reference;
  - (2) P was *employed* by a company (D) that is not a *firm*; and
  - (3) P (in their capacity as an *employee* of D) performed any function or services for a *firm* (B) such that P was also an *employee* of B;
- then:
- (4) A should ask both B and D for a reference;

- (5) B is obliged to give the reference;
- (6) B should take reasonable steps to obtain from D the information needed to provide a reference in accordance with this chapter; and
- (7) D may give a reference but (as it is not a *firm*) it is not obliged to.

22.5.8 G If:

- (1) a *firm* (A) is thinking of appointing someone (P) to a position that requires A to obtain a reference;
- (2) P was *employed* in a group that has several *firms* in it; and
- (3) P was an *employee* of some or all of them;

then:

- (4) A should ask all the *firms* that *employed* P for a reference; and
- (5) those *firms* may give a single joint reference.

## 22.6 Records

22.6.1 R A *firm* must arrange for orderly records to be kept that are sufficient to enable it to comply with the requirements of this chapter.

22.6.2 R A *firm* must retain all records kept by it under SYSC 22.6.1R for a period of at least six years after the *employee* in question has ceased to be *employed* by it.

22.6.3 R A *firm* must retain all records kept by it under SYSC 22.6.1R that are created after the *employee* in question has ceased to be *employed* by it for a period of at least six years after the creation of the record.

## 22 Annex 1R Template for regulatory references given by relevant authorised persons

### Regulatory Reference Template for Full Scope Regulatory Reference Firms

This is the template referred to in SYSC 22.2.9R of the FCA Handbook and in CRR Firms and Non-CRR firms: Fitness and Propriety 5.1(2), Solvency II Firms: Insurance – Fitness and Propriety 3 and Non-Solvency II Firms: Large Non-Solvency II Firms – Fitness and Propriety 3 in the PRA Rulebook.

**Please answer each of the below questions. Where you have nothing to disclose, this should be confirmed in response to the relevant question.**

**In this template:**

- “firm” / “your firm” refers to the firm giving the reference;
- “individual” refers to the subject of the reference.

<b>Name, and Firm reference number of firm providing reference</b>	
<b>Individual’s Name</b>	
<b>Name of firm requesting the reference</b>	

(A) Please state whether the individual:

- (1) is performing or has at any time performed a *specified significant harm function* or *certification function* for your firm; or
- (2) is or has at any time been an *approved person* for your firm.

Yes	
No	

(B) Please state whether the individual is performing or has at any time performed any of the following roles in relation to your firm:

- (1) notified non-executive director;
- (2) credit union non-executive director; or
- (3) *Solvency II Directive* key function holder (other than a controlled function).

Yes	
No	

(C) If the answer to (A or B) is ‘yes’, provide details of each position held, including:

- (1) what the *controlled function* or *significant-harm function / certification function*, credit union or notified non-executive director function, or *Solvency II Directive* key function was;
- (2) (in the case of a *controlled function*) whether the approval is or was at any time subject to a condition, suspension, limitation, restriction or time limit and if so, details about it;
- (3) summary details of the role and the individual’s responsibilities in performing that role;
- (4) whether any potential *FCA governing function* is or was included in a *PRA controlled function*; and
- (5) the dates during which the individual held the position.

(D) Please state whether the individual is performing or has performed any role or responsibility for your firm other than the ones in (A) and (B) at any time:

- (1) in the six years before the request for a reference; or
- (2) between the date of the request for the reference and the date of the reference.

Yes	
No	

If 'yes', please provide details of the other role(s) or responsibility/ies.

(E) Where:

- (1) your firm has concluded that the individual was in breach of any individual conduct requirements that:
  - (a) apply or applied to the individual; or
  - (b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules; and
- (2) your firm reached that conclusion:
  - (a) in the six years before the request for a reference; or

(b) between the date of the request for the reference and the date of the reference;

set out the facts which led your firm to that conclusion.

(F) Where:

(1) your firm has concluded that the individual was not fit and proper to perform a function; and

(2) your firm reached that conclusion:

(a) in the six years before the request for a reference; or

(b) between the date of the request for the reference and the date of the reference;

set out the facts which led your firm to that conclusion.

(G) Where:

(1) your firm has found that the individual was:

(a) in breach of any individual conduct requirements that:

(i) apply or applied to the individual; or

(ii) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules; or

(b) not fit and proper to perform a function; and

(2) following that finding, your firm has taken disciplinary action; and

(3) your firm took that disciplinary action:

(a) in the six years before the request for a reference; or

(b) between the date of the request for the reference and the date of the reference;

provide a description of the basis for, and outcome of, the disciplinary action.

(H) Please provide any other information of which you are aware that is relevant to the requesting firm's assessment of whether the individual is fit and proper.

Amend the following as shown.

**Sch 1 Record keeping requirements**

...

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>SYSC</i> 14.1.53R	...	...	...	...
<u>SYSC 22.6</u>	<u>Employment history of employees</u>	<u>As specified in the rules in column 1</u>	<u>None specified</u>	<u>Six years from date specified in the rules in column 1</u>

...

**Sch 5 Rights of actions for damages**

...

Sch 5.4G

Chapter/Appendix	Section/Annex	Paragraph	Rights of action under section 138D			
			For private person?	Removed?	For other person	
...						
<i>SYSC</i> 11 to <i>SYSC</i> 19A, and <i>SYSC</i> 19D	...		...	...	...	...
<u>SYSC 22</u>			<u>Yes (apart from SYSC 22.5.3R)</u>	<u>No (apart from SYSC 22.5.3R)</u>		<u>No</u>

		and <u>SYSC</u> <u>22.6)</u>	and <u>SYSC</u> <u>22.6)</u>		
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...

**TP 5 Financial Services (Banking Reform) Act 2013 and regulatory references ÷ Certification**

Purpose of SYSC TP 5

- 5.1.1 G SYSC TP 5;
- (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017;
  - (2) has certain transitional provisions dealing with:
    - (a) the certification regime that apply after 7 March 2017; and
    - (b) SYSC 22 (Regulatory references) more generally.
- 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017.

Application

- 5.2.1 G (1) SYSC TP 5 applies to *relevant authorised persons*.
- (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.

Certification: The transitional period

...

- 5.3.3 G (1) The table in SYSC TP 5.3.4G explains how the requirements of the Handbook and the Act about *certification employees* apply in the transitional period.
- (2) It also explains how the transitional provisions in SYSC TP 5.4 work.
- (3) The certification regime and SYSC TP 5.4 are only relevant to relevant authorised persons.
- 5.3.4 G Table: Transitional arrangements for ~~How the certification regime applies in the transitional period~~

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
--------------------------------------	------------------------------	---

...		
The parts of SYSC 4.5 dealing with the <i>management responsibilities map</i>	...	...
<u>SYSC 22</u>	<u>Regulatory references</u>	<p><u>(1) The obligation in SYSC 22 to obtain a reference for a person who is being appointed to perform a specified significant-harm function applies during the transitional period, even though there is no need yet to issue that person with a certificate.</u></p> <p><u>See SYSC TP 5.4.</u></p> <p><u>(2) During the transitional period, SYSC 22 applies in relation to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</u></p> <p><u>(3) If at 7 March 2016, a person has already been appointed to perform a role that comes within the definition of a specified significant-harm function, there is no requirement to obtain a reference as long as their role does not change.</u></p>

(4) For example, if on 7 March 2016, S is performing for firm X what will be a *specified significant-harm function* for which a certificate will have to be issued when the regime comes fully into force, firm X will not need to obtain a reference for S for that function:

- (a) during the transitional period;
- (b) when firm X issues a certificate for S after the transitional period comes to an end; or
- (c) when firm X reissues a certificate for S;

as long as S's role does not change.

(5) If S in paragraph (4) takes on a new *specified significant-harm function* (either during or after the transitional period), firm X will need to obtain a reference.

(6) If, during the transitional period, firm Y appoints T to perform for it what will be a *specified significant-harm function* for which a certificate will have to be issued when the regime comes fully into force:

		<p>(a) <u>firm Y will need to obtain references for T;</u></p> <p>(b) <u>it is unlikely that firm Y will need to ask for the references to be reissued once the certification regime comes fully into force.</u></p>
...		

#### Regulatory references and the certification regime

- 5.4.1 R Until 7 March 2017, SYSC 22 (Regulatory references) applies as if the table in SYSC 22.2.4R (Table: What positions need a reference) included the following entry:

Position	When to obtain reference	Comments
<u>Appointing someone to perform a specified significant-harm function</u>	<u>Before the appointment is made</u>	

- 5.4.2 R (1) FCA-prescribed senior management responsibility (2) (Responsibility for the firm's performance of its obligations under the employee certification regime) includes responsibility for the requirements in SYSC TP 5.4.1R.
- (2) This applies to third country relevant authorised persons and UK relevant authorised persons.
- 5.4.3 R (1) If on 7 March 2016 an employee (P) is already performing a specified significant-harm function for a relevant authorised person (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate for P for that significant-harm function does not apply.
- (2) Paragraph (1) ceases to apply if there has been a significant change in P's responsibilities forming part of that specified significant-harm function as compared to the position on 7 March 2016.

#### Regulatory references and the approved persons regime

5.5.1 R SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an *approved person* that is:

- (1) made under SUP TP 6.8.1D or SUP TP 7.4.1D (Applications for approval as an approved person to take effect from 7 March 2016);  
or
- (2) made before 7 March 2016 but that has not yet been finally determined by then.

General material about regulatory references

5.5.2 R If a *firm* (A) asks another *firm* (B) for a reference before 7 March 2016, SYSC 22 (Regulatory references) applies to B if B gives the reference after that date.

5.5.3 G SYSC 22 applies to a reference requested or given after 7 March 2016 even if the matters covered by the reference occurred before then.

5.5.4 G (1) If, on or after 7 March 2016, a *full scope regulatory reference firm* (A):

- (a) is considering appointing a *person* (P) to a position (or doing anything else for P) for which SYSC 22 or SYSC TP 5.4.1R requires a reference; and
- (b) already has a reference from P's former *employer* (B), which B supplied before 7 March 2016;

A will need to consider whether to ask B to update that reference so that it meets the requirements of SYSC 22 (Regulatory references).

(2) If B is a *firm* that is not a *full scope regulatory reference firm*, A may decide that it is not necessary to ask B to update the reference. This is because the *FCA* requirements about regulatory references that applied to such *firms* before 7 March 2016 were similar to those in SYSC 22. Thus the existing reference may already be sufficient.

(3) The main difference between the requirements for a *firm* that is not a *full scope regulatory reference firm* before and after 7 March 2016 is that the certification regime did not exist before 7 March 2016 and so there was no obligation to supply a reference for a *certification employee*.

(4) If B is not a *firm*, A may decide that it is not necessary to ask B to update the reference if A believes that B will refuse the request.

5.5.5 G SYSC 22.2.6R (Obligation to revise references) does not apply to references obtained before 7 March 2016.

...



## Annex C

## Amendments to the Supervision manual (SUP)

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

## 10A FCA Approved Persons

...

## 10A.15 References and accurate information

## References

10A.15.1 ~~R~~ (1) ~~If SYSC 22 (Regulatory references) says that if a firm (A):~~  
G

- (a) is considering appointing a *person* (P) to perform any ~~FCA controlled function~~ or certain other functions;
- (b) requests ~~another firm (B), as a~~ a reference from a firm (B) that is P's current or former employer of that person, for a reference or other information in connection with that appointment ~~employer~~; and
- (c) indicates to B the purpose of the request;

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

- (2) This applies even if A is a firm to which SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) applies rather than this chapter. ~~When giving the information to A under (1), B must have regard to the purpose of the request and, in particular, to:~~
  - (a) ~~any outstanding liabilities of that person from commission payments;~~
  - (b) ~~any relevant outstanding or upheld complaint from an eligible complainant against that person;~~
  - (c) ~~section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);~~
  - (d) ~~FIT 2 (Main assessment criteria); and~~
  - (e) ~~if SUP 16.8.1G(1) (Persistency reports from insurers) applies~~

to B, the persistency of any *life policies* sold by that *person*.

(3) SYSC 22 also requires certain *insurers* to get a reference before applying to have someone approved as an *approved person*.

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

10A.15.3 G ~~A *firm* supplying a reference in accordance with SUP 10A.15.1R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based. [deleted]~~

The need for complete and accurate information

10A.15.4 G The obligations to supply information to:

(1) the *FCA* under either SUP 10A.14.8R or SUP 10A.14.10R ;

(2) another *firm* under SUP 10A.15.1R;

apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

...

## 10C FCA senior management regime for approved persons in relevant authorised persons

...

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

...

10C.10.23 G Please see SYSC 5.3 22 (~~References and accurate information~~ Regulatory references) about the requirement for a *firm* to ask for references from previous employers.

...

Insert the following new section after SUP 10C.15. The text is not underlined.

**10C.16 References and accurate information**

References

10C.16.1 G SYSC 22 (Regulatory references) has requirements for a *firm*:

- (1) to give a reference when asked to by another *firm* (whether or not that other *firm* is a *relevant authorised person*) if that other *firm* is considering appointing a *person* to perform certain functions; and
- (2) to request a reference when it is considering appointing a *person* to perform a *designated senior management function* or certain other functions.

The need for complete and accurate information

10C.16.2 G (1) The obligations to supply information to the *FCA* under this chapter about a current or former *SMF manager* or *candidate* apply notwithstanding any:

- (a) agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)); or
- (b) any other arrangements entered into by the *firm* and that *person* upon termination of the *person's* employment or role.

(2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this chapter.

10C.16.3 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

Amend the following as shown.

*Editor's note: In relation to the forms other than the Solvency II forms, the text of the forms to be amended is taken from FCA Feedback Statement FS15/3 (Strengthening accountability in banking: UK branches of foreign banks). The text of the Solvency II forms to be amended is taken from the Handbook text.*

**10C            Form A: Application to perform senior management functions**  
**Annex 2**



BANK OF ENGLAND  
 PRUDENTIAL REGULATION  
 AUTHORITY



Application number  
 (for FCA/PRA use only)

The FCA and PRA have produced notes which will assist both the *applicant* and the *candidate* in answering the questions in this form. Please read these notes, which are available on both FCA and PRA websites at:

<http://fshandbook.info/FS/html/FCA/SUP/10C/Annex2D>

<http://www.bankofengland.co.uk/PRA>

Both the applicant and the *candidate* will be treated by the FCA and PRA as having taken these notes into consideration when completing this form.

## **Long Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only**

### **Application to perform senior management functions**

FCA Handbook Reference: SUP 10C Annex 2D

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

7 March 2016

...

**Fitness and propriety** **Section 5**

...

**5.05 Other Matters**

...

**5.05.4**

Has / Have a reference or references been obtained from previous employer(s) in accordance with the requirements of the *FCA* or *PRA*?  
If No, please provide details why the reference or references has/have not been obtained.

*Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety [reference to follow] in the PRA Rulebook)*

YES  NO

...



Application number  
(for FCA use only)

The FCA has produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on the *FCA Handbook* website at:

<http://fshandbook.info/FS/html/FCA/SUP/10C/Annex2D>

Both the applicant and the candidate will be treated by the FCA as having taken these notes into consideration when completing their answers to the questions in this form.

## Long Form A – EEA Relevant Authorised Persons only

### Application to perform senior management functions

*FCA Handbook* Reference: SUP 10C Annex 2D

7 March 2016

...

## Fitness and propriety

## Section 5

...

### 5.05 Other Matters

...

**5.05.4** Has / Have a reference or references been obtained from previous employer(s) in accordance with the requirements of the *FCA* or *PRA*?

If No, please provide details why the reference or references has/have not been obtained.

YES  NO

*Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety [reference to follow] in the PRA Rulebook)*

...



Application number  
(for FCA use only)

The FCA has produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on the FCA website at:

<http://fshandbook.info/FS/html/FCA/SUP/10C/Annex2D>

Both the applicant and the candidate will be treated by the FCA as having taken these notes into consideration when completing this form.

# Short Form A – EEA Relevant Authorised Persons Only

## Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D  
7 March 2016

...

### Fitness and Propriety

### Section 5

This section has largely been removed. However if there has been a change to the detail in this section since your last approval, you must submit a Long Form A as opposed to a Short Form A informing the FCA and/or PRA of the revised detail.

#### 5.1

Has / Have a reference or references been obtained from previous employer(s) in accordance with the requirements of the FCA or PRA. If No, please provide details why the reference or references has/have not been obtained.

Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety [reference to follow] in the PRA Rulebook)

YES  NO



I have supplied further information  
related to this page in Section 6

YES  NO



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Application number  
(for FCA/PRA use only)

The *FCA* and *PRA* have produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on both *FCA* and *PRA* websites at:

<http://fshandbook.info/FS/html/FCA/SUP/10C/Annex2D>

<http://www.bankofengland.co.uk/PRA>

Both the applicant and the candidate will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form.

## Short Form A –UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only

### Application to perform senior management functions

*FCA Handbook* Reference: SUP 10C Annex 2D

*PRA Rulebook* Reference: Senior Managers Regime - Applications and Notifications

7 March 2016

...

**Fitness and Propriety**

**Section 5**

This section has largely been removed. However if there has been a change to the detail in this section since your last approval, you must submit a Long Form A as opposed to a Short Form A informing the *FCA* and/or *PRA* of the revised detail.



I have supplied further information related to this page in Section 6

YES  NO

**5.1**

Has / Have a reference or references been obtained from previous employer(s) in accordance with the requirements of the FCA or PRA. If No, please provide details why the reference or references has/have not been obtained.

YES  NO

*Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety [reference to follow] in the PRA Rulebook*

...

**10C**      **Form E: Internal transfer of an approved person (for firms and individuals**  
**Annex 3**    **subject to the senior management regime)**



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Application number  
(for FCA/PRA use only)

The *FCA* and *PRA* have produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on the *FCA* and *PRA*'s websites at

<http://fshandbook.info/FS/html/FCA/SUP/10A/Annex8>

[www.bankofengland.co.uk/PRA](http://www.bankofengland.co.uk/PRA).

Both the applicant and the candidate will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form.

**Form E**  
**Internal transfer of an approved person (for**  
**firms and individuals subject to the senior**  
**management regime)**

*FCA Handbook* Reference: SUP 10C Annex 3D

*PRA Rulebook* Reference: Senior Managers Regime - Applications and Notifications

7 March 2016

...

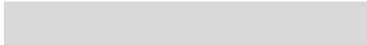
**Senior management functions**

**Section 4**

...

4.04

...



I have supplied further information related to this page in Section 6

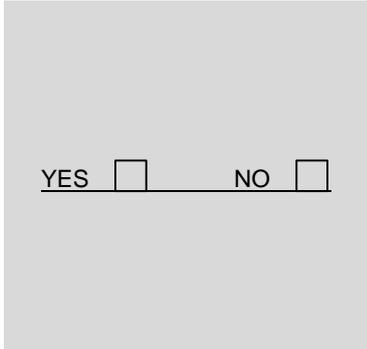
YES  NO

4.05

Has / Have a reference or references been obtained from previous employer(s) in accordance with the requirements of the FCA or PRA. If No, please provide details why the reference or references has/have not been obtained.

YES  NO

*Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety [reference to follow] in the PRA Rulebook*



**10A Long Form A – Solvency II firms only**  
**Annex 4**



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Application number  
(for FCA/PRA use only)

The *FCA* and *PRA* have produced notes which will assist both the applicant and the *candidate* in answering the questions in this form. Please read these notes, which are available on both *FCA* and *PRA* websites at:

<http://fshandbook.info/FS/html/FCA/SUP/10A/Annex4>

<http://www.bankofengland.co.uk/PRA>

Both the applicant and the *candidate* will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form.

## **Long Form A – Solvency II firms only<sup>2</sup>**

### **Application to perform controlled functions**

*FCA Handbook* Reference: SUP 10A Annex 4D

*PRA Rulebook* Reference: Solvency II firms: Senior Insurance Managers Regime - Applications and Notifications

...

**5.05 Other Matters****5.05.5**

~~For PRA functions only:~~ Has / Have a reference or references been obtained from current and previous employer(s) in accordance with the requirements of the *PRA or FCA?* ~~as set out in 2.5 in Insurance-Fitness and Propriety~~

If No, please provide details why the reference or references has/have not been obtained.

*Please note that for candidates for PRA controlled functions, a firm is required to take reasonable steps to obtain appropriate references from any current or previous employer of the candidate, or at any organisation at which the candidate is or was a non-executive director during the last 6 5 years (see SYSC 22 and Insurance-Fitness and Propriety 2.5 in the PRA Rulebook).*

YES NO

**10A Short Form A – Solvency II firms only  
Annex 4**

BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Application number  
(for FCA/PRA use only)

The FCA and PRA have produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on both FCA and PRA websites at:

<http://fshandbook.info/FS/html/FCA/SUP/10A/Annex4>

<http://www.bankofengland.co.uk/PRA>

Both the applicant and the candidate will be treated by the FCA and PRA as having taken these notes into consideration when completing this form.

## Short Form A – Solvency II firms only<sup>3</sup>

### Application to perform controlled functions

*FCA Handbook* Reference: SUP 10A Annex 4D

*PRA Rulebook* Reference: Solvency II firms: Senior Insurance Managers Regime - Applications and Notifications

...

...

**5.05.5**

~~For PRA functions only:~~ Has / Have a reference or references been obtained from current and previous employer(s) in accordance with the requirements of the PRA and FCA ~~as set out in 2.5 in Insurance- Fitness and Propriety~~

If No, please provide details why the reference or references has/have not been obtained.

*Please note that ~~for candidates for PRA controlled functions~~, a firm is required to use reasonable efforts to obtain a reference from any previous employer of the candidate, or any organisation at which the candidate is or was a non-executive director during the last 6.5 years (see SYSC 22 and Insurance- Fitness and Propriety 2 in the PRA Rulebook).*

YES  NO

**10A**      **Form E – internal transfer for an approved person (for Solvency II firms**  
**Annex 8**    **only)**



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Application number  
(for FCA/PRA use only)

The *FCA* and *PRA* have produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on the *FCA* and *PRA*'s websites at <http://fshandbook.info/FS/html/FCA/SUP/10A/Annex8>  
[www.bankofengland.co.uk/PRA](http://www.bankofengland.co.uk/PRA).

Both the applicant and the candidate will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form.

## Form E

### Internal transfer of an approved person (for Solvency II firms only<sup>4</sup>)

*FCA Handbook* Reference: SUP 10A Annex 8D

*PRA Rulebook* Reference: Solvency II firms: Senior Insurance Managers Regime – Applications and Notifications

...

**New arrangement and controlled functions****Section 4**

...

**4.05**

Has / Have a reference or references been obtained from current and previous employer(s) in accordance with the requirements of the PRA or FCA?

If No, please provide details why the reference or references has/have not been obtained.

*Please note that a firm is required to take reasonable steps to obtain appropriate references from any current or previous employer of the candidate, or at any organisation at which the candidate is or was a non-executive director during the last 6 years (see SYSC 22 and Insurance- Fitness and Propriety 2.5 in the PRA Rulebook).*

YES  NO

## **Appendix 2: PRA Draft Rulebook text**

**PRA RULEBOOK: CRR FIRMS: NON-CRR FIRMS: FITNESS AND PROPRIETY AMENDMENT INSTRUMENT [2015]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 60 (Applications for approval);
  - (2) section 60A (Vetting candidates by relevant authorised persons);
  - (3) section 63F (Issuing of certificates);
  - (4) section 137G (the PRA’s general rules); and
  - (5) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**PRA Rulebook: CRR Firms: Non-CRR Firms: Fitness and Propriety Amendment Instrument [2015]**

- C. The PRA makes the rules in the Annexes to this instrument.

**Commencement**

- D. This instrument comes into force on [7 March 2016]<sup>1</sup>.

**Citation**

- E. This instrument may be cited as the PRA Rulebook: CRR Firms: Non-CRR Firms: Fitness and Propriety Amendment Instrument [2015].

**By order of the Board of the Prudential Regulation Authority**

[DATE]

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<sup>1</sup> HM Treasury has now provided for the senior managers regime to commence on 7 March 2016 and the requirement to issue certificates to commence on 7 March 2017 (Financial Services (Banking Reform) Act 2013 Commencement Order No 9, SI 2015/490). The proposed draft Treasury Order under section 71A of the Act was laid before Parliament on 22 July 2015 and is expected to come into force in November 2015. These PRA rules are therefore drafted in anticipation of the regime for foreign branches being operational on the same date as the new regime for UK banks.

## Annex A

In this Annex, the deleted text is struck through and new text is underlined.

Part

# **FITNESS AND PROPRIETY**

---

Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. CONDUCT STANDARDS
4. NOTIFIED NON-EXECUTIVE DIRECTORS – NOTIFICATIONS
5. REGULATORY REFERENCES
6. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*;
- (2) a *credit union*;
- (3) a *Northern Ireland credit union*; or
- (4) a *third country CRR firm* in relation to the activities of its establishment in the *UK*.

1.2 The matters referred to in 2 are relevant to the *PRA*'s determination of whether a *person* to whom a *senior management application* relates is fit and proper.

1.3 In this Part, the following definitions shall apply:

*certification function*

has the meaning given in the Certification 2.2 – 2.4.<sup>2</sup>

*certificate*

means the certificate referred to in section 63F(1) of *FSMA*.

*commencement date*

means [the date appointed by the Treasury to commence the senior managers regime under the Financial Services (Banking Reform Act) 2013]

*continued approval*

has the meaning in Senior Managers Regime – Transitional Provisions 1.2.

*credit union non-executive director*

means a *non-executive director* of a *credit union* or of a *Northern Ireland credit union* who is not an *approved person* in relation to that credit union.

*full scope regulatory reference firm*

means:

- (1) a *CRR firm*,
- (2) a *credit union*,
- (3) a *Northern Ireland credit union*,
- (4) a *third country CRR firm* in relation to the activities of its establishment in the *UK*,
- (5) a *UK Solvency II firm*,
- (6) the *Society*,
- (7) a *managing agent*,
- (8) a *third country branch undertaking* (other than a *Swiss general insurer*),
- (9) a *UK ISPV*,
- (10) a *large non-directive insurer*.

*non-executive director*

---

<sup>2</sup> This reference is already in the PRA Glossary with effect from 7 March 2016.

means a *director* of a *firm* who does not perform an executive function in relation to that *firm*.

Northern Ireland credit union

means a *firm* which is either a society registered under the Credit Unions (Northern Ireland) Order 1985 or a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union.

*notified non-executive director*

means a *non-executive director* of a *CRR firm* who is not an *approved person* in relation to that *firm*.

*senior management application*

means an application (by a *firm* to whom this Part applies) for the *PRA's* approval under section 59 of *FSMA*.

## 2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

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- 2.1 A *firm* must not make a *senior management application* in relation to a *person* unless it is satisfied that *person* is fit and proper to perform the *PRA senior management function* to which the application relates.
- 2.2 A *firm* must not issue a *certificate* in relation to a *person* unless it is satisfied that *person* is fit and proper to perform the *certification function* to which the *certificate* relates.
- 2.3 A *firm* must not appoint a *person* as a *notified non-executive director* or *credit union non-executive director* unless it is satisfied that *person* is fit and proper to perform that *non-executive director* role.<sup>3</sup>
- 2.4 A *firm* other than a *third country CRR firm* must ensure that each member of its *management body* is at all times fit and proper.

**[Note: Art. 91(1) CRD IV]**

- 2.5 A *third country CRR firm* must ensure that each person who performs a *PRA senior management function* in relation to its *UK establishment* is at all times fit and proper.<sup>4</sup>
- 2.6 In deciding whether a *person* is fit and proper pursuant to 2.1 – 2.5 and, where applicable, section 60A(1) of *FSMA*, a *firm* must be satisfied that the *person*:
- (a) has the personal characteristics (including being of good repute and integrity);
  - (b) possesses the level of competence, knowledge and experience;
  - (c) has the qualifications; and
  - (d) has undergone or is undergoing all training,

<sup>3</sup> Rule 2.3 will not apply to the *persons* subject to the transitional provisions in 6.3 below.

<sup>4</sup> The *notified non-executive director* and *credit union non-executive director* functions are not relevant to *third country CRR firms*; however a *non-executive director* of the firm could potentially perform a senior management function in relation to the branch.

required to enable such *person* to perform his or her function effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.

- 2.7 Before deciding whether a *person* (P) is fit and proper, a *firm* must take reasonable steps to obtain appropriate references covering ~~at least the past 56 years from that persons' current and previous employers~~ the following:
- (1) each FCA-*authorised person* and PRA-*authorised person* that is:
    - (a) P's current or former employer; or
    - (b) an organisation (not falling within (a)):
      - (i) at which P performs or performed a *function* or *service*; and
      - (ii) which is or was in the same *group* as P's current or former employer; or
    - (c) an organisation (not falling within (a) or (b)) at which P served as, or is currently, a *senior manager*, *senior insurance management function holder* or other *approved person*, *non-executive director*, *notified non-executive director* or a *key function holder*, or performed, or is currently performing, a *certification function*;
  - (2) that *person's* *other* current and previous employers; and
  - (3) ~~from other~~ organisations at which that *person* served as, or is currently, a *non-executive director*.<sup>5</sup>
- 2.8 (1) Where a *firm* (A) seeks a reference pursuant to 2.7, A must request that the organisation giving the reference (B) discloses all matters of which B is aware that are relevant to the assessment of that *person's* fitness and propriety.
- (2) A must also request that, if B is a *full scope regulatory reference firm*, B discloses the information contained in the template found [here].<sup>6</sup>
- 2.89 In deciding whether a *person* (P) is fit and proper in connection with a *senior management application* or on appointment as a *notified non-executive director* or *credit union non-executive director*, a *firm* must:
- (a) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 (Certificates of Criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK*;
  - (b) if P has lived or worked outside the *UK* for a material time in the previous ~~five~~ six years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
  - (c) request, and have regard to, such information.<sup>7</sup>

<sup>5</sup> Rule 2.7 does not apply to the *persons* subject to the transitional provisions in 6.1 to 6.3 below.

<sup>6</sup> This will link to the template in an appendix to this consultation paper.

- 2.9~~10~~ If a *firm* engages a *person* for a continuous period of time it is only required to comply with 2.7 and 2.8 the first time it determines that previously obtained the information in 2.7 – 2.9 when it determined that a *person* was fit and proper in relation to a *senior management function*, *non-executive director function* or *certification function*, and the *firm* engages that *person* for a continuous period of time, the *firm* is not required to comply with 2.7 – 2.9 again in respect of any subsequent appointments at the same *firm* within that continuous period.

### 3 CONDUCT STANDARDS

---

- 3.1 A *firm* must contractually require any *PRA approved person*, *notified non-executive director* or *credit union non-executive director* to:
- (a) act with integrity;
  - (b) act with due skill, care and diligence;
  - (c) be open and co-operative with the *FCA*, the *PRA* and other regulators; and
  - (d) disclose appropriately any information to the *FCA* or *PRA* of which they would reasonably expect notice.
- 3.2 A *firm* must contractually require any *PRA approved person* to:
- (a) take reasonable steps to ensure that the business of the *firm* for which they are responsible is controlled effectively;
  - (b) take reasonable steps to ensure that the business of the *firm* for which they are responsible complies with relevant requirements and standards of the *regulatory system*; and
  - (c) take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively.

### 4 NOTIFIED NON-EXECUTIVE DIRECTORS – NOTIFICATIONS

---

- 4.1 This Chapter applies to *CRR firms* only.
- 4.2 A *firm*, must notify the *PRA* when a *person* becomes a *notified non-executive director* and shall provide the *PRA* with all of the information needed to assess whether that *person* is fit and proper.
- 4.3 If the notification referred to in 4.2 is in respect of a *person* who, on becoming a *notified non-executive director*, ceases to perform a *PRA senior management function* or an *FCA designated senior management function*, the *firm* is not required to provide information needed to assess the fitness and propriety of that *person* unless there has been a change in the information provided in respect of that *person* regarding fitness and propriety provided to the *PRA* or the *FCA* at the time the application for the approval for performance of the *PRA*

---

<sup>7</sup> Rule 2.9 does not apply to the *persons* subject to the transitional provisions in 6.2 or 6.3 below.

*senior management function* or the *FCA designated senior management function* was made.

- 4.4 If a *firm* becomes aware of information which would reasonably be material to the assessment of a current or former *notified non-executive director's* fitness and propriety under this Part, it must inform the *PRA* in writing as soon as practicable.
- 4.5 Where a *firm* replaces a *notified non-executive director* because the *firm* considers that person no longer fulfils the requirements of 2.34, the *firm* must notify the *PRA* as soon as reasonably practicable.
- 4.6 Where a *notified non-executive director* assumes a new role with the *firm* or ceases to be a *director* of the firm, the *firm* must notify the *PRA* in writing as soon as reasonably practicable.

## 5 REGULATORY REFERENCES

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- 5.1 (1) If any *PRA-authorised person* (A):<sup>8</sup>
- (a) is considering issuing a *certificate* to, making a *senior management application* in respect of, or appointing as a *senior insurance management function holder, a key function holder, a non-executive director, a notified non-executive director* or a *credit union non-executive director, a person* (P);
- (b) makes a request for a reference or other information in respect of P from a *firm* to which this Part applies (B), in B's capacity as:
- (i) P's current or former employer; or
- (ii) an organisation (not falling within (a)):
- (A) at which P performs or performed a *function* or service; and
- (B) which is or was in the same *group* as P's current or former employer; or
- (iii) an organisation (not falling within (i) or (ii)) at which P served as, or is currently, a *senior manager, other approved person, non-executive director, notified non-executive director* or *credit union non-executive director*, or performed, or is currently performing, a *certification function*;
- (c) indicates to B the purpose of the request,
- B must, as soon as reasonably practicable, provide a reference and disclose to A in the reference all information of which B is aware that is relevant to A's assessment of whether P is fit and proper.

---

<sup>8</sup> Rule 5.1 covers *third country CRR firms* as these must be *PRA-authorised persons* to carry out regulated activities in the *UK*. See section 2B(5) *FSMA* for the definition of *PRA-authorised persons*.

- (2) When giving the reference referred to in 5.1(1), B must use the template found [here]<sup>9</sup> and must include at least the following information:
- (A) Whether P:
- (i) is performing or has at any time performed a *certification function* in respect of B; or
  - (ii) is or has at any time been an *approved person* in respect of B;
- (B) Whether P is or has at any time been:
- (i) a *notified non-executive director* of B; or
  - (ii) a *credit union non-executive director* of B.
- (C) If the answer to (A) or (B) is 'yes', details of each position held, including:
- (i) the name of the relevant *controlled function*, if applicable;
  - (ii) (in the case of a *controlled function*) whether the approval is or was at any time subject to a condition, suspension, limitation, restriction or time limit and if so, details about it;
  - (iii) summary details of the role and the individual's responsibilities in performing that role;
  - (iv) whether any potential *FCA controlled function* is or was included in a *controlled function* specified by the *PRA*, as described in *CRR Firms and Non-CRR Firms: Senior Management Functions 2.4*;
  - (v) the dates during which P held each position.
- (D) Whether P is performing or has performed any other role or responsibility in the employment or service of B at any time:
- (i) in the six years before the request for a reference; or
  - (ii) between the date of the request for a reference and the date of the reference.
- (E) Where B has concluded that P is or was in breach of the *PRA's* or *FCA's* conduct rules or standards which P is or was required to observe, and B reached that conclusion:
- (i) in the six years before the request for a reference; or
  - (ii) between the date of the request for a reference and the date of the reference;
- the facts which led B to that conclusion.
- (F) Where B has concluded that P is or was not fit and proper to perform a *controlled function* or act as a *notified non-executive director* or *credit union non-executive director*, and B reached that conclusion:

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<sup>9</sup> This will link to the template in an appendix to this consultation paper.

- (i) in the six years before the request for a reference; or
- (ii) between the date of the request for a reference and the date of the reference;

the facts which led B to that conclusion.

(G) Where B:

- (i) has reached a conclusion of the type in (E) or (F) in relation to P;
- (ii) following that conclusion, has taken disciplinary action against P; and
- (iii) that disciplinary action was taken:
  - (a) in the six years before the request for a reference; or
  - (b) between the date of the request for a reference and the date of the reference;

a description of the basis for, and outcome of, the disciplinary action.

(H) A firm must provide the information in (G) regarding disciplinary action that resulted in:

- (i) the issue of a formal written warning; or
- (ii) the suspension or dismissal of P; or
- (iii) the reduction or recovery of any of P's remuneration.

- 5.2 (1) Where the *person* (P) is not or was not an employee of the *firm* giving the reference pursuant to 5.1(1) (B), B must still comply with the information requirements in 5.1 to the extent applicable.
- (2) Where P is or was an employee of another organisation (C), and C is a member of the *firm's group*, B must obtain from C the information required under 5.1 for inclusion in the reference.
- (3) Where C is not a member of the *firm's group*, B must take reasonable steps to obtain from C the information required under 5.1 for inclusion in the reference.

- 5.3 (1) If at any time:
- (a) a *firm* to whom this Part applies (B) has given a reference pursuant to 5.1 to any *PRA-authorised person* (A) about any *person* (P);
  - (b) B is aware of matters or circumstances that mean that, if B was giving that reference now, this Chapter would require B to draft it differently; and
  - (c) the differences in (b) are significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must provide A with details of those differences in writing as soon as reasonably practicable.

- (2) The rule in (1) does not require B to disclose anything of which it becomes aware more than 6 years after it gave the reference.
- (3) The rule in (1) applies even if P is no longer employed by, or in the service of, A.
- (4) The rule in (1) does not require B to update references provided prior to 7 March 2016.

5.4 A firm must not enter into any arrangements or agreements with any person that limit its ability to disclose information under this Part.

## 6 FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS<sup>10</sup>

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- 6.1 The requirement to obtain regulatory references in accordance with 2.67 does not apply to a *firm* in respect of any *person* to the extent that:
- (a) the *firm* is deciding whether the *person* is fit and proper for the purpose of issuing a *certificate*;
  - (b) the *person* will be performing a *certification function* from 7 March 2016; and
  - (c) immediately prior to 7 March 2016, the *person* performed the same function for the *firm*.
- 6.2 The requirement to obtain regulatory references in accordance with 2.6 does not apply to a *firm* in respect of any *person* who has *continued approval*.
- 6.3 The requirements of 2.3, 2.7, 2.89 and 4.2 do not apply to a *director* who, in relation to the *firm*:
- (a) on the 7 March 2016 is a *notified non-executive director* or *credit union non-executive director*; and
  - (b) immediately prior to 7 March 2016, was approved as a *non-executive director* or *credit union non-executive director*.
- 6.4 A *CRR firm* must notify the *PRA* before 7 March 2016 of any *director* who, in relation to the *firm*, will be a *notified non-executive director* on 7 March 2016 and who immediately prior to 7 March 2016 was approved as a *non-executive director*.

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<sup>10</sup> See footnote 1. Rules 6.1 and 6.2 apply to *third country CRR firms*. Rule 6.3 is not relevant to *third country CRR firms*.

## Annex B

In this Annex, the deleted text is struck through and new text is underlined.

Part

# **ALLOCATION OF RESPONSIBILITIES**

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Chapter content

1. APPLICATION AND DEFINITIONS
2. STATEMENT OF RESPONSIBILITIES
3. ALLOCATION OF RESPONSIBILITIES
4. PRESCRIBED RESPONSIBILITIES
5. PRESCRIBED RESPONSIBILITIES: SMALL FIRMS
6. PRESCRIBED RESPONSIBILITIES: UK BRANCHES
7. RECORDS
8. CHAIRMAN'S OFFICE

Links

## 1 APPLICATION AND DEFINITIONS

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...

1.2 In this Part, the following definition[s] shall apply:

*certification regime*

means the requirements of the *regulatory system* which apply to *relevant authorised persons* insofar as they relate to *persons performing certification functions* including those set out in Certification and Fitness and Propriety and the corresponding *FCA requirements*.

*certification rules*

~~means the rules set out in Certification [of Employees] .~~

...

*senior management regime*

means the requirements of the *regulatory system* which apply to *relevant authorised persons* insofar as they relate to *approved persons performing PRA senior management functions* and *FCA designated senior management functions*, including those set out in Senior Management Functions, ~~and~~ Allocation of Responsibilities and Fitness and Propriety.

....

## 4 PRESCRIBED RESPONSIBILITIES

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4.1 Each of the responsibilities set out in this rule is a *prescribed responsibility*:

...

- (2) responsibility for the *firm's* performance of its obligations under the *certification regime rules* ;

.....

## 6 PRESCRIBED RESPONSIBILITIES: UK BRANCHES

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...

6.2 Each of the responsibilities set out in this rule is a *UK branch prescribed responsibility*:

...

- (2) responsibility for the *firm's* performance of its obligations under the *certification regime rules*;

...

## 7 RECORDS

---

...

7.4 (1) A *firm* must retain a copy of each version of:

- (a1) its *management responsibilities map*; and
- (b2) the *statement of responsibilities* for each *person* who performs or has performed a *PRA senior management function* for the *firm*.

for a period of ten years from the date on which the *management responsibilities map* or the *statement of responsibilities*, as the case may be, is superseded by a more up-to-date version.

(2) a firm must:

- (a) arrange for orderly records to be kept that are sufficient to enable it to comply with the requirements of Fitness and Propriety 5 in response to any requests for references referred to in that Chapter;
- (b) retain all records kept by it under (1) for a period of six years after the notified non-executive director or credit union non-executive director has ceased to perform that role for the firm or the employee in question has ceased to be employed by it; and
- (c) retain all records kept by it under (1) that are created after the notified non-executive director or credit union non-executive director has ceased to perform that role for the firm or the employee in question has ceased to be employed by it, for a period of six years after the creation of the record.

...

**PRA RULEBOOK: SOLVENCY II FIRMS: NON-SOLVENCY II FIRMS: FITNESS AND PROPRIETY  
AMENDMENT INSTRUMENT [2015]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 60 (applications for approval);
  - (2) section 137G (the PRA’s general rules); and
  - (3) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (rule-making instruments) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: Solvency II Firms: Non-Solvency II Firms: Fitness and Propriety Amendment  
Instrument [2015]**

- D. The PRA makes the rules in the Annexes to this instrument.

**Commencement**

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

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms: Non-Solvency II Firms: Fitness and Propriety Amendment Instrument [2015].

**By order of the Board of the Prudential Regulation Authority**

[DATE]

## Annex A

[Note: This Annex A contains updates to the rules made in PS22/15 Appendix 1 (PRA Rulebook: Solvency II Firms: Senior Insurance Managers Regime (No.2) Instrument 2015).]

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

### Part

# INSURANCE – FITNESS AND PROPRIETY

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### Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. ~~OBLIGATION TO PROVIDE REFERENCES~~ REGULATORY REFERENCES
4. DISCLOSURE AND REPLACEMENTS
5. LLOYD'S
6. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

### Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with Insurance General Application 3, the *Society*, as modified by 5;
- (3) in accordance with Insurance General Application 3, *managing agents*, as modified by 5;
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*); and
- (5) a *UK ISPV*.

1.2 In this Part, the following definitions shall apply:

*continued approval*

has the meaning given in Senior Insurance Managers Regime – Transitional Provisions.

*full scope regulatory reference firm*

means:

- (1) a *CRR firm*;
- (2) a *credit union*;
- (3) a *Northern Ireland credit union*;
- (4) a *third country CRR firm* in relation to the activities of its establishment in the *UK*;
- (5) a *UK Solvency II firm*;
- (6) the *Society*;
- (7) a *managing agent*;
- (8) a *third country branch undertaking* (other than a *Swiss general insurer*) in relation to the activities of its establishment in the *UK*;
- (9) a *UK ISPV*;
- (10) a *large non-directive insurer*.

## 2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

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2.1 A *firm* must ensure that all *persons* who perform *key functions* are at all times fit and proper *persons*.

**[Note: Art. 42(1) of the *Solvency II Directive*]**

2.2 In deciding whether a *person* is fit and proper pursuant to 2.1, a *firm* must be satisfied that the *person*:

- (1) has the personal characteristics (including being of good repute and integrity);
- (2) possesses the level of competence, knowledge and experience;
- (3) has the qualifications; and
- (4) has undergone or is undergoing all training,

required to enable such *person* to perform his or her *key function* effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.

**[Note: Art. 42(1) of the Solvency II Directive]**

- 2.3 Before deciding, and in considering on an on-going basis, whether a *person* is fit and proper pursuant to 2.1 and 2.2, a *firm* must consider:
- (1) the *person's* past business conduct; and
  - (2) whether the *person* performs his or her *key functions* in accordance with the relevant *conduct standards* specified in Insurance - Conduct Standards 3.

**[Note: Art. 42(1) of the Solvency II Directive]**

- 2.4 In deciding whether a *person* (P) is fit and proper to be appointed as a *senior insurance management function holder* or a *notified non-executive director*, a *firm* must:
- (1) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 and related subordinated legislation of the *UK* or any part of the *UK*;
  - (2) if P has lived or worked outside the *UK* for a material time in the previous ~~five~~six years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
  - (3) request, and have regard to, such information.
- 2.5 Before deciding whether a *person* (P) is fit and proper to be appointed as a ~~*senior insurance management function holder* or a *notified non-executive director*~~ *key function holder*, a *firm* must take reasonable steps to obtain appropriate references ~~from that *person's* current and previous employers, and from organisations at which that *person* served as, or is currently, a *non-executive director*~~ covering at least the past ~~five~~six years, from the following:
- (1) each FCA-*authorised person* and PRA-*authorised person* that is:
    - (a) P's current or former employer; or
    - (b) an organisation (not falling within (a)):
      - (i) at which P performs or performed a *function* or service; and
      - (ii) which is or was in the same *group* as P's current or former employer; or
    - (c) an organisation (not falling within (a) or (b)) at which P served as, or is currently, a *senior manager*, *senior insurance management function holder* or other *approved person*, *non-executive director*, *notified non-executive director* or a *key function holder*, or performed, or is currently performing, a *certification function*;
  - (2) that *person's* other current and previous employers; and
  - (3) other organisations at which that *person* served as, or is currently, a *non-executive director*.

- 2.6 (1) Where a *firm* (A) seeks a reference pursuant to 2.5 ~~from an FCA-*authorised person* or a PRA-*authorised person* (B)~~, A must also request that ~~B~~ the organisation giving the reference (B) discloses all matters of which B is aware that are relevant to the assessment of that *person's* fitness and propriety.
- (2) A must also request that, if B is a *full scope regulatory reference firm*, B discloses the information referred to in the template found [here<sup>1</sup>].
- 2.7 If a *firm* previously obtained the information required by 2.4 – 2.6 when it determined that a *key function holder* was fit and proper in accordance with this Part, and the *firm* engages a *that person* for a continuous period of time as a ~~*senior insurance management function holder* or a *notified non-executive director*~~, the *firm* it is only not required to comply with 2.4 - 2.6 again in respect of any subsequent *key function* appointments at the same *firm* within that continuous period ~~the first time it determines that *person* is fit and proper to act as a *senior insurance management function holder* or a *notified non-executive director*.~~

### **3 OBLIGATION TO PROVIDE REFERENCES REGULATORY REFERENCES**

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- 3.1 If any PRA-*authorised person* (A):
- (1) is considering issuing a *certificate* to, making a *senior management application* in respect of, or appointing as a *senior insurance management function holder*, a *key function holder*, a *non-executive director*, a *notified non-executive director* or a *credit union non-executive director*, a *person* (P);
- (2) makes a request for a reference or other information in respect of P from a *firm* to which this Part applies (B), in B's capacity as:
- (a) P's current or former employer; or
- (b) an organisation (not falling within (a)):
- (i) at which P performs or performed a *function* or service; and
- (ii) which is or was in the same *group* as P's current or former employer;  
or
- (c) an organisation (not falling within (a) or (b)) at which P served or serves as a *key function holder*; and
- (3) indicates to B the purpose of the request;
- B must, as soon as reasonably practicable, provide a reference and disclose to A in the reference all information of which B is aware that is relevant to A's assessment of whether P is fit and proper.
- 3.2 When giving the reference referred to in 3.1, B must use the template found [here<sup>2</sup>] and must include at least the following information:
- (A) Whether P is or has at any time been an *approved person* in respect of B.

<sup>1</sup> This will link to the template appended to this consultation paper.

<sup>2</sup> This will link to the template appended to this consultation paper.

- (B) Whether P is or has at any time been a *key function holder* (other than an *approved person*) in respect of B.
- (C) If the answer to (A) or (B) is 'yes', details of each position held, including:
- (1) the name of the relevant *controlled function* or *key function*, if applicable;
  - (2) (in the case of a *controlled function*) whether the approval is or was at any time subject to a condition, suspension, limitation, restriction or time limit and if so, details about it;
  - (3) summary details of the role and the individual's responsibilities in performing that role;
  - (4) whether any potential *FCA controlled function* is or was included in a *controlled function* specified by the *PRA* pursuant to:
    - (a) Solvency II Firms: Insurance – Senior Insurance Management Functions 2.5; or
    - (b) Solvency II Firms: Senior Insurance Managers Regime – Transitional Provisions 6.3; and
  - (5) the dates during which P held each position.
- (D) Whether P is performing or has performed any other role or responsibility in the employment or service of B at any time:
- (1) in the six years before the request for a reference; or
  - (2) between the date of the request for a reference and the date of the reference.
- (E) Where P is or was a *key function holder*, and B concluded that P is or was in breach of the *PRA's* or *FCA's* conduct rules or standards which P is or was required to observe, and B reached that conclusion:
- (1) in the six years before the request for a reference; or
  - (2) between the date of the request for a reference and the date of the reference;
- the facts which led B to that conclusion.
- (F) Where B has concluded that P is not or was not fit and proper to perform a *controlled function* or *key function*, and B reached that conclusion:
- (1) in the six years before the request for a reference; or
  - (2) between the date of the request for a reference and the date of the reference;
- the facts which led B to that conclusion.
- (G) Where B:
- (1) has reached a conclusion in relation to P of the type in (E) or (F) above;
  - (2) following that conclusion, has taken disciplinary action against P; and

- (3) that disciplinary action was taken:
- (a) in the six years before the request for a reference; or
- (b) between the date of the request for a reference and the date of the reference;

a description of the basis for, and outcome of, the disciplinary action.

(H) A firm must provide the information in (G) regarding disciplinary action that resulted in:

- (1) the issue of a formal written warning; or
- (2) the suspension or dismissal of P; or
- (3) the reduction or recovery of any of P's remuneration.

3.3 (1) Where the person (P) is not or was not an employee of the firm giving the reference pursuant to 3.1 (B), B must still comply with the information requirements in 3.2 to the extent applicable.

(2) Where P is or was an employee of another organisation (C), and C is a member of the firm's group, B must obtain from C the information required under 3.2 for inclusion in the reference.

(3) Where C is not a member of the firm's group, B must take reasonable steps to obtain from C the information required under 3.2 for inclusion in the reference.

3.4 (1) If at any time:

- (a) a firm to which this Part applies (B) has given a reference pursuant to 3.1 to any PRA-authorised person (A) about any person (P);
- (b) B is aware of matters or circumstances that mean that, if B was giving that reference now, this Chapter would require B to draft it differently; and
- (c) the differences in (b) are significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must provide A with details of those differences in writing as soon as reasonably practicable.

(2) The rule in (1) does not require B to disclose anything of which it becomes aware more than six years after it gave the reference.

(3) The rule in (1) applies even if P is no longer employed by, or in the service of, A.

(4) The rule in (1) does not require B to update references provided prior to 7 March 2016.

3.5 A firm must not enter into any arrangements or agreements with any person that limit its ability to disclose information under this Part.

## 4 DISCLOSURE AND REPLACEMENTS

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- 4.1 (1) A *firm* (other than a *UK ISPV*) shall notify the *PRA* of any changes to the identity of *key function holders* and shall provide the *PRA* with:
- (a) all the information needed to assess whether such *person* is fit and proper pursuant to 2.2; and
  - (b) the information referred to in Insurance - Allocation of Responsibilities 5.1(3) in respect of that *person*.
- (2) A *UK ISPV* shall notify the *PRA* of any changes to the identity of *key function holders* who are effectively running the *firm* and shall provide the *PRA* with all the information needed to assess whether such *person* is fit and proper pursuant to 2.2.

**[Note: Art. 42(2) of the Solvency II Directive]**

- (3) Where a *firm* has complied with 4.1(1) in connection with the appointment of a *person* as a *key function holder*, and such *person* transfers from that *key function* to a different *key function* or is appointed to an additional *key function*, in either case within the same *firm*, for the purposes of 4.1(1) the *firm* need only supply, in connection with such subsequent appointment:
- (a) updates to the information previously provided; and
  - (b) if the *key function holder* is also to perform a *senior insurance management function* or an *FCA controlled function*, the information required in connection with an application for approval to do so.
- 4.2 Where:
- (1) a *person* who is to become a *key function holder* is also to be approved by the *PRA* to perform a *senior insurance management function* or by the *FCA* to perform an *FCA controlled function*; and
  - (2) the *firm* includes the information referred to in 4.1 in its application to the *PRA* for the approval of that *person* to perform the *senior insurance management function*, or in the application to the *FCA* for the approval of that *person* to perform the *FCA controlled function*,

this shall satisfy the requirement in 4.1 in respect of that *key function* appointment.

- 4.3 If a *firm* becomes aware of information which would reasonably be expected to be material to the assessment of a current or former *key function holder's* fitness and propriety under this Part, it must inform the *PRA* as soon as practicable.

**[Note: Art. 42(3) of the Solvency II Directive]**

- 4.4 Where a *firm* replaces a *key function holder* because the *firm* considers that that *person* is no longer fit and proper pursuant to 2.1 and 2.2, the *firm* must notify the *PRA* as soon as reasonably practicable.

**[Note: Art. 42(3) of the Solvency II Directive]**

## 5 LLOYD'S

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- 5.1 This Part applies to the *Society* and *managing agents* separately.

**6 FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS**

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- 6.1 The requirements of 2.4 - 2.6 do not apply to a *firm* in respect of a *key function holder* in relation to any *key function* held by that *person* as at 7 March 2016 at that *firm* (including any *senior insurance management function* for which that *person* ~~who~~ has *continued approval* in relation to that *firm*).

## **Annex B**

[Note: This Annex B contains updates to the rules made in PS22/15 Appendix 1 (PRA Rulebook: Solvency II Firms: Senior Insurance Managers Regime (No.2) Instrument 2015).]

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

### **Part**

# **INSURANCE – ALLOCATION OF RESPONSIBILITIES**

---

### **Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. ALLOCATION OF RESPONSIBILITIES**
- 3. SIMR PRESCRIBED RESPONSIBILITIES**
- 4. IDENTIFICATION OF KEY FUNCTIONS**
- 5. RECORDS**
- 6. LLOYD'S**

### **Links**

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with Insurance General Application 3, the *Society*, as modified by 6;
- (3) in accordance with Insurance General Application 3, *managing agents*, as modified by 6; and
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*).

1.2 In this Part, the following definitions shall apply:

*governance map*

has the meaning given in 5.1.

*SIMR prescribed responsibility*

- (1) for a *firm* (other than a *third country branch undertaking*) means the responsibilities in 3.1;
- (2) for a *third country branch undertaking* (other than a *UK-deposit insurer* or a *Swiss general insurer*) means the responsibilities set out in 3.1 to the extent only that they are relevant to the operations effected by its *third country branch*, save in relation to 3.1(4) which shall also take account of the operations of the *third country branch undertaking* to the same extent as is necessary to ensure compliance by the *third country branch undertaking* with Third Country Branches 13;
- (3) for a *UK-deposit insurer*, means the responsibilities set out in 3.1 to the extent only that they are relevant to the operations effected by its *third country branch* and all its *third country undertaking EEA branches*, save in relation to 3.1(4) which shall also take account of the operations of the *third country branch undertaking* to the same extent as is necessary to ensure compliance by the *third country branch undertaking* with Third Country Branches 13.

## 2 ALLOCATION OF RESPONSIBILITIES

---

2.1 A *firm* (other than a *third country branch undertaking*) must allocate each of the *SIMR prescribed responsibilities* set out in 3.1 (other than 3.1(10) and (11)), to one or more *persons* who, in relation to that *firm*, are approved under section 59 of *FSMA* by:

- (1) the *PRA* to perform a *senior insurance management function*; or
- (2) in relation to *relevant senior management functions* only, the *FCA*.

2.2 A *firm* (other than a *third country branch undertaking*) must allocate each of the *SIMR prescribed responsibilities* set out in 3.1(10) and (11) to one or more *non-executive directors* who perform a *senior insurance management function* set out in Insurance – Senior Insurance Management Functions 4 or an *FCA governing function* at that *firm*.

2.3 A *third country branch undertaking* (other than a *Swiss general insurer*) must allocate each of the *SIMR prescribed responsibilities* set out in 3.1(1), (4), (5), (6) and (7) to one or more *persons* who, in relation to that *firm*, are approved under section 59 of *FSMA* by:

- (1) the *PRA* to perform a *senior insurance management function*; or
- (2) in relation to *relevant senior management functions* only, the *FCA*.

### 3 SIMR PRESCRIBED RESPONSIBILITIES

---

3.1 Each of the responsibilities set out in this rule is an *SIMR prescribed responsibility*:

- (1) responsibility for ensuring that the *firm* has complied with its obligations in Insurance - Fitness and Propriety 2-4 to:
  - (a) ensure that every *person* who performs a *key function* (including every *person* in respect of whom an application under section 59 of *FSMA* is made) is a fit and proper *person*; and
  - (b) provide and obtain regulatory references;
- (2) responsibility for leading the development of the *firm's* culture by the *governing body* as a whole;
- (3) responsibility for overseeing the adoption of the *firm's* culture in the day-to-day management of the *firm*;
- (4) responsibility for the production and integrity of the *firm's* financial information and its regulatory reporting;
- (5) responsibility for management of the allocation and maintenance of the *firm's*:
  - (a) capital; and
  - (b) liquidity;
- (6) responsibility for the development and maintenance of the *firm's* business model by the *governing body*;
- (7) responsibility for performance of the *firm's* *ORSA*;
- (8) responsibility for leading the development and monitoring effective implementation of policies and procedures for the induction, training and professional development of all members of the *firm's governing body*;
- (9) responsibility for monitoring effective implementation of policies and procedures for the induction, training and professional development of all of the *firm's key function holders* (other than members of the *firm's governing body*);
- (10) responsibility for oversight of the independence, autonomy and effectiveness of the *firm's* policies and procedures on whistleblowing including the procedures for protection of staff who raise concerns from detrimental treatment; and
- (11) responsibility for overseeing the development and implementation of the *firm's* remuneration policies and practices.

### 4 IDENTIFICATION OF KEY FUNCTIONS

---

4.1 A *firm* must identify:

- (1) each of the *functions* that the *firm* considers to be a *key function*; and

- (2) any such *key function* that amounts to effectively running the *firm* (or, for a *third country branch undertaking* other than a *Swiss general insurer*, effectively running the operations effected by the *third country branch*, or, for a *UK-deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*).

4.2 A *firm* must keep its identification of *key functions* pursuant to 4.1 up-to-date.

4.3 A *firm* must keep a record of its reasoning for the identification of *key functions* pursuant to 4.1.

## 5 RECORDS

5.1 A *firm* must have and maintain a *governance map*, which is a clear and coherent document or series of documents with the following details:

- (1) a list of the *key functions* identified by the *firm* in accordance with 4.1 highlighting those that amount to effectively running the *firm* (or, for a *third country branch undertaking* other than a *Swiss general insurer*, effectively running the operations effected by the *third country branch* or, for a *UK-deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*);
- (2) the names of the *persons* who effectively run the *firm* (or, for a *third country branch undertaking* other than a *Swiss general insurer*, effectively run the operations effected by the *third country branch* or, for a *UK-deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*) or who are responsible for other *key functions* listed pursuant to 5.1(1);
- (3) for each *person* named pursuant to 5.1(2), a summary of the significant responsibilities allocated to that *person* (including, if applicable, any *SIMR prescribed responsibilities* that have been allocated to that *person* in accordance with 2);
- (4) where any responsibilities covered by 5.1(3) are allocated to more than one *person*, details of how those responsibilities are shared or divided between the *persons* concerned;
- (5) reporting lines and lines of responsibility for each *person* listed pursuant to 5.1(2);
- (6) where a *firm* (other than a *third country branch undertaking*) is a member of a *group*:
  - (a) how the *firm's* management and governance arrangements fit together with those of its *group* and the extent to which the *firm's* management and governance arrangements are provided by or shared with other members of its *group*; and
  - (b) for the *persons* listed pursuant to 5.1(2), details of the reporting lines and the lines of responsibility (if any) to *persons* who are employees or officers of other *group* members or to committees or other bodies of the *group* or of other *group* members.

5.2 A *firm* must update the *governance map*:

- (1) at least quarterly; and
- (2) in the event of a significant change to:

- (a) the *firm's* governance structure;
- (b) the significant responsibilities allocated to a *key function holder*, or
- (c) the reporting lines or lines of responsibility for a *key function holder*.

5.3 A *firm* must, as soon as reasonably practicable, provide the following to the *PRA*:

- (1) upon request by the *PRA*, a copy of the *governance map*; and
- (2) in the event of an update pursuant to 5.2(2), a copy of the relevant part of the *governance map*.

5.4 A *firm* must keep an up-to-date record of the scope of responsibilities of each *key function holder*.

5.5 A *scope of responsibilities form*, where it is kept and maintained on behalf of a *key function holder*, will satisfy the requirement in 5.4.

5.6 The record in 5.4, and each updated version, must be signed by the *key function holder* and an appropriate representative of the *firm*.

5.7 Where a *firm* amends its *governance map* to show changes in a *person's* responsibilities it must also ensure that:

- (1) the *person* concerned is informed in writing of the changes; and
- (2) the record in 5.4 is amended to show the changes.

5.8 Each version of both the *governance map* and the record in 5.4 must be retained for a period of ten years from the date on which it was superseded by a more up-to-date record, and must be provided to the *PRA* on request.

5.9 A *firm* must:

- (1) arrange for orderly records to be kept that are sufficient to enable it to comply with the requirements of Insurance - Fitness and Propriety 3 in response to any requests for references referred to in that Chapter;
- (2) retain all records kept by it under (1) for a period of six years after the *person* referred to in the reference (P) has ceased to perform that role for the *firm*; and
- (3) retain all records kept by it under (1) that are created after P has ceased to perform that role for the *firm* for a period of six years after the creation of the record.

5.10 A *firm* must comply with 5.8 in relation to any record created in accordance with SYSC 2.2.1R of the *PRA Handbook* as at 31 December 2015.

## **6 LLOYD'S**

6.1 This Part applies to the *Society* and *managing agents* separately.

## Annex C

[Note: This Annex C amends the rules currently being consulted on in CP26/15 'The Senior Insurance Managers Regime – implementation proposals for non-Solvency II firms']

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

Part

# LARGE NON-SOLVENCY II FIRMS – FITNESS AND PROPRIETY

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Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. ~~OBLIGATION TO PROVIDE REFERENCES~~ REGULATORY REFERENCES
4. DISCLOSURE AND REPLACEMENTS
5. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

Links

## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *large non-directive insurer*.

1.2 In this Part, the following definitions shall apply:

*continued approval*

has the meaning given in Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions.

*full scope regulatory reference firm*

means:

- (1) a CRR firm;
- (2) a credit union;
- (3) a Northern Ireland credit union;
- (4) a third country CRR firm in relation to the activities of its establishment in the UK;
- (5) a UK Solvency II firm;
- (6) the Society;
- (7) a managing agent;
- (8) a third country branch undertaking (other than a Swiss general insurer) in relation to the activities of its establishment in the UK;
- (9) a UK ISPV;
- (10) a large non-directive insurer.

## 2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

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2.1 A *firm* must ensure that all *persons* who perform *key functions* are at all times fit and proper *persons*.

2.2 In deciding whether a *person* is fit and proper pursuant to 2.1, a *firm* must be satisfied that the *person*:

- (1) has the personal characteristics (including being of good repute and integrity);
- (2) possesses the level of competence, knowledge and experience;
- (3) has the qualifications; and
- (4) has undergone or is undergoing all training,

required to enable such *person* to perform his or her *key function* effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.

2.3 Before deciding, and in considering on an on-going basis, whether a *person* is fit and proper pursuant to 2.1 and 2.2, a *firm* must consider:

- (1) the *person's* past business conduct; and
- (2) whether the *person* performs his or her *key functions* in accordance with the relevant *conduct standards* specified in Large Non-Solvency II Firms - Conduct Standards 3.

- 2.4 In deciding whether a *person* (P) is fit and proper to be appointed as a *senior insurance management function holder* or a *notified non-executive director*, a *firm* must:
- (1) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 and related subordinated legislation of the *UK* or any part of the *UK*;
  - (2) if P has lived or worked outside the *UK* for a material time in the previous ~~five~~six years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
  - (3) request, and have regard to, such information.
- 2.5 Before deciding whether a *person* (P) is fit and proper to be appointed as a ~~*senior insurance management function holder* or a *notified non-executive director*~~ *key function holder*, a *firm* must take reasonable steps to obtain appropriate references ~~from that person's current and previous employers, and from organisations at which that person served as, or is currently, a *non-executive director*~~ covering at least the past ~~five~~six years, from the following:
- (1) each *FCA-authorised person* and *PRA-authorised person* that is:
    - (a) P's current or former employer; or
    - (b) an organisation (not falling within (a)):
      - (i) at which P performs or performed a *function* or service; and
      - (ii) which is or was in the same *group* as P's current or former employer; or
    - (c) an organisation (not falling within (a) or (b)) at which P served as, or is currently, a *senior manager*, *senior insurance management function holder* or other *approved person*, *non-executive director*, *notified non-executive director* or a *key function holder*, or performed, or is currently performing, a *certification function*;
  - (2) that *person's* other current and previous employers; and
  - (3) other organisations at which that *person* served as, or is currently, a *non-executive director*.
- 2.6 (1) Where a *firm* (A) seeks a reference pursuant to 2.5 ~~from an *FCA-authorised person* or a *PRA-authorised person* (B)~~, A must also request that B the organisation giving the reference (B) discloses all matters of which B is aware that are relevant to the assessment of that *person's* fitness and propriety.
- (2) A must also request that, if B is a *full scope regulatory reference firm*, B discloses the information referred to in the template found [here<sup>3</sup>].
- 2.7 If a *firm* previously obtained the information required by 2.4 – 2.6 when it determined that a *key function holder* was fit and proper in accordance with this Part, and the *firm* engages a that *person* for a continuous period of time as a *senior insurance management function holder* or a *notified non-executive director*, the *firm* it is only not required to comply with 2.4 - 2.6 again in respect of any subsequent *key function* appointments at the same *firm* within that

<sup>3</sup> This will link to the template appended to this consultation paper.

~~continuous period~~the first time it determines that ~~person~~ is fit and proper to act as a ~~senior insurance management function holder or a notified non-executive director~~.

### **3 OBLIGATION TO PROVIDE REFERENCESREGULATORY REFERENCES**

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3.1 ~~[Not yet in force]~~ If any PRA-authorized person (A):

(1) is considering issuing a certificate to, making a senior management application in respect of, or appointing as a senior insurance management function holder, a key function holder, a non-executive director, a notified non-executive director or a credit union non-executive director, a person (P);

(2) makes a request for a reference or other information in respect of P from a firm to which this Part applies (B), in B's capacity as:

(a) P's current or former employer; or

(b) an organisation (not falling within (a)):

(i) at which P performs or performed a function or service; and

(ii) which is or was in the same group as P's current or former employer;  
or

(c) an organisation (not falling within (a) or (b)) at which P served or serves as a key function holder, and

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

B must, as soon as reasonably practicable, provide a reference and disclose to A in the reference all information of which B is aware that is relevant to A's assessment of whether P is fit and proper.

3.2 When giving the reference referred to in 3.1, B must use the template found [here<sup>4</sup>] and must include at least the following information:

(A) Whether P is or has at any time been an approved person in respect of B.

(B) Whether P is or has at any time been a key function holder (other than an approved person) in respect of B.

(C) If the answer to (A) or (B) is 'yes', details of each position held, including:

(1) the name of the relevant controlled function or key function, if applicable;

(2) (in the case of a controlled function) whether the approval is or was at any time subject to a condition, suspension, limitation, restriction or time limit and if so, details about it;

(3) summary details of the role and the individual's responsibilities in performing that role;

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<sup>4</sup> This will link to the template appended to this consultation paper.

- (4) whether any potential *FCA controlled function* is or was included in a *controlled function* specified by the *PRA* pursuant to:
- (a) Non-Solvency II Firms: Large Non-Solvency II Firms – Senior Insurance Management Functions 2.5; and
  - (b) Non-Solvency II Firms: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions 6.3; and
- (5) the dates during which P held each position.
- (D) Whether P is performing or has performed any other role or responsibility in the employment or service of B at any time:
- (1) in the six years before the request for a reference; or
  - (2) between the date of the request for a reference and the date of the reference.
- (E) Where P is or was a *key function holder*, and B concluded that P is or was in breach of the *PRA*'s or *FCA*'s conduct rules or standards which P is or was required to observe, and B reached that conclusion:
- (1) in the six years before the request for a reference; or
  - (2) between the date of the request for a reference and the date of the reference;
- the facts which led B to that conclusion.
- (F) Where B has concluded that P is not or was not fit and proper to perform a *controlled function* or *key function*, and B reached that conclusion:
- (1) in the six years before the request for a reference; or
  - (2) between the date of the request for a reference and the date of the reference;
- the facts which led B to that conclusion.
- (G) Where B:
- (1) has reached a conclusion in relation to P of the type in (E) or (F) above;
  - (2) following that conclusion, has taken disciplinary action against P; and
  - (3) that disciplinary action was taken:
    - (a) in the six years before the request for a reference; or
    - (b) between the date of the request for a reference and the date of the reference;
- a description of the basis for, and outcome of, the disciplinary action.
- (H) A *firm* must provide the information in (G) regarding disciplinary action that resulted in:
- (1) the issue of a formal written warning; or

- (2) the suspension or dismissal of P; or
- (3) the reduction or recovery of any of P's remuneration.

3.3 (1) Where the *person* (P) is not or was not an employee of the *firm* giving the reference pursuant to 3.1 (B), B must still comply with the information requirements in 3.2 to the extent applicable.

(2) Where P is or was an employee of another organisation (C), and C is a member of the *firm's group*, B must obtain from C the information required under 3.2 for inclusion in the reference.

(3) Where C is not a member of the *firm's group*, B must take reasonable steps to obtain from C the information required under 3.2 for inclusion in the reference.

3.4 (1) If at any time:

(a) a *firm* to which this Part applies (B) has given a reference pursuant to 3.1 to any *PRA-authorised person* (A) about any *person* (P);

(b) B is aware of matters or circumstances that mean that, if B was giving that reference now, this Chapter would require B to draft it differently; and

(c) the differences in (b) are significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must provide A with details of those differences in writing as soon as reasonably practicable.

(2) The rule in (1) does not require B to disclose anything of which it becomes aware more than six years after it gave the reference.

(3) The rule in (1) applies even if P is no longer employed by, or in the service of, A.

(4) The rule in (1) does not require B to update references provided prior to 7 March 2016.

3.5 A *firm* must not enter into any arrangements or agreements with any *person* that limit its ability to disclose information under this Part.

#### **4 DISCLOSURE AND REPLACEMENTS**

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4.1 (1) A *firm* shall notify the *PRA* of any changes to the identity of *key function holders* and shall provide the *PRA* with:

- (a) all the information needed to assess whether such *person* is fit and proper pursuant to 2.2; and
- (b) the information referred to in Large Non-Solvency II Firms - Allocation of Responsibilities 5.1(3) in respect of that *person*.

(2) Where a *firm* has complied with 4.1(1) in connection with the appointment of a *person* as a *key function holder*, and such *person* transfers from that *key function* to a different *key function* or is appointed to an additional *key function*, in either case

within the same *firm*, for the purposes of 4.1(1) the *firm* need only supply, in connection with such subsequent appointment:

- (c) updates to the information previously provided; and
- (d) if the *key function holder* is also to perform a *senior insurance management function* or an *FCA controlled function*, the information required in connection with an application for approval to do so.

4.2 Where:

- (1) a *person* who is to become a *key function holder* is also to be approved by the *PRA* to perform a *senior insurance management function* or by the *FCA* to perform an *FCA controlled function*; and
- (2) the *firm* includes the information referred to in 4.1 in its application to the *PRA* for the approval of that *person* to perform the *senior insurance management function*, or in the application to the *FCA* for the approval of that *person* to perform the *FCA controlled function*,

this shall satisfy the requirement in 4.1 in respect of that *key function* appointment.

4.3 If a *firm* becomes aware of information which would reasonably be expected to be material to the assessment of a current or former *key function holder's* fitness and propriety under this Part, it must inform the *PRA* as soon as practicable.

4.4 Where a *firm* replaces a *key function holder* because the *firm* considers that that *person* is no longer fit and proper pursuant to 2.1 and 2.2, the *firm* must notify the *PRA* as soon as reasonably practicable.

## **5 FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS**

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5.1 The requirements of 2.4 - 2.6 do not apply to a *firm* in respect of a *key function holder* in relation to any *key function* held by that *person* as at 7 March 2016 at that *firm* (including any *senior insurance management function* for which that *person* ~~who~~ has *continued approval* in relation to that *firm*).

## **Annex D**

[Note: This Annex D amends the rules currently being consulted on in CP26/15 'The Senior Insurance Managers Regime – implementation proposals for non-Solvency II firms']

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

Part

# **LARGE NON-SOLVENCY II FIRMS – ALLOCATION OF RESPONSIBILITIES**

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Chapter content

1. APPLICATION AND DEFINITIONS
2. ALLOCATION OF RESPONSIBILITIES
3. SIMR PRESCRIBED RESPONSIBILITIES
4. IDENTIFICATION OF KEY FUNCTIONS
5. RECORDS

Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to a *large non-directive insurer*.

1.2 In this Part, the following definitions shall apply:

*governance map*

has the meaning given in 5.1.

*SIMR prescribed responsibility*

means the responsibilities in 3.1.

## 2 ALLOCATION OF RESPONSIBILITIES

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2.1 A *firm* must allocate each of the *SIMR prescribed responsibilities* set out in 3.1 (other than 3.1(9) and (10)) to one or more *persons* who, in relation to that *firm*, are approved under section 59 of *FSMA* by:

- (1) the *PRA* to perform a *senior insurance management function*; or
- (2) in relation to *relevant senior management functions* only, the *FCA*.

2.2 A *firm* must allocate each of the *SIMR prescribed responsibilities* set out in 3.1(9) and (10) to one or more *non-executive directors* who perform a *senior insurance management function* set out in Large Non-Solvency II Firms – Senior Insurance Management Functions 4 or an *FCA governing function* at that *firm*.

## 3 SIMR PRESCRIBED RESPONSIBILITIES

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3.1 Each of the responsibilities set out in this rule is an *SIMR prescribed responsibility*:

- (1) responsibility for ensuring that the *firm* has complied with its obligations in Large Non-Solvency II Firms - Fitness and Propriety 2.4 to:
  - (a) ensure that every *person* who performs a *key function* (including every *person* in respect of whom an application under section 59 of *FSMA* is made) is a fit and proper *person*; and
  - (b) provide and obtain regulatory references;
- (2) responsibility for leading the development of the *firm's* culture by the *governing body* as a whole;
- (3) responsibility for overseeing the adoption of the *firm's* culture in the day-to-day management of the *firm*;
- (4) responsibility for the production and integrity of the *firm's* financial information and its regulatory reporting;
- (5) responsibility for management of the allocation and maintenance of the *firm's*:
  - (a) capital; and
  - (b) liquidity;

- (6) responsibility for the development and maintenance of the *firm's* business model by the *governing body*;
- (7) responsibility for leading the development and monitoring effective implementation of policies and procedures for the induction, training and professional development of all members of the *firm's governing body*;
- (8) responsibility for monitoring effective implementation of policies and procedures for the induction, training and professional development of all of the *firm's key function holders* (other than members of the *firm's governing body*);
- (9) responsibility for oversight of the independence, autonomy and effectiveness of the *firm's* policies and procedures on whistleblowing including the procedures for protection of staff who raise concerns from detrimental treatment; and
- (10) responsibility for overseeing the development and implementation of the *firm's* remuneration policies and practices.

#### 4 IDENTIFICATION OF KEY FUNCTIONS

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4.1 A *firm* must identify:

- (1) each of the *functions* that the *firm* considers to be a *key function*; and
- (2) any such *key function* that amounts to effectively running the *firm*.

4.2 A *firm* must keep its identification of *key functions* pursuant to 4.1 up-to-date.

4.3 A *firm* must keep a record of its reasoning for the identification of *key functions* pursuant to 4.1.

#### 5 RECORDS

---

5.1 A *firm* must have and maintain a *governance map*, which is a clear and coherent document or series of documents with the following details:

- (1) a list of the *key functions* identified by the *firm* in accordance with 4.1 highlighting those that amount to effectively running the *firm*;
- (2) the names of the *persons* who effectively run the *firm* or who are responsible for other *key functions* listed pursuant to 5.1(1);
- (3) for each *person* named pursuant to 5.1(2), a summary of the significant responsibilities allocated to that *person* (including, if applicable, any *SIMR prescribed responsibilities* that have been allocated to that *person* in accordance with 2);
- (4) where any responsibilities covered by 5.1(3) are allocated to more than one *person*, details of how those responsibilities are shared or divided between the *persons* concerned;
- (5) reporting lines and lines of responsibility for each *person* listed pursuant to 5.1(2);
- (6) where a *firm* is a member of a *group*:
  - (a) how the *firm's* management and governance arrangements fit together with those of its *group* and the extent to which the *firm's* management and

governance arrangements are provided by or shared with other members of its *group*; and

- (b) for the *persons* listed pursuant to 5.1(2), details of the reporting lines and the lines of responsibility (if any) to *persons* who are employees or officers of other *group* members or to committees or other bodies of the *group* or of other *group* members.

5.2 A *firm* must update the *governance map*:

- (1) at least quarterly; and
- (2) in the event of a significant change to:
  - (a) the *firm's* governance structure;
  - (b) the significant responsibilities allocated to a *key function holder*; or
  - (c) the reporting lines or lines of responsibility for a *key function holder*.

5.3 A *firm* must, as soon as reasonably practicable, provide the following to the *PRA*:

- (1) upon request by the *PRA*, a copy of the *governance map*; and
- (2) in the event of an update pursuant to 5.2(2), a copy of the relevant part of the *governance map*.

~~5.4 A *firm* must retain each version of the *governance map* for six years from the date on which it was superseded by a more up-to-date version.~~

~~5.5 A *firm* must retain any records created in accordance with SYSC 2.2.1R of the *PRA Handbook* as at 31 December 2015 for six years from the date on which they were superseded by more up-to-date records.~~

5.4 A *firm* must keep an up-to-date record of the scope of responsibilities of each *key function holder*.

5.5 A *scope of responsibilities form*, where it is kept and maintained on behalf of a *key function holder*, will satisfy the requirement in 5.4.

5.6 The record in 5.4, and each updated version, must be signed by the *key function holder* and an appropriate representative of the *firm*.

5.7 Where a *firm* amends its *governance map* to show changes in a *person's* responsibilities it must also ensure that:

- (1) the *person* concerned is informed in writing of the changes; and
- (2) the record in 5.4 is amended to show the changes.

5.8 Each version of both the *governance map* and the record in 5.4 must be retained for a period of six years from the date on which it was superseded by a more up-to-date record, and must be provided to the *PRA* on request.

5.9 A *firm* must:

- (1) arrange for orderly records to be kept that are sufficient to enable it to comply with the requirements of Large Non-Solvency II Firms - Fitness and Propriety 3 in response to any requests for references referred to in that Chapter;
- (2) retain all records kept by it under (1) for a period of six years after the *person* referred to in the reference (P) has ceased to perform that role for the *firm*; and
- (3) retain all records kept by it under (1) that are created after P has ceased to perform that role for the *firm* for a period of six years after the creation of the record.

5.10 A *firm* must comply with 5.8 in relation to any record created in accordance with SYSC 2.2.1R of the *PRA Handbook* as at 31 December 2015.

## Annex E

[Note: This Annex E contains updates to the rules consulted on in CP26/15 Appendix 2 (PRA Rulebook: Non-Solvency II Firms: Senior Insurance Managers Regime Instrument 2015).]

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

Part

# NON-SOLVENCY II FIRMS - FITNESS AND PROPRIETY

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Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
- ~~3. OBLIGATION TO PROVIDE REFERENCES~~ REGULATORY REFERENCES
4. DISCLOSURE AND REPLACEMENTS
5. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to a *small non-directive insurer*.

1.2 In this Part, the following definitions shall apply:

*continued approval*

has the meaning given in Non-Solvency II Firms - Senior Insurance Managers Regime - Transitional Provisions.

## 2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

---

2.1 A *firm* must ensure that all *persons* who perform a *senior insurance management function* are fit and proper *persons*.

2.2 In deciding whether a *person* is fit and proper pursuant to 2.1, a *firm* must be satisfied that the *person*:

- (1) has the personal characteristics (including being of good repute and integrity);
- (2) possesses the level of competence, knowledge and experience;
- (3) has the qualifications; and
- (4) has undergone or is undergoing all training,

required to enable such *person* to perform his or her *senior insurance management function* effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.

2.3 Before deciding, and in considering on an on-going basis, whether a *person* is fit and proper pursuant to 2.1 and 2.2, a *firm* must consider the *person's* past business conduct, including whether the *person* performs his or her *senior insurance management functions* in accordance with the relevant conduct standards specified in Non-Solvency II Firms - Conduct Standards 2.

2.4 In deciding whether a *person* (P) is fit and proper to perform a *senior insurance management function*, a *firm* must:

- (1) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 and related subordinated legislation of the *UK* or any part of the *UK*;
- (2) if P has lived or worked outside the *UK* for a material time in the previous five~~six~~ years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
- (3) request, and have regard to, such information.

2.5 If a *firm* engages a ~~person for a continuous period of time as a senior insurance management function holder~~ previously obtained the information in 2.4 when it determined that a senior insurance management function holder was fit and proper in accordance with this Part, and the firm engages that person for a continuous period of time, it the firm is only not required to comply with 2.4 again in respect of any subsequent appointments at the same firm within that

~~continuous period the first time it determines that person is fit and proper in relation to a senior insurance management function.~~

### **3 OBLIGATION TO PROVIDE REFERENCES REGULATORY REFERENCES**

---

3.1 If any PRA-authorised person (A):

- (1) is considering issuing a certificate to, making a senior management application in respect of, or appointing as a senior insurance management function holder, a key function holder, a non-executive director, a notified non-executive director or a credit union non-executive director, a person (P);
- (2) makes a request for a reference or other information in respect of P from a firm to which this Part applies (B), in B's capacity as:
  - (a) P's current or former employer; or
  - (b) an organisation (not falling within (a)):
    - (i) at which P performs or performed a function or service; and
    - (ii) which is or was in the same group as P's current or former employer;

or
  - (c) an organisation (not falling within (a) or (b)) at which P served or serves as a senior insurance management function holder; and
- (3) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, provide a reference and disclose to A in the reference all information of which B is aware that is relevant to A's assessment of whether P is fit and proper.

3.2 (1) If at any time:

- (a) a firm to which this Part applies (B) has given a reference pursuant to 3.1 to any PRA-authorised person about any person (P);
- (b) B is aware of matters or circumstances that mean that, if B was giving that reference now, this Chapter would require B to draft it differently; and
- (c) the differences in (b) are significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must provide A with details of those differences in writing as soon as reasonably practicable.

- (2) This rule does not require B to disclose anything of which it becomes aware more than six years after it gave the reference.
- (3) This rule applies even if P is no longer employed by, or in the service of, A.
- (4) This rule does not require B to update references given prior to 7 March 2016.

3.3 A firm must not enter into any arrangements or agreements with any person that limit its ability to disclose information under this Part.

#### **4 DISCLOSURE AND REPLACEMENTS**

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- 4.1 A firm must ensure that any application it makes for the approval of a person to perform a senior insurance management function provides the PRA with:
- (1) all the information needed to assess whether such person is fit and proper; and
  - (2) its record of the significant responsibilities allocated to that person.
- 4.2 If a firm becomes aware of information which would reasonably be expected to be material to the assessment of a current or former senior insurance management function holder's fitness and propriety under this Part, it must inform the PRA as soon as practicable.
- 4.3 If a firm becomes aware of a significant change to a senior insurance management function holder's responsibilities, it must inform the PRA as soon as practicable.
- 4.4 Where a firm replaces a senior insurance management function holder because the firm considers that that person no longer fulfils the requirements in 2.2, the firm must notify the PRA as soon as reasonably practicable.

#### **5 FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS**

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- 5.1 The requirements of 2.4 do not apply to a firm in respect of any person who has continued approval in relation to that firm.

## **Annex F**

[Note: This Annex F contains updates to the rules consulted on in CP26/15 Appendix 2 (PRA Rulebook: Non-Solvency II Firms: Senior Insurance Managers Regime Instrument 2015)].

In this Annex, underlining indicates new text.

### **Part**

# **NON-SOLVENCY II FIRMS – ALLOCATION OF RESPONSIBILITIES**

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### **Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. ALLOCATION OF RESPONSIBILITIES**
- 3. PRESCRIBED RESPONSIBILITIES**
- 4. RECORDS**

### **Links**

## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *small non-directive insurer*.

1.2 In this Part, the following definitions shall apply:

*small non-directive insurer prescribed responsibility*

means each of the responsibilities in 3.1.

## 2 ALLOCATION OF RESPONSIBILITIES

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2.1 A *firm* must allocate each of the *small non-directive insurer prescribed responsibilities* to one or more *persons* who, in relation to that *firm*, are approved under section 59 of FSMA by either:

- (1) the *PRA*; or
- (2) in relation to *relevant senior management functions* only, the *FCA*.

2.2 (1) A *firm* must have and maintain up-to-date records of the significant responsibilities allocated to each of those *persons*, including those allocated in accordance with 2.1.

(2) A *firm* must retain the records in (1) for six years from the date on which they were superseded by more up-to-date records.

(3) A *firm* must comply with (2) in relation to any record created in accordance with SYSC 2.2.1R of the *PRA Handbook* as at 31 December 2015.

2.3 The *firm* must provide the *PRA* with a copy of the records in 2.2 upon request.

## 3 PRESCRIBED RESPONSIBILITIES

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3.1 Each of the responsibilities set out in this rule is a *small non-directive insurer prescribed responsibility*:

- (1) responsibility for providing the *governing body* with an up-to-date business plan and all relevant management information;
- (2) responsibility for management of the *firm's* financial resources;
- (3) responsibility for ensuring the *governing body* is kept informed of its legal and regulatory obligations; and
- (4) responsibility for the oversight of systems and controls, along with risk management policies and procedures, that are proportionate to the nature, scale, and complexity of the risks inherent in the *firm's* business model.

## 4 RECORDS

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4.1 A *firm* must:

- (1) arrange for orderly records to be kept that are sufficient to enable it to comply with the requirements of Non-Solvency II Firms - Fitness and Propriety 3 in response to any requests for references referred to in that Chapter;

- (2) retain all records kept by it under (1) for a period of six years after the *person* referred to in the reference (P) has ceased to perform that role for the *firm*; and
- (3) retain all records kept by it under (1) that are created after P has ceased to perform that role for the *firm* for a period of six years after the creation of the record.

# Appendix 3: PRA Draft Supervisory Statement

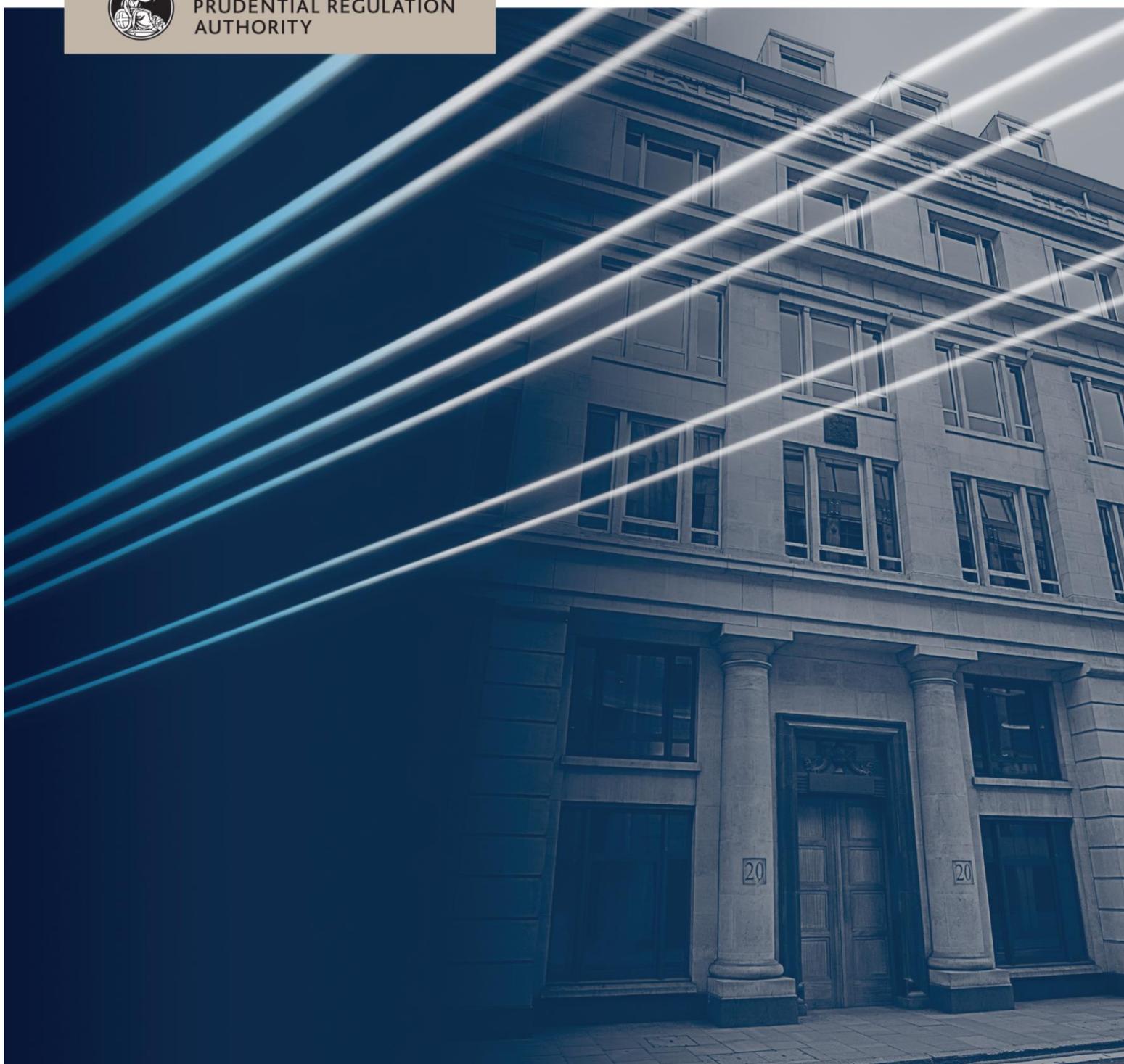
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# Strengthening accountability in banking and insurance: Regulatory References

2015



BANK OF ENGLAND  
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Supervisory Statement | SSXX/XX

# Strengthening accountability in banking and insurance: Regulatory References

2015



## Contents

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## 1 Introduction

1.1 This supervisory statement sets out the Prudential Regulation Authority's (PRA's) expectations of how firms should comply with the rules on regulatory references in the Fitness and Propriety and Insurance - Fitness and Propriety sections of the PRA Rulebook respectively. It applies to the following firms, collectively referred to as 'full scope regulatory reference firms':

- Relevant Authorised Persons (RAP) as defined in section 71A of the Financial Services and Markets Act 2000 (FSMA) namely:
  - (a) UK banks;
  - (b) building societies;
  - (c) credit unions; and
  - (d) PRA designated investment firms; and
- Incoming branches of non-EEA banks and investment firms.
- Insurers namely:
  - (a) UK Solvency II insurance firms and groups;
  - (b) third-country insurance branches within the scope of the rules transposing the Solvency II Directive;
  - (c) the Society of Lloyd's and managing agents; and
  - (d) UK insurers that are out-of-scope of Solvency II, and have assets of more than £25million in respect of regulated activities.

1.2 The Statement seeks to advance the PRA's safety and soundness and policyholder protection statutory objectives by clarifying how full scope regulatory reference firms should comply with a range of measures whose ultimate goal is to prevent the 'recycling' of individuals with poor conduct records between firms.

1.3 The revised rules on regulatory references and the expectations set out in this supervisory statement are part of a wider package of reforms to strengthen individual accountability in banking and insurance, including the Senior Managers Regime (SMR), the Certification Regime and the Senior Insurance Managers Regime (SIMR). They also take into account the recommendations of the Fair and Effective Markets Review (FEMR). This statement should therefore be read in conjunction with:

- The PRA's final policy and final and near-final rules on the SMR, Certification Regime and SIMR as set out in PS2/15, PS3/15, PS16/15, PS20/15, PS21/15, PS22/15, SS28/15 and SS35/15;<sup>1</sup> and

- The Financial Conduct Authority's (FCA's) rules and guidance on regulatory references.

## 2 Requesting regulatory references

2.1 The Fitness and Propriety rules for RAPs and insurers in the PRA Rulebook require full scope regulatory reference firms to request references when assessing the fitness and propriety of candidates to perform the following functions:

- Senior Management Functions (SMF) under the SMR;
- Certification functions under the Certification Regime;
- Senior Insurance Management Functions (SMF) under the SIMR;
- any other Key function holders (KFHs) for insurers, which are neither SIMFs or FCA Controlled Functions (CF); and
- Notified non-executive director (NED) functions under both the SMR and SIMR.<sup>2</sup>

2.2 Regulatory references must cover the previous six years' employment and be sought from all relevant former employers and (if different) any firms at which the candidate has performed:

- an SMF;
- a SIMF;
- another CF;
- a Certification function;
- a notified NED function or credit union NED function; and/or
- any other KFH which is neither a SIMF nor CF.

### **Recruiting individuals internally or from the same group**

2.3 The requirement to seek references applies even if a full scope regulatory reference firm is recruiting an individual subject to the regulatory reference requirements internally or from a company in its group.

2.4 For example, from 7 March 2016, if a RAP is considering appointing an employee whose role at the time is not subject to regulatory referencing requirements to a Certification function, it will need to seek a regulatory reference covering his or her conduct at past employers over the previous six years' employment.

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<sup>2</sup> CRR: Capital Requirement Regulation firms - Fitness and Propriety 2.1(4), Solvency II Firms: Insurance – Fitness and Propriety 2.5 and Non-Solvency II Firms: Large Non-Solvency II Firms – Fitness and Propriety 2.5

2.5 If:

- a firm has previously obtained a regulatory reference in relation to an individual; and
- that individual is seeking to move to another position within the firm or its group which is also subject to regulatory referencing requirements; the firm and other entities in its group should consider whether the existing reference should be reissued or reviewed but should normally be able to rely on it.

### **Recruiting individuals from overseas or unregulated institutions**

2.6 We recognise that full scope regulatory reference firms may sometimes hire individuals from financial institutions overseas<sup>3</sup> or from outside the regulated financial services sector. In these instances, hiring firms remain under an obligation to obtain appropriate references, and should still make reasonable efforts to obtain a reference as part of their assessment of the candidate's fitness and propriety.

2.7 For instance, when hiring an individual from a financial institution located outside the UK and subject to the jurisdiction of an overseas regulator, a full scope regulatory reference firm should enquire whether the candidate has been subject to a prohibition order (or equivalent) or had any other official adverse finding on his or her fitness and propriety issued by an overseas regulator in the past six years. If the candidate is appealing against any of these findings to either the relevant regulator or the courts, the PRA would also expect this to be disclosed.

### **Certification functions: unforeseen urgent appointments**

2.8 Where a firm needs to fill a vacancy which is a Certification function and which could not have reasonably been foreseen, the PRA recognises that it may not be reasonable to expect the firm to obtain references prior to issuing a certificate. In such cases, firms should take up the references as soon as reasonably possible. If the references duly obtained raise concerns about the employee's fitness and propriety, the firm should immediately revisit and, if appropriate, revoke, its decision to issue him or her with a certificate.

### **Certification functions: grandfathering**

2.9 As stated in Fitness and Propriety 6.1, the requirement to obtain a regulatory reference does not apply where all of the following are met:

- the firm is deciding whether a person performing a Certification function is fit and proper for the purpose of issuing a certificate
- the person will be performing a Certification function from 7 March 2016; and
- immediately prior to 7 March 2016 the person performed the same function for the firm.

### **Information to be included in the request for a reference**

2.10 Where a full scope regulatory reference firm (firm A) is requesting a regulatory reference, from another full scope regulatory firm (firm B), firm A should make it sufficiently clear that the request is subject to the requirements in Fitness and Propriety or Insurance –Fitness and Propriety, for instance by attaching or referring to the relevant template. As long as firm A

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<sup>3</sup> For UK branches of non-EEA RAPs and for UK branches of insurers within the scope of the rules transposing the Solvency II Directive, the obligation to provide references only applies to employees performing a function relating to their UK-regulated activities.

makes the nature of its request to firm B sufficiently clear, it does not have to set out specifically the information that firm B needs to include in the regulatory reference. Firm B must include all relevant information even it is not specifically asked by firm A to do so.

2.11 Conversely, if firm A is requesting a reference from a firm which is not a full scope regulatory reference firm or where it does not know whether the firm is a full scope regulatory reference firm, it should clearly specify the information it requires to be provided as a minimum.

### **3 Providing regulatory references**

3.1 If a full scope regulatory reference firm receives a request from another full scope regulatory reference firm relating to an individual performing a role or function listed in paragraph 2.1,<sup>4</sup> the Fitness and Propriety sections for RAPs and insurers in the PRA Rulebook require that firm to provide a regulatory reference including all information of which it is aware that is relevant to the hiring firm's assessment of that individual's fitness and propriety.

3.2 The regulatory reference must be provided using the Regulatory Reference Template for Full Scope Regulatory Reference Firms form and include, at a minimum, the information set out in the Fitness and Propriety sections for RAPs and insurers in the PRA Rulebook.<sup>5</sup>

#### **Individuals employed by a firm which is part of a group**

3.3 It is not uncommon for individuals to be contractually or formally employed by one firm but to perform their role in or provide services to other entities within that firm's group. Where this is the case, the full scope regulatory reference firm providing the reference should obtain relevant information from other entities in its group which the individual has worked in or provided services to over the past six years. Feedback from the various entities can, however, be consolidated into a single document. Firms should take similar action when updating a reference (see paragraph 3.16 below).

#### **Agreements and circumstances relating to the departure of an employee**

3.4 The precise manner in which an individual may have left a full scope regulatory reference firm (i.e. dismissal, redundancy, mutual agreement etc.) has no bearing on that firm's obligation to provide a regulatory reference.

3.5 Moreover, the obligation to provide regulatory references applies to every full scope regulatory reference firm notwithstanding any agreement or arrangement it may have entered into with an individual prior to or upon termination of his or her employment, including a COT 3 Agreement settled by the Advisory, Conciliation and Arbitration Service.

3.6 A full scope regulatory reference firm should not enter into any arrangements or agreements that could conflict with its obligations under the Fitness and Propriety sections for RAPs and insurers in the PRA Rulebook.<sup>6</sup>

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<sup>4</sup> CRR Firms and Non-CRR Firms: Fitness and Propriety 3.1(3), Solvency II Firms: Insurance – Fitness and Propriety 3.1 and Non-Solvency II Firms: Large Non-Solvency II Firms – Fitness and Propriety 3.1

<sup>5</sup> CRR Firms and Non-CRR Firms: Fitness and Propriety 3.2, Solvency II Firms: Insurance – Fitness and Propriety 3.2 and Non-Solvency II Firms: Large Non-Solvency II Firms – Fitness and Propriety 3.2. The applicable part of the Rulebook will depend on whether the full scope regulatory reference firm making the request is a UK CRR firm; a UK branch of a third-country firm; a UK Solvency II insurer or a large NDF.

<sup>6</sup> CRR and Non-CRR Firms: Fitness and Propriety, Solvency II Firms: Insurance – Fitness and Propriety 3 and Non-Solvency II

### **Outsourcing the collection of employee information**

3.7 The requirement for a full scope regulatory reference firm to give information to another full scope regulatory reference firm also applies where the hiring firm has outsourced the collection of information on a candidate to an unregulated third party, such as an executive search firm, provided that the firm requesting the reference makes it clear to the firm giving it that the unregulated third party is acting on its behalf.

### **Conduct Rule breaches/ breaches of APER**

3.8 Where a full scope regulatory reference firm has concluded that an individual<sup>7</sup> has breached a PRA conduct rule, conduct standard or a provision in the statements of principle and code of practice for approved persons (APER), the Fitness and Propriety sections for RAPs and insurers in the PRA Rulebook require that firm to include the facts that led it to come to that conclusion when providing a regulatory reference for that individual.

3.9 However, this requirement does not apply where, after reaching its initial determination but before receiving the request for a regulatory reference, the firm reaches a new determination (for example, following an appeal) that the individual did not breach that conduct rule, conduct standard or APER requirement.

### **Providing relevant information beyond the mandatory minimum**

3.10 In order for the SMR and SIMR to achieve their underlying objectives, it is vital that all full scope regulatory reference firms embrace their obligations to provide meaningful employee references.

3.11 The obligation on firms in to disclose all relevant information may require them to provide information beyond the minimum requirements prescribed in the Fitness and Propriety sections for RAPs and insurers in the PRA Rulebook if such information is relevant to the assessment of an individual's fitness and propriety.

3.12 The PRA expects firms to exercise judgement, based on their knowledge of the candidate and the role for which they are being considered in determining what information beyond the mandatory minimum, if any, may be relevant to include in a regulatory reference. The relevance of an issue or incident may depend on a range of factors, including but not limited to:

- the seriousness of the misconduct;
- how long ago it occurred or came to light;
- the candidate's general behaviour; and
- any other relevant criteria.

3.13 For example, it may sometimes be appropriate for a firm to include information relating to breaches of APER or the PRA conduct rules or conduct standards going back further than the mandatory six years. Whether this is the case may depend on factors including but not limited to:

- the severity of the incident;

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Firms: Large Non-Solvency II Firms – Fitness and Propriety 3

<sup>7</sup> Other than an individual performing a 'key function' at an insurer who is not also a 'key function holder'

- the extent to which it was subsequently corrected or redressed by the candidate; and
- its ongoing relevance to the candidate's fitness and propriety.

3.14 Full scope regulatory reference firms should, at all times, balance their obligation to provide all relevant information with their employment and common law duties towards employees. In particular, they should:

- take reasonable care in preparing references;
- ensure that all references they provide are true, accurate and fair; and
- be objective.

3.15 Firms should give honest views, but only after taking reasonable care both as to factual content and as to the opinions expressed. In the case of the latter, firms should verify the information upon which the opinions are based.

### **Updating regulatory references**

3.16 From 7 March 2016, full scope regulatory reference firms should revise a regulatory reference (i.e. a reference subject to the Fitness and Propriety sections for RAPs and insurers in the PRA Rulebook) they have given in the past six years where they become aware of matters that would cause them to draft the reference differently, if the reference were being given now. The requirements to update a reference cover the same disclosures and minimum time requirements as those applicable to initial references. This means that updates should be limited to adverse findings on an individual's fitness and propriety and confirmed breaches of the conduct rules where the firm has reached a finding in the past six years. In practice, this is likely to be limited to circumstances where misconduct comes to light after an employee has left the firm, and that firm is able to confirm that misconduct and a breach of the relevant rules in fact occurred.

### **Record-keeping**

3.17 A firm should have in place procedures for the retention of records to enable it to comply with Fitness and Propriety 3 when responding to any requests for references.

## **4 Link to PRA Prescribed Responsibilities**

4.1 The definitions of *senior management regime* and *certification regime* in the Allocation of Responsibilities part of the PRA Rulebook have been amended to explicitly acknowledge that the Prescribed Responsibilities in Allocation of Responsibilities 4(1)(1), 4(1)(1), 6(1)(1) and (2) include responsibility for compliance with the relevant parts of Fitness and Propriety, including those relating to regulatory references.

4.2 It follows that the two Prescribed Responsibilities relating to a RAP's performance of its obligations under the SMR and Certification regime should be interpreted as encompassing responsibility for the firm's compliance with all applicable obligations to request and provide regulatory references.

4.3 Similarly, for insurers, the prescribed responsibility for ensuring that persons who perform a key function are fit and proper includes responsibility for both the receipt and provision of

regulatory references in accordance with the relevant parts of Insurance - Fitness and Propriety.

## Appendix 4: Draft template

## Regulatory Reference Template for Full Scope Regulatory Reference Firms

This is the template referred to in SYSC 22.2.9R of the *FCA Handbook* and in CRR Firms and Non-CRR firms: Fitness and Propriety 5.1(2), Solvency II Firms: Insurance – Fitness and Propriety 3 and Non-Solvency II Firms: Large Non-Solvency II Firms – Fitness and Propriety 3 in the PRA Rulebook.

**Please answer each of the below questions. Where you have nothing to disclose, this should be confirmed in response to the relevant question.**

**In this template:**

- “firm” / “your firm” refers to the firm giving the reference;
- “individual” refers to the subject of the reference.

<b>Name, and Firm reference number of firm providing reference</b>	
<b>Individual’s Name</b>	
<b>Name of firm requesting the reference</b>	

(A) Please state whether the individual:

- (1) is performing or has at any time performed a *specified significant harm function* or *certification function* for your firm; or
- (2) is or has at any time been an *approved person* for your firm.

Yes	
No	

(B) Please state whether the individual is performing or has at any time performed any of the following roles in relation to your firm:

- (1) notified non-executive director;
- (2) credit union non-executive director; or
- (3) *Solvency II Directive* key function holder (other than a controlled function).

Yes	
No	

(C) If the answer to (A or B) is ‘yes’, provide details of each position held, including:

- (1) what the *controlled function* or *significant-harm function / certification function*, credit union or notified non-executive director function, or *Solvency II Directive* key function was;

(2) (in the case of a *controlled function*) whether the approval is or was at any time subject to a condition, suspension, limitation, restriction or time limit and if so, details about it;

(3) summary details of the role and the individual's responsibilities in performing that role;

(4) whether any potential *FCA governing function* is or was included in a *PRA controlled function*; and

(5) the dates during which the individual held the position.

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(D) Please state whether the individual is performing or has performed any role or responsibility for your firm other than the ones in (A) and (B) at any time:

(1) in the six years before the request for a reference; or

(2) between the date of the request for the reference and the date of the reference.

Yes	
No	

If 'yes', please provide details of the other role(s) or responsibility/ies.

--

(E) Where:

(1) your firm has concluded that the individual was in breach of any individual conduct requirements that:

(a) apply or applied to the individual; or

(b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules; and

(2) your firm reached that conclusion:

(a) in the six years before the request for a reference; or

(b) between the date of the request for the reference and the date of the reference;

set out the facts which led your firm to that conclusion.

(F) Where:

- (1) your firm has concluded that the individual was not fit and proper to perform a function; and
- (2) your firm reached that conclusion:
  - (a) in the six years before the request for a reference; or
  - (b) between the date of the request for the reference and the date of the reference;

set out the facts which led your firm to that conclusion.

(G) Where:

- (1) your firm has found that the individual was:
  - (a) in breach of any individual conduct requirements that:
    - (i) apply or applied to the individual; or
    - (ii) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules; or
  - (b) not fit and proper to perform a function; and
- (2) following that finding, your firm has taken disciplinary action; and
- (3) your firm took that disciplinary action:
  - (a) in the six years before the request for a reference; or
  - (b) between the date of the request for the reference and the date of the reference;

provide a description of the basis for, and outcome of, the disciplinary action.

(H) Please provide any other information of which you are aware that is relevant to the requesting firm's assessment of whether the individual is fit and proper.



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