

# **Optimising the Senior Managers & Certification Regime and feedback to DP16/4 – Overall responsibility and the legal function**

**Consultation Paper**

CP19/4\*\*\*

January 2019

## How to respond

We are asking for comments on this Consultation Paper (CP) by 23 April 2019.

You can send them to us using the form on our website at:  
[www.fca.org.uk/cp19-04-response-form](http://www.fca.org.uk/cp19-04-response-form)

**Or in writing to:**

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# 1 Summary

## Why we are consulting

- 1.1** We have introduced a new regime for firms and regulators to strengthen accountability in financial services. The Senior Managers & Certification Regime (SM&CR) was introduced for banking firms in 2016 and insurers in December 2018. It will apply to solo-regulated firms from December 2019.
- 1.2** We made near-final rules on the SM&CR in July 2018 and final rules for insurers in September 2018. When consulting on these rules we identified a few areas where we need to make changes. These proposals are set out in this Consultation Paper (CP) and are intended to provide extra clarity in some areas and help firms adjust to the SM&CR.

**Table 1: Summary of proposals in this CP and the firms affected**

Proposals	Firms affected					
	Banking firms <sup>1</sup>	Solvency II and Large NDFs	Other insurers	Enhanced solo-regulated firms	Core solo-regulated firms	Limited-scope solo-regulated firms
<b>Clarifying the application of the SM&amp;CR to the Legal Function</b> Following our Discussion Paper DP16/4 – ‘Overall responsibility and the legal function’, published in September 2016, we propose to exclude the Legal Function from the Overall Responsibility Requirement. <b>Read Chapter 3 for more information.</b>	☑	☑		☑		
<b>Amending the intermediary revenue criteria for the Enhanced tier</b> In PS18/14, we explained that we would propose rules bringing intermediaries with regulated revenue of more than £35m that do not complete RMA-B into scope of the Enhanced regime. In this CP, we propose to implement a notification requirement to bring these firms into scope. <b>Read Chapter 4 for more information.</b>				☑	☑	

<sup>1</sup> ‘In this CP, ‘banking firms’ is used to cover the firms in scope of the SM&CR banking regime; banks, building societies, credit unions and PRA-designated investment firms.

<p><b>Amending the scope of the Client Dealing Function</b></p> <p>We propose to amend the scope of the Client Dealing Function in the Certification Regime to allow firms to exclude purely administrative roles that involve 'taking part in' investment activities.</p> <p><b>Read Chapter 5 for more information.</b></p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Including the Systems &amp; Controls Function in the Certification Regime</b></p> <p>We propose to ensure that the Certification Regime applies to individuals performing roles that were Systems and Controls functions under the Approved Persons Regime, but which are no longer approved under the SM&amp;CR.</p> <p><b>Read Chapter 5 for more information.</b></p>			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Applying Senior Manager Conduct Rule 4 to non-approved executive directors at Limited Scope firms</b></p> <p>We propose to apply Senior Manager Conduct Rule 4 (SC4), in COCON 2.2 of our Handbook, to non-approved executive directors at Limited Scope firms to ensure that executive and non-executive directors at these firms are subject to equivalent requirements. SC4 requires relevant individuals to disclose appropriately any information of which the FCA would reasonably expect notice.</p> <p><b>Read Chapter 6 for more information.</b></p>						<input checked="" type="checkbox"/>
<p><b>Minor changes to our regulatory forms and Handbook</b></p> <p>We propose to make a number of minor changes to our regulatory forms to ensure they are consistent with our rules.</p> <p><b>Read Chapter 6 for more information.</b></p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

## Who this applies to

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### 1.3 People who need to read sections of this document:

- firms subject to the banking SM&CR ('banking firms')
- insurers
- FCA solo-regulated firms authorised under FSMA
- EEA and third-country branches

### 1.4 Legal professional bodies may also be interested in our proposals on the legal function. Read Chapter 3 for more information.

### 1.5 People who don't need to read this document – these firms are not in-scope of the SM&CR:

- incoming EEA firms providing cross-border services only
- Payment Services firms

## The wider context of this consultation

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### 1.6 The Financial Services (Banking Reform) Act 2013 and Bank of England and Financial Services Act 2016 made changes to the Financial Services and Markets Act 2000 (FSMA).

### 1.7 We implemented these changes through our rules and a series of Policy Statements, a summary of which are set out in Annex 2. We also published a Discussion Paper on 'Overall Responsibility and the Legal Function'.

### 1.8 There are 3 elements that make up the SM&CR:

- the Senior Managers Regime (SMR) that focuses regulatory approval on fewer senior individuals in a firm than under the current Approved Persons Regime (APR)
- the Certification Regime, which requires firms to assess the fitness and propriety of certain individuals who could harm the firm, its customers or the market
- the Conduct Rules, which are high-level standards of behaviour expected of those working in financial services

### 1.9 In the solo-regulated regime, we applied 3 tiers. These are set out in Table 2. Some of the proposals in this CP affect some tiers differently to others and this is set out later in this chapter.

**Table 2: Solo-regulated firm tiers**

Firm type	Description
Limited Scope Firm	Firms that will be subject to fewer requirements than Core firms. This covers all firms that currently have a limited application of the APR, including: <ul style="list-style-type: none"><li>• limited permission consumer credit firms</li><li>• all sole traders</li><li>• authorised professional firms whose only regulated activities are non-mainstream regulated activities</li><li>• oil market participants</li><li>• service companies</li><li>• energy market participants</li><li>• subsidiaries of local authorities or registered social landlords</li><li>• insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts</li><li>• authorised internally managed Alternative Investment Funds (AIFs)</li></ul>
Core Firm	Firms that will have a baseline of SM&CR requirements applied.
Enhanced Firm	<p>A small proportion of solo-regulated firms that will have to apply extra rules. If a firm meets one or more of 6 criteria below, they will be an Enhanced firm:</p> <p><b>Definitional criteria</b></p> <ul style="list-style-type: none"><li>• a firm that is a Significant IFPRU firm</li><li>• a firm that is a CASS Large firm</li></ul> <p><b>Criteria calculated on a rolling average</b></p> <ul style="list-style-type: none"><li>• firms with Assets Under Management of £50 billion or more as a 3-year rolling average</li><li>• firms with current total intermediary regulated business revenue of £35 million or more per annum calculated as a 3-year rolling average</li><li>• firms with annual revenue generated by regulated consumer credit lending of £100m or more calculated as a 3-year rolling average.</li></ul> <p><b>Criteria calculated as a point in time</b></p> <ul style="list-style-type: none"><li>• mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages outstanding at the latest reporting date.</li></ul>

## Measuring success

**1.10** The SM&CR creates a step-change in standards for firms authorised under FSMA and these optimisations will help ensure the effectiveness of the regime. The intended outcomes of the SM&CR are that:

- the most senior people know what they are responsible for
- there is a focus on skills, capability and conduct within the firm – and a commitment to ensuring staff are fit and proper to carry out their roles
- the Conduct Rules set a foundation for how individuals behave
- there is a sense of accountability throughout the firm – individuals speak out when they see harm or potential harm
- improved systems and controls mean that the FCA can easily assess the suitability of senior management
- the FCA is able to hold individuals to account

## Next steps

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### What you need to do

- 1.11** We want to know what you think of our proposals. Please respond to the consultation questions in this paper by 23 April 2019. Use the online response form on our website, email us at [cp19-04@fca.org.uk](mailto:cp19-04@fca.org.uk) or write to us at the address on page 2.

### What we will do next

- 1.12** We will consider your feedback and publish our rules and guidance in a Policy Statement in Q3 2019.

## 2 The wider context

### The harm we are trying to address

- 2.1** This Consultation Paper (CP) proposes several amendments to the SM&CR for banking firms, insurers and FSMA-authorised solo-regulated firms. The proposals are designed to ensure the effectiveness of the SM&CR and support its objectives of reducing harm to consumers and strengthening market integrity.

### How it links to our operational objectives

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- 2.2** Clarifying the status of the head of the legal function within the Senior Managers Regime (SMR) will help ensure that the SM&CR operates effectively by giving firms certainty on how the regime will apply to these individuals.
- 2.3** Amending the intermediary revenue criterion for the Enhanced tier will ensure that larger or more complex firms are allocated to the correct tier of the regime. Weaknesses in accountability or governance in these firms could result in greater harm to consumers and in a greater impact on market integrity. Ensuring that these firms are allocated to the correct tier will help prevent this.
- 2.4** Clarifying the application of the Certification Regime to non-approved individuals performing Systems and Controls functions will ensure that firms assess these individuals as fit and proper at least annually, supporting consumer protection and market integrity by helping firms ensure that they employ suitable individuals in these roles.
- 2.5** Extending Senior Manager Conduct Rule 4 to non-approved executive directors at Limited Scope firms will support consumer protection and market integrity by ensuring that senior individuals at these firms must disclose any information of which the FCA would reasonably expect notice.

### Wider effects of this consultation

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- 2.6** This CP supports the Culture and Governance priority set out in our 2018/19 Business Plan.

### What we are doing

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- 2.7** We are proposing to make the changes set out in this CP before the extended SM&CR comes into force for solo-regulated firms on 9 December 2019.

- 2.8** Insurers and banking firms can rely on the statements on the Legal Function and Client Dealing Function on our website when considering how overall responsibility applies to their legal function and the application of the Client Dealing Function until the changes suggested in this CP come into force.

## Equality and diversity considerations

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- 2.9** We have considered the equality and diversity issues that may arise from the proposals in this CP.
- 2.10** Overall, we do not believe that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when making the final rules.
- 2.11** In the meantime, we welcome your input to our consultation on this.

## 3 Clarifying the application of the SM&CR to the Legal Function

Banking firms, Solvency II and large non-directive (NDF) insurers, and Enhanced solo-regulated firms should read this chapter

### Background – SM&CR and the legal function

- 3.1** The SM&CR for banking firms, Solvency II and large NDF insurers, and Enhanced solo-regulated firms requires that a Senior Manager has 'Overall Responsibility' for each of the firm's activities, business areas and management functions.
- 3.2** When our rules came into effect for banking firms in March 2016, firms asked how the concept of Overall Responsibility and the SMF18 – Other Overall Responsibility Function applies to the legal function. Many firms felt that it had not been clear that a Senior Manager must have Overall Responsibility for the legal function, while others considered it inappropriate for the SMR to apply to the legal function at all.
- 3.3** In January 2016, we published a statement ('Clarifying our supervisory intentions: overall responsibility for the legal function under SMR') on our website recognising these concerns. We clarified that, although the legal function was included in the regime, any firm that had decided in good faith whether the person in charge of the legal function needed to be approved, based on the published rules and our other communications, would not need to change their approach in the interim.
- 3.4** In September 2016, we published Discussion Paper 16/4 – 'Overall responsibility and the legal function'. The purpose of the paper was to clarify our view of how and why the legal function was captured by the SMR, and to consider whether the Head of Legal should continue to be part of the SMR.
- 3.5** The extension of the SM&CR for insurers came into force on 10 December 2018 and FCA solo-regulated firms will be in scope from 9 December 2019. With the extension of the regime to these firms, this issue is also now of relevance to Solvency II and large NDF insurers, and Enhanced solo-regulated firms.
- 3.6** In this chapter, we summarise the feedback received to DP16/4 and our proposal to exclude the Head of Legal from the requirement to be a Senior Manager.

## Feedback to DP16/4 and our response

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**3.7** We received 33 responses to our Discussion Paper. Of these:

- 5 respondents argued that the legal function should be kept within the scope of the SMR
- 24 respondents suggested that the legal function should be removed from the SMR
- 4 respondents provided a mixed response

**3.8** We have categorised this feedback below, under a number of different themes.

### **Reasons to include the legal function in the Senior Managers Regime** ***The legal function provides more than legal advice***

**3.9** Most respondents argued that the function was purely advisory, but others suggested the legal function in a firm is often responsible for more than just the provision of legal advice. The Consumer Panel noted that lawyers may be involved in product development or approval.

**3.10** Indeed, some respondents suggested that the legal function had evolved in some firms from being purely advisory to being a control function or 'line of defence', while in others, they had a dual role as a decision-maker and legal advisor in decision-making processes.

**3.11** One respondent noted that some firms have in-house lawyers that use legal expertise to contribute to the performance of the business.

**3.12** Some respondents argued that privileged material would not need to be disclosed to demonstrate reasonable steps in managing the function. This means that the FCA does not need to have access to legally privileged material to include the head of the legal function in the SMR. As the management of the legal function covers a broad range of issues, respondents argued that access to legally privileged material is not a necessary precondition to justify inclusion of the function within the SMR, and we can effectively supervise the function without access to legally privileged material.

### ***The Head of Legal needs sufficient authority to perform their role***

**3.13** One respondent favoured the inclusion of the Head of Legal in the SMR as it reinforces the importance of the legal function as a control function.

**3.14** Another argued that General Counsels would be disenfranchised by exclusion from the SMR and that they should be included.

### ***The legal function has been involved in cases of misconduct/unethical practices***

**3.15** One respondent argued that the inclusion of the Head of Legal in the SMR would drive up standards of conduct and reduce misconduct. They suggested that inclusion of the legal function would reduce instances of lawyers being involved in unethical practices or being compromised by commercial pressures.

### ***Improved independence***

- 3.16** One respondent suggested that individual accountability as a Senior Manager would help heads of the legal function to say difficult or uncomfortable things to the business, at CEO and Board levels. Being a Senior Manager would provide extra authority and improve the independence of the function.

## **Reasons to exclude the legal function from the Senior Managers Regime**

### ***Legal professional privilege***

The principle of legal professional privilege protects the confidentiality of communications between a client and their lawyer, by prohibiting a lawyer from revealing either information provided to them in confidence, or advice they have provided, without the client's permission. There are 2 main types of privilege: (i) legal advice privilege and (ii) litigation privilege.

- 3.17** Most respondents raised this as a key concern. Under the SMR, every Senior Manager is subject to a Duty of Responsibility. This means that if a firm breaches one of our requirements, the Senior Manager responsible for that area could be held accountable if they did not take reasonable steps to prevent or stop the breach from occurring.
- 3.18** Respondents argued that the Duty of Responsibility would put firms under pressure to waive legal professional privilege ('privilege') to allow the Senior Manager performing the Head of Legal role to demonstrate that they had taken reasonable steps. Respondents argued that this creates a potentially significant conflict of interest. Specifically, the Senior Manager may want, or need, to rely on legally privileged material to demonstrate reasonable steps, but at the same time be obliged to advise the firm not to waive privilege for other reasons.
- 3.19** Respondents also suggested that we may view non-disclosure of privileged information as a negative action by the individual Senior Manager, when it would in fact be the firm making the decision as to whether to waive privilege.

### ***Independence of the legal function***

- 3.20** More than half of the respondents were concerned that including the legal function in the SMR would undermine the independence of the function. They provided two main scenarios:
- Personal liability may affect lawyers' judgement, making legal teams more conservative and less likely to pro-actively offer advice. This may also cause them to avoid asking necessary questions or investigating matters if information that comes to light increases their personal exposure under the SMR
  - Under Senior Manager Conduct Rule 4, Senior Managers are required to notify the FCA of anything of which we would reasonably require notice. This could create a conflict with the duty of confidentiality and the Solicitors Regulatory Authority (SRA) Principle 4 obligation to act in the best interests of the client
- 3.21** Some respondents suggested that these scenarios would have a "chilling effect" on advice sought from in-house lawyers that would result on external counsel being sought more often and at a greater cost.

### ***Practical challenges with separating 'management' of the legal function from the underlying advice***

- 3.22** Respondents suggested that, in practice, the separation of the quality of legal advice from the management of the function would be difficult. Poor management would manifest itself as some form of deficient legal advice, and we would have to make a decision on the quality of legal advice as a result.

### ***Policy justification***

- 3.23** Respondents argued that the inclusion of the legal function in the SMR was not justified. This was for 2 main reasons:

- Most respondents argued that the legal function is purely advisory and does not make management decisions. It therefore does not meet the FSMA definition of a 'business area, activity or management function' for which we require a Senior Manager to have Overall Responsibility
- Lawyers are already regulated by the SRA and inclusion in the SMR would be unduly burdensome, a duplication of regulation, and unnecessary in addition to the Certification Regime and Conduct Rules

### **Our response**

Having considered the responses received to our Discussion Paper, we propose to exclude the Head of Legal from the requirement to be approved as a Senior Manager.

As so much of the Head of Legal's work relates to legal advice, the laws of legal privilege may restrict us, in practice, from using our powers over Senior Managers and carrying out our usual supervisory processes relating to Senior Managers, even in relation to the management parts of their job. As a result, the benefits that normally result from applying the SMR will be substantially reduced so that any remaining benefits are not sufficient to justify applying it.

Almost all respondents recognised that in-house lawyers would already be subject to the Individual Conduct Rules. The Head of Legal will also fall under the Certification Regime as either a Material Risk Taker or Significant Management Function, and we have proposed additional guidance in our Handbook to make this clear (read Chapter 5 for more information).

Including the Head of Legal in the Certification Regime and applying our Conduct Rules delivers most of the benefits of including these individuals within the SMR, without compromising the laws of legal privilege. We believe the protections under these elements of the SM&CR will be sufficient to drive up standards of conduct and ensure the fitness and propriety of legal staff.

It is important to note that we are proposing to remove the requirement for the Head of Legal to be a Senior Manager; we are not proposing to exclude anyone who is a lawyer from performing a Senior Management Function. This means that there may be cases where the Head of Legal

performs another Senior Management Function, for example; the Chief Operations Officer or Head of Compliance.

In these instances, the Head of Legal will still have responsibility as a Senior Manager for their additional role. Firms will be expected to clearly outline the responsibilities for each role in the individual's Statement of Responsibilities.

We should make clear that we do not see our proposal to exclude the Head of Legal from the requirement to be approved as a Senior Manager as creating an opportunity for firms or Senior Managers responsible for other functions or business areas to avoid their responsibilities.

Senior Managers so responsible will remain subject to Senior Manager Conduct Rule 4. While that Rule does not require the disclosure of legally privileged communications, it does require Senior Managers to disclose appropriately, to the FCA or PRA, any information of which the FCA or PRA would reasonably expect notice.

Further, Senior Managers are required by Senior Manager Conduct Rule 2 (SC2) to take reasonable steps to ensure that the business of their firm for which they are responsible complies with the relevant requirements and standards of the regulatory system. This includes the obligations imposed on firms by Principle 11 and SUP 15 to notify and/or disclose to the FCA.

Senior Managers must, to comply with SC2, take reasonable steps to ensure that all employees, officers, agents and contractors working within or retained by the businesses of the firm for which those Senior Managers are responsible, and who become aware of a matter subject to those obligations, report the matter without delay so that it is disclosed promptly to the FCA. They must do so even if the matter is, in parallel, the subject of or referred to or described in legally privileged communications, documents or other records created within or for the firm.

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**Q1:** Do you agree with our proposal to exclude the Head of Legal from the requirement to be approved as a Senior Manager? If not, please explain why.

## 4 Amending the intermediary revenue criterion for the Enhanced regime

Solo-regulated firms should read this chapter

**4.1** In PS18/14, we applied 6 criteria to identify those firms that we will apply extra requirements to. We classify these firms as Enhanced. Table 3 sets out the Enhanced criteria and our proposed changes.

**Table 3: Enhanced criteria**

Criterion	Proposed amendments
A firm that is a Significant IFPRU firm	None
A firm that is a CASS Large firm	None
Firms with Assets Under Management of £50bn or more calculated as a 3-year rolling average	None
Firms with current total intermediary regulated business revenue of £35m or more per annum calculated as a 3-year rolling average	<p>Introduction of a notification requirement for firms in the relevant categories that:</p> <ul style="list-style-type: none"> <li>do not submit RMA-B and</li> <li>have over £35m in relevant business revenue</li> </ul> <p>The relevant firms for this proposed amendment are firms in one of the following categories:</p> <ul style="list-style-type: none"> <li>with a permission that includes insurance distribution activity in relation to non-investment insurance contracts</li> <li>with a permission that includes home finance mediation activities</li> <li>that are retail investment firms</li> <li>that meet both of the following conditions: <ul style="list-style-type: none"> <li>they have permissions that include advising on P2P agreements; and</li> <li>their permission, so far as it relates to advising on P2P agreements, is not limited to activities carried on exclusively with or for professional clients</li> </ul> </li> </ul> <p>We propose to amend the rules about Enhanced firm categorisation to cover such firms.</p>
Firms with an annual revenue generated by regulated consumer credit lending of £100m or more calculated as a 3-year rolling average	None

Mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages outstanding	None
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The thresholds can be found in SYSC 23 Annex 1 of the legal instrument accompanying this CP.

**4.2** As we explained in PS18/14 and our updated [SM&CR CBA](#), some firms that we intended to be in scope of these criteria were not caught by our near-final rules. So, we propose to make some changes to bring these firms into scope of the criteria.

### ***Retail investment intermediaries who do not complete RMA-B***

**4.3** As we noted in PS18/14, our original intention was that all retail intermediaries would be assessed against the £35m three-year rolling average revenue criterion. Our analysis shows that approximately 40 firms that are not subject to other Enhanced criteria submit regulatory returns other than RMA-B.

**4.4** These are firms that do intermediation business but also undertake activities which bring them into a lower number regulated activity group in [SUP 16.12](#) of our Handbook. This replaces their RMA-B reporting obligation with another return – usually FSA002 or FSA030, depending on their permissions.

**4.5** The relevant activities fall under the following permissions:

- retail investment activities
- advising on P2P agreements (except when carried on exclusively with or for professional clients)
- advising on pensions transfers & opt-outs
- arranging (bringing about deals) in retail investments
- home finance mediation activity
- insurance mediation activity (non-investment insurance contracts)

**4.6** To resolve this, and ensure that the Enhanced regime applies fairly to all relevant firms, we propose to take a proportionate approach. Non-RMA-B firms with the relevant permissions will be required to annually self-assess and notify us if they have (as a three-year rolling average) over £35m in regulated revenue from the activities undertaken using the permissions above. This notification will be submitted by one of the methods set out in [SUP 15.7](#) of our Handbook. Firms may find this easiest to do via email, in line with SUP 15.7.9G.

**4.7** In line with the existing approach in the near-final rules that accompanied PS18/14, firms that notify us that they meet the Enhanced criterion will then have 1 year to implement the requirements of the Enhanced regime. Once a firm no longer meets this criterion, it must notify us of this, and the Enhanced regime will cease to apply from 1 year after the date of the notification.

## Notifying before the start of the SM&CR for solo-regulated firms

- 4.8** In order for firms to be categorised correctly at Commencement, we propose that this notification requirement will apply before Commencement.
- 4.9** We recognise that the diverse nature of the firms in the solo-regulated population means that many firms will have year-end accounting dates that may fall within the period before commencement of the new regime and therefore propose to take the following approach.
- 4.10** All firms will need to calculate whether they have over £35m in relevant revenue before 1 September 2019, and notify us in line with the approach above, if they do.
- 4.11** Firms that meet the revenue criterion on the basis of the calculation performed before this date will be treated as Enhanced from the start of the new regime on 9 December 2019. This means that they will need to submit the relevant conversion documentation for Enhanced firms, including a Form K to ensure that their functions are converted appropriately at commencement.
- 4.12** After 1 September 2019, the notification requirement will align to the post-commencement approach outlined in 4.6 to 4.7. This means that such firms will have a year to transition into the Enhanced regime and will complete the relevant additional applications as if the notification had been submitted after the start of the new regime.
- 4.13** This approach is designed to ensure that the conversion process is as easy as possible for firms. We do not expect that there will be many firms that will notify during the period set out in 4.12.

**Q2:** Do you agree with our proposed notification requirement for relevant intermediaries that do not submit RMA-B and our approach to the period before commencement? If not, please explain why.

## 5 Amendments to the Certification Regime

**5.1** In SYSC 27 of the legal instrument accompanying PS18/14, we defined a set of 8 Certification Functions. These are set out in the table below.

**Table 4: Certification Functions**

Certification Function	Description
Significant Management Function (APR CF29)	These individuals perform functions that would have been Significant Influence Functions under the APR.
Proprietary traders (also covered by APR CF29)	These important roles can seriously affect how the firm conducts its business.
CASS Oversight Function (APR CF10a)	
Functions subject to qualification requirements	This includes, for example, mortgage advisers, retail investment advisers and pension transfer specialists. The full list is set out in our Training and Competence Sourcebook.
The client dealing function	<p>This function has been expanded from the CF30 function under APR to apply to any person dealing with clients, including retail and professional clients and eligible counterparties. This will cover people who:</p> <ul style="list-style-type: none"> <li>advise on investments (other than a noninvestment insurance contract) and perform other related functions, such as dealing and arranging</li> <li>deal, as principal or agent, and arrange (bring about) deals in investments</li> <li>act in the capacity of an investment manager and all functions connected with this</li> <li>act as a bidder's representative</li> </ul>
Anyone who supervises or manages a Certified Function (directly or indirectly), but isn't a Senior Manager	This will ensure that people who supervise certified employees are held to the same standard of accountability. It also ensures a clear chain of accountability between junior certified employees and the Senior Manager ultimately responsible for that area. For example, if a firm employs a customerfacing financial adviser, every manager above them in the same chain of responsibility will have to be certified (until the Senior Manager approved under the SMR is reached).
Material Risk Takers	<p>The concept of Material Risk Takers (also known as Remuneration Code staff) already exists for firms under our remuneration rules (SYSC 19). They are a category of staff that all firms under AIFMD, UCITS, IFPRU and BIPRU are already required to identify under our remuneration regime.</p> <p>These firms need to consider all types of risk when identifying their Material Risk Takers. This includes prudential, operational, conduct and reputational risks. All of these Material Risk Takers will be covered by this certification function.</p>
Algorithmic trading	<p>This function includes people with responsibility for:</p> <ul style="list-style-type: none"> <li>approving the deployment of a trading algorithm or a material part of one</li> <li>approving the deployment of a material amendment to a trading algorithm or a material part of one, or the combination of trading algorithms</li> <li>monitoring or deciding whether the use or deployment of a trading algorithm is or remains compliant with the firm's obligations</li> </ul>

## Amending the scope of the Client Dealing Function

All firms should read this section

- 5.2** When introducing the Certification Regime, we broadened the scope of the Client Dealing Certification Function (the function) from the existing CF30 – Customer Function in the Approved Persons Regime (APR). The CF30 function covered advice and investment activity. This was broadened in the Certification Regime from a retail context to include individuals dealing with professional clients and eligible counterparties.
- 5.3** Following the publication of our Policy Statements (PS18/14 and PS18/15) on 4 July, we received a large volume of feedback requesting further clarity on whether the function applies to staff who interact with clients in purely administrative capacities. In most cases, the activities undertaken by these individuals are unlikely to harm consumer or other users of financial services. These individuals will be following a procedure with appropriate systems and controls in place to prevent them from causing significant harm.
- 5.4** Under the rules as drafted, many of these low-risk individuals would be caught because they are taking part in 'managing' or 'arranging'. We believe that requiring firms to certify such individuals is disproportionate (in terms of costs and administration) to the risks posed.
- 5.5** We propose to amend the scope of the Client Dealing Function. This would mean amending the rules to exclude an individual who has no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant skill. This will allow firms to exercise judgment on whether a role requires certification.
- 5.6** The relevant factors that firms would be required to consider in assessing individuals would include whether the role:
- is simple or largely automated
  - involves exercising discretion or judgment

### Client Dealing Function web update

- 5.7** We have published a web update explaining that until the rules clarifying the scope of the Client Dealing Function commences, the FCA will accept that some parts of the Client Dealing Function do not include employees who perform no more than administrative functions: Those parts are rows (1)(b), (2)(b), (3) and (4) of the table in our Handbook defining the activities falling into the Client Dealing Function. That table is found in rule 27.8.19 in chapter 27 of the Senior Management Arrangements, Systems and Controls Sourcebook (SYSC).
- 5.8** This will apply to banks' and insurers' current implementation of the certification regime. It will also be relevant to solo-regulated firms' preparations for the certification regime.

**Q3: Do you agree with our proposed amendments to the scope of the Client Dealing Function?**

## Clarifying the application of the Certification Regime to systems and controls roles

Core and Limited Scope FCA solo-regulated firms, small NDF insurers, small run-off firms and ISPVs should read this section

- 5.9** Under the Approved Persons Regime (APR) we had a number of functions requiring approval. One of these was the CF28 Systems and Controls Function. In most cases, roles previously included under the APR CF28 function will also be covered by the Material Risk Taker or Significant Management Certification Functions under SM&CR. Those individuals will already be in scope of the Certification Regime. Though there are situations where this may not be the case.
- 5.10** For example, under our proposals there will be situations in which a Senior Manager at a Core firm holds their Senior Management Function (SMF) and also performs a Systems and Controls role. In this situation, the individual may need to be Certified for the Systems and Controls part of their role if it differs significantly from their SMF role.
- 5.11** This change only affects firms where such individuals are not required to be approved as SMFs for the Systems and Controls roles. So, it only affects Core and Limited Scope firms (including branches) under the regime for solo-regulated firms, and small NDFs, small run-off firms and Insurance Special Purpose Vehicles (ISPVs) in the insurers regime. Therefore, for example, at an Enhanced firm the individual would need to hold the specific Systems and Controls SMF(s) applicable to their role and would not need to be Certified as well.
- 5.12** Adding this new guidance will ensure that firms assess the fitness and propriety of individuals performing these important roles.

**Q4:** **Do you agree with our proposal to introduce a new Certification Function to cover individuals in Systems & Controls functions at firms where these functions do not require approval? If not, please explain why.**

## 6 Other proposals

All firms should read this chapter

**6.1** This chapter sets out several more minor proposed amendments to the SM&CR.

**6.2** We propose to:

- extend the application of Senior Manager Conduct Rule 4 (SC4) to cover non-approved executive directors
- make a number of minor changes to regulatory forms
- amend Handbook text on the detailed application of functions to Limited Scope firms to align this with our SM&CR near-final rules for solo-regulated firms and final rules for insurers

### Applying SC4 to non-approved Executive Directors at Limited Scope firms

Limited Scope firms should read this section

**6.3** COCON 2 of our Handbook sets out 4 Senior Manager-specific Conduct Rules. These are set out below.

**Table 5: Senior Manager Conduct Rules**

Rule Reference	Senior Manager Conduct Rule
COCON 2.2.1R	SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
COCON 2.2.2R	SC2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
COCON 2.2.3R	SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
COCON 2.2.4R	SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

**6.4** In our near-final rules for the extension of the SM&CR to solo-regulated firms we confirmed our intention to apply Senior Manager Conduct Rule 4 (SC4) to all non-executive directors at UK Limited Scope firms. This is consistent across all types of firms in scope of the extended SM&CR.

**6.5** Executive Directors at Core and Enhanced firms are required to be approved as Senior Managers, so SC4 already applies to them. In the Limited Scope tier of the regime, which

includes sole traders, limited permission consumer credit firms and other similar less complex businesses, a narrower set of SMFs apply. In some cases, executive directors at these firms will not need to be approved as a Senior Manager. As the rules are currently drafted, SC4 applies to NEDs at these firms, but not the executive directors who are potentially more involved in the running of the business.

- 6.6** To ensure a consistent standard between Executive and Non-Executive Directors at these firms and ensure that we are notified of anything that we would reasonably expect notice, we propose to apply SC4 to all directors at UK Limited Scope firms. This change reinforces the importance of accountability among senior individuals, and will help ensure the effectiveness of the SM&CR and the reduction of harm to consumers, firms and market integrity.

**Q5: Do you agree with our proposal to extend the application of SC4 (from Senior Managers and all Non-Executive Directors) to all directors of UK Limited Scope firms? If not, please explain why.**

## Amendments to regulatory forms and our Handbook

All firms should read this chapter

- 6.7** We propose to make a number of smaller changes to the wording of our regulatory forms to ensure that they accurately reflect the rules in our Handbook.
- 6.8** Table 6 summarises our proposed changes.

**Table 6: Summary of proposed amendments to regulatory forms**

Form	Proposed change
Form H	Amendment of wording to clarify reporting requirements and the application of the form to Non-Executive Directors.
Form O Notification	Amendment of wording to provide further clarity on the submission of supporting documents.

**Q6: Do you have any comments on the proposed amendments to our regulatory forms?**

## Detailed application of functions to Limited Scope firms

- 6.9** We intend to make a change to SYSC 1 Annex 1 to ensure this section of the Handbook aligns with our near final rules, published in PS18/14 in July 2018. SYSC 4.4.1A R sets out which firms are subject to the rules and guidance in SYSC 4.4. We updated this in our near final rules for solo-regulated firms to refer to SM&CR categories, but did not update SYSC 1 Annex 1. To ensure that firms have clarity, we intend to update this section.
- 6.10** We have also clarified that while our Handbook theoretically allows for the application of the SMF16 – Compliance Oversight and SMF17 – MLRO functions to apply to Limited Scope General Insurance intermediaries, these functions are unlikely to apply in practice due to SYSC 1 Annex 1.

## Annex 1

### Questions in this paper

- Q1:** Do you agree with our proposal to exclude the Head of Legal from the requirement to be approved as a Senior Manager? If not, please explain why.
- Q2:** Do you agree with our proposed notification requirement for relevant intermediaries that do not submit RMA-B and our approach to the period before commencement? If not, please explain why.
- Q3:** Do you agree with our proposed amendments to the scope of the Client Dealing Function?
- Q4:** Do you agree with our proposal to introduce a new Certification Function to cover individuals in Systems & Controls functions at firms where these functions do not require approval? If not, please explain why.
- Q5:** Do you agree with our proposal to extend the application of SC4 (from Senior Managers and all Non-Executive Directors) to all directors of UK Limited Scope firms? If not, please explain why.
- Q6:** Do you have any comments on the proposed amendments to our regulatory forms?
- Q7:** Do you have any comments on the cost benefit analysis?
- Q8:** Do you agree that these proposals would not result in any direct discrimination against any of the protected groups? Please provide any additional feedback you believe is relevant.

## Annex 2

### SM&CR Policy Statements and Discussion Papers

Date	Ref	Title	Firms affected
Policy Statements			
<b>Dec 2015</b>	<a href="#"><u>PS15/31</u></a>	Final Rules on changes to the Approved Persons Regime for insurers not subject to Solvency II	Insurers
<b>Feb 2016</b>	<a href="#"><u>PS16/3</u></a>	Strengthening accountability in banking	Banking firms
<b>Feb 2016</b>	<a href="#"><u>PS16/5</u></a>	Strengthening accountability in banking and insurance: implementation of SM&CR and SIMR, and PRA requirements on regulatory references	Insurers
<b>March 2016</b>	<a href="#"><u>PS16/6</u></a>	Consequential Changes to the Senior Managers Regime	Banking firms
<b>Sept 2016</b>	<a href="#"><u>PS16/22</u></a>	Strengthening accountability in banking and insurance: regulatory references final rules	Banking firms Insurers
<b>May 2017</b>	<a href="#"><u>PS17/8</u></a>	Applying our conduct rules to non-executive directors in the banking and insurance sectors	Banking firms Insurers
<b>July 2018</b>	<a href="#"><u>PS18/14</u></a>	Extending the Senior Managers and Certification Regime to FCA firms – Feedback to CP17/25 and CP17/40, and near-final rules	Solo-regulated firms Banking firms
<b>July 2018</b>	<a href="#"><u>PS18/15</u></a>	Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules	Insurers
<b>July 2018</b>	<a href="#"><u>PS18/16</u></a>	The Duty of Responsibility for insurers and FCA solo-regulated firms	Insurers Solo-regulated firms

## Annex 3

# Cost benefit analysis

### Introduction

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1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This analysis presents estimates of the significant impacts of our proposals. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement.

### Problem and rationale for intervention

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3. In the final CBA that accompanied PS18/14 (Extending the Senior Managers and Certification Regime to FCA firms), we set out the market failures the regime addresses. Here we set out a summary of that analysis as the proposals in this CP aim to increase the effectiveness of the PS18/14 rules while, in some cases, reducing its costs, so the problem and rationale for intervention in the main are unchanged. We also provide a summary of the harm we seek to avoid with the regime.

### Description of harms

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4. The regime seeks to address the harm caused by misconduct and poor standards of behaviour occurring in financial services. The harm from this misconduct and poor behaviours in financial services will arise in a wide variety of ways.
5. There have been many conduct failings in recent years, following the financial crisis in 2008. LIBOR manipulation, FX rigging, and PPI represent 3 major incidents where misconduct has occurred in the market place to the detriment of customers. Furthermore, our experience tells us that these poor conduct practices aren't unique to any one sector of the firms we regulate.

## Drivers of harm

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6. There are 2 main market failures that the SM&CR looks to address in markets served by solo-regulated firms and insurers (the firms in scope of the rules in this CP):

- information asymmetry: firms have more information than their regulator(s) and firms' employees have more information than firms' owners (for example, shareholders)
- behavioural biases affecting employees

7. We briefly discuss these in turn.

### ***Information asymmetry***

8. A market can be affected by one of the above failures occurring in isolation or, as often happens, by a combination of failures. For example, a large degree of market power can interact with consumers' behavioural biases, such as reliance on rules of thumb or overconfidence, and asymmetric information.
9. Regulators make rules and supervise firms to make sure that the markets they regulate function well. However, they have incomplete information about the compliance of the firms they supervise. Information asymmetry between firms and regulators arises because it is impossible for regulators to monitor all the activities and outcomes in financial markets to detect misconduct.
10. Principal-agent problems also exist within financial services firms, such as those between managers and their staff or compliance officers and other employees. Employees within firms may also have more information about activities and outcomes within the firm than the firms' owners. This imperfect knowledge can be exploited by employees at the expense of firms, as well as consumers and markets. As firms can't monitor employees perfectly, they may be unable to punish employees for misconduct (e.g. if they have moved firms or if responsibility is not clear). This information asymmetry can lead to misconduct in markets.

### ***Behavioural biases affecting employees***

11. Organisational theorists suggest that cognitive, as well as informational, difficulties are pervasive in firms. There are a number of case studies of systematic flaws in firms' decision making.
12. Decision making can be hindered when the information flow within firms is biased towards positive outcomes or progress and therefore negative information may take longer to cascade, or indeed not be shared at all.
13. Peoples' decision making can be impaired by cognitive limitations, including errors due to lack of time. For example, people use 2 generic modes of cognitive function, corresponding roughly to intuition and reasoning. They rely on the quicker 'intuition' mode and may later confirm their assessment using the slower, controlled and rule-governed mode of 'reasoning'. While this might work well where decisions are simple or where both modes work together, the shortcomings of intuitive assessments can affect an employee's 'reasoning process', leading them to flawed decisions.
14. Evidence suggests that people believe that they are, on average, less biased in their judgement and behaviour than their peers. This has a detrimental effect on judgements and behaviours that rely on comparing one's own accuracy to that of

peers. The belief that a peer's judgement is biased may lead managers and other employees to be less likely to listen to useful advice from others.

15. More broadly, biases may not be accounted for in organisational structure or joint decision making, potentially leading to dramatic consequences. The FCA and PRA's joint report on HBOS highlights the lack of challenge at Board level as one of the reasons behind its failure. Also, in the FSA review of the RBS take-over of Fortis and ABN Amro, one former RBS Board member thought that there was an element of 'group-think' in the decision and that no Board member had ever expressed concerns about the deal.
16. When people assess their skill relative to their peers, they tend to overstate their abilities. Because they are more likely to attribute favourable outcomes to their own actions (but unfavourable outcomes to bad luck), executives are particularly prone to overconfidence and this can lead to instances of misconduct. For example, overconfidence might also lead to financial misreporting. This might initially be unintentional and may only reflect the over-optimism of the executives. However, overconfident executives are more likely to intentionally misreport if the firm's performance doesn't meet their (overly) optimistic expectations.

## Our package of interventions

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### Clarifying the application of the SM&CR to the Legal Function

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17. The SM&CR for banking firms, Solvency II and large NDF insurers, and Enhanced solo-regulated firms requires that a Senior Manager has 'Overall Responsibility' for each of the firm's activities, business areas and management functions. We propose to exclude the Legal Function from the Overall Responsibility Requirement. This is because including the legal function within the Overall Responsibility Requirement could limit the provision of full and frank legal advice to the firm.
18. We consider that our proposal to exclude the Head of Legal from the requirement to be approved as a Senior Manager will have a minimal incremental change to costs to industry, as some firms will not have included the function within the SMR, and for those firms that have, the removal of the requirement should result in a minor reduction in some associated costs (e.g. maintenance of the individual's Statement of Responsibilities).
19. Consequently, as we expect a small reduction in costs (and no new costs), we are therefore not required to provide a cost benefit analysis under FSMA.

### Amending the intermediary revenue criterion for the Enhanced regime

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20. We propose to implement a notification requirement to bring intermediaries with regulated revenue of more than £35m that do not complete RMA-B into scope of the Enhanced regime.
21. The additional requirements of the Enhanced regime are:
  - extra Senior Management Functions

- extra Prescribed Responsibilities
- the creation and maintenance of a Responsibilities Map
- the requirement for a Senior Manager to have Overall Responsibility for each of the firm's business areas
- Handover Procedures

**22.** Our proposals also require firms that meet the relevant criteria to undertake this calculation every year at their financial year end and notify us if they meet, or no longer meet, the three-year rolling average revenue calculation that would bring them into the Enhanced tier.

**23.** The criteria include:

- holding the relevant permissions for:
  - retail investment activities
  - advising on P2P agreements
  - advising on pension transfers and opt-outs
  - arranging (bringing about deals) in investments
  - home finance mediation activity
  - insurance mediation activity (non-investment insurance contracts)
- having regulated revenue of over £35m from the equivalent activities captured by RMA-B field 4E

## Costs

**24.** We have identified two sets of costs associated with this proposal:

- the incremental costs associated with the estimated 39 firms implementing the additional requirements of the Enhanced regime (applying to around firms)
- costs associated with all firms in scope undertaking the relevant calculation each year (around 140 firms we be required to do this)

### ***Costs of the additional requirements***

**25.** From analysis of our regulatory data we believe that, under our proposals in this CP, there are 39 regulated firms that would be brought into the Enhanced regime from the Core tier.

**26.** In the updated CBA we published alongside PS18/14, we estimated the average cost to firms of the elements of the enhanced regime. These costs were derived from a survey that we sent to firms. In their response to the survey firms indicated that they would incur a variety of costs, such as: changes to organisational structure, required adjustments (most commonly hiring, new staff), training costs, staff monitoring, staff time, IT changes, record keeping and other costs.

**27.** We use the average costs we presented in the CBA that accompanied PS18/14 to estimate the increase in costs for these firms. These costs are calculated averages and so are not the costs that each firm would incur (some firms would incur higher costs but others lower costs).

**Table 1: Costs of the additional requirements of the Enhanced regime**

	Average cost per firm <sup>2</sup>		Total costs	
	One-off	Ongoing	One-off	Ongoing, per year
Responsibilities maps	£5,480	420-880	£220,000	20,000-40,000
Allocation of overall responsibility	£3,710	140-450	£150,000	10,000-20,000
Handover Arrangements	£4,110	350-670	£160,000	10,000-30,000
Total	£13,310	910-2,000	£530,000	40,000-80,000

Note: The numbers presented in this table may not sum due to rounding.

### **Costs of undertaking the relevant calculations**

- 28.** We have used regulatory data to determine the number of firms affected by the requirement to undertake the relevant calculation every year. That is those firms that will need to check whether their revenue would meet the criteria. Our analysis indicates that around 140 firms would be in scope. This includes the 39 firms above that we believe currently have over £35m in relevant revenue as a three-year rolling average.
- 29.** We anticipate firms will incur costs in gathering, self-assessing and if they have more than £35m in qualifying revenue notifying us that they meet the enhanced criteria. We might expect that some firms will be easily able to calculate the relevant revenue but some other firms may incur more significant costs in doing so.
- 30.** To estimate the ongoing cost of the relevant calculation, we have reviewed previous FCA and FSA cost estimates for similar situations where firms are undertaking such calculations. In CP 11/08, the FSA consulted on changes to the reporting requirements in the Retail Mediation Activity return, which included similar revenue calculations amongst other things. We have used the cost reported by firms to calculate an upper bound estimate of the cost for our proposal. The proposals in CP11/08 were much wider ranging so we have excluded some costs that are unlikely to apply. Even so, we still expect we have overestimated the costs of these calculations. Accounting for inflation since previous estimates, we estimate one-off costs of £1,400 per firm. We also estimate of ongoing costs of £1,400 per firm per year.
- 31.** Over the 140 firms affected, we estimate total one-off costs of £190,000 and total ongoing costs to be around £200,000 per year.

### **Benefits**

- 32.** In Chapter 5 of the CBA that accompanied PS18/14, we set out the benefits of the SM&CR. This proposal will increase some of the benefits of the regime. Specifically, these proposals will drive the reduction of harm by:
- Driving up culture and standards through increased accountability at the senior level, as well as the Regime's effect on the likelihood of detecting and sanctioning misconduct more generally (see below)
  - Broadening scope for the FCA to take disciplinary action through Statements of Responsibilities and Responsibilities Maps, Prescribed Responsibilities, Overall Responsibility requirement and Conduct Rules

2 These averages are taken from the updated CBA we published alongside PS18/14

- Better decision making within firms through increased accountability and clarity about each individual's responsibilities
- Improved staff hiring processes and professionalism through regular fit and proper checks, conditional approvals, regulatory references, and reducing the number of approved people

**33.** In paragraph 5.5 of the CBA in PS18/14, we also explained that we did not attempt to estimate these benefits as it was not reasonably practicable to do so. This is because misconduct has specific effects depending on the rules breached and markets affected. Consequently, to assess the benefits of the Regime would require significant amounts of data from across financial services. Even if we collected such data, we could not use these data to fully assess the benefits from the Regime. This is because it would likely not cover all past misconduct. Misconduct is by its very nature hidden, until some of this misconduct is discovered. Assessing the change in the benefits of the regime as a result of the specific proposals in CP would be even more challenging and hence it is not reasonably practicable to do so.

**34.** Additionally, in section 7 of the CBA in PS18/14, we did a breakeven analysis by comparing the compliance costs with an estimate of illustrative harm. The analysis indicated that for solo-regulated firms a 9-17% reduction in the harm identified would lead to benefits that are larger than the compliance costs.

## Amendments to the Certification Regime

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**35.** In this CP, we propose two clarificatory changes to the Certification Regime. Our assessment of the costs and benefits is set out below.

### Amending the scope of the Client Dealing Function

**36.** In Chapter 5, we proposed to amend the definition of the Client Dealing Function to exclude an individual who has no scope to choose, decide or reach a judgement on what should be done in each situation, and whose tasks do not require them to exercise significant skill.

### Costs

**37.** Amending the scope of this Certification Function will reduce the number of individuals that firms will need to certify and therefore reduce the costs of running certification processes. It is not reasonably practicable to estimate the associated cost reduction as this is heavily dependent on firms' business models and assessments of which of their staff meet the relevant definitions under the function. We expect there might be some small one off costs from identifying the individuals to be excluded but we think these costs will be of minimal significance. These costs will be outweighed by the lower costs of the certification process.

### Benefits

**38.** We do not believe that amending the scope of the Client Dealing Function to exclude these individuals will have a material impact on the benefits of the Certification Regime we outlined in our CBAs for the banking SM&CR and the extension to insurers and solo-regulated firms. This is because these individuals will remain subject to the Conduct Rules and perform roles that are limited in function, required judgment and skills.

## Clarifying the application of the Certification Regime to systems and controls roles

- 39.** We proposed to add further guidance confirming that individuals performing systems and controls functions at Limited Scope and Core firms should be certified.
- 40.** This proposal should not incur any costs to firms as this guidance merely enhances the clarity of the Significant Management Function definition and does not bring additional individuals into scope of the function. We are therefore not required to provide under FSMA a cost benefit analysis. We note that even if this leads to firms incurring some additional costs these would have been included in the CBA in PS18/14. This is because we asked for firms to provide the cost of applying a more onerous regime for Limited Scope and Core firms, including having many more senior managers (including systems and controls).

## Other proposals

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- 41.** Our other proposals in this CP relate to minor wording and formatting changes to regulatory forms, and the extension of Senior Manager Conduct Rule 4 (SC4) to non-approved executive directors at Limited Scope firms.
- 42.** We believe that the changes to regulatory forms do not lead to any material costs to industry. Changes to FCA systems have already been accounted for in the FCA costs detailed in paragraphs 3.73 to 3.79 of the CBA accompanying our Policy Statements on the extension of the regime to insurers and solo-regulated firms.<sup>3</sup> We are therefore not required to provide a cost benefit analysis.
- 43.** In Chapter 6, we also set out our intention to clarify the application of functions to Limited Scope firms in order to adjust this section to match the near-final rules set out in PS18/14. Our original CBA assumed that these firms had the applicable functions and the cost was therefore captured in that CBA.
- 44.** The Senior Manager Conduct Rules are additional Conduct Rules that apply to all Senior Managers. SC4 also applies to non-approved Non-Executive Directors (NEDs) and requires Senior Managers and non-approved NEDs to disclose to the FCA anything of which we would expect notice. We propose that SC4 rules are applied to non-approved executive directors. We believe that there are minimal incremental costs involved in extending the application of SC4 to non-approved executive directors. This is because the obligation to notify the FCA of anything of which we require notice already applies to the firm itself under Principle 11. Additionally, we would not expect many additional notifications from NEDs as a result of this requirement and the cost of each notification will be negligible (i.e. the cost of producing and sending an email or making a telephone call). We are therefore not required to provide a cost benefit analysis.

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3 [www.fca.org.uk/publication/research/cost-benefit-analysis.pdf](http://www.fca.org.uk/publication/research/cost-benefit-analysis.pdf)

## Familiarisation costs

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- 45.** As part of the CBA in PS18/14 we asked firms to assess the costs of the regime in a survey. As part of this survey, we provided detailed information about the regime. We therefore believe that firms will have factored familiarisation costs into their costs estimates, including becoming familiar with the quite small amendments we present here. Indeed, we might expect that most firms who are implementing the regime in 2019 will take the proposals here into account with the more significant changes they need to make under the regime. However, it is possible that firms will incur additional costs in becoming familiar with the requirements on extending the scope of the Enhanced Regime and for firms already applying the certification scheme and who will need to understand changes to the scope of the client dealing function.
- 46.** We use standard assumptions to estimate these costs. We anticipate that there will be approximately 2 pages in this Consultation Paper for the enhanced regime extension and 1 page for the clarification that firms will need to familiarise themselves with the scope of the client dealing function in this Consultation Paper. We assume that there are 300 words per page and a reading speed of 100 words per minute. It is further assumed that 20 compliance staff at large firms, 5 compliance staff at medium firms, and 2 compliance staff at small firms read the document. Finally, the hourly compliance staff salary is assumed to be £57 at the larger firm, £61 at medium firms, and £44 at small firms, including overheads.
- 47.** We also estimate the cost for firms of conducting a legal review of these proposals given they are a new requirement. There are around 10 pages of legal instrument to review for the intermediary revenue calculation and around 1 page for amending the scope of the Client Dealing Function. It is assumed that 2 legal staff at the three largest firms in the RTO sector and 1 member of legal staff at small firms will review the legal instrument associated with the implementation of the price cap. It is further assumed that each legal staff member can review 50 pages of legal text per day. Finally, using data on salaries from the Willis Towers Watson UK Financial Services survey the hourly legal staff salary is assumed to be £67 at large firms and medium firms and £53 at small firms, including 30% overheads.
- 48.** Using these assumptions, we expect total one-off industry-wide costs of approximately £90,000.

**Q7: Do you have any comments on the cost benefit analysis?**

## Annex 4

# Compatibility statement

### Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation. It includes an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its 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 the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. See 2.9 to 2.11 for an assessment of the equality and diversity implications of these proposals.
5. We have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties and this Annex explains how we have done this.
6. The FCA, under the Legislative and Regulatory Reform Act 2006 (LRRRA) is required to consider a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### The FCA's objectives and regulatory principles: Compatibility statement

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7. The proposals set out in this consultation support the move to the Senior Managers & Certification Regime and will advance our operational objective of securing an appropriate degree of protection for consumers and ensuring market integrity.

8. They are also relevant to our strategic objective of ensuring that relevant markets function well. They will help clarify the lines of responsibility at the top of firms and help regulators hold people in such firms to account. This will, over time, reduce harm and instil a culture of personal accountability across financial services. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s. 1F FSMA.
9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

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

10. Our proposals are designed to be as proportionate as possible and ensure that firms have clarity of our expectations. We have proposed the notification process set out in Chapter 4, rather than a new regulatory reporting requirement, to minimise the burden on firms.

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

11. The CBA in Annex 3 sets out the costs and benefits for the proposals in this CP. We believe that the benefits of these proposals outweigh the costs.

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

12. These proposals support the Senior Managers & Certification Regime, which is intended to have a positive impact on firms' behaviour and culture, creating greater sustainability of any market growth.

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

13. The proposals optimise the Senior Managers & Certification Regime. Consumers do not have any influence over this.

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

14. One of the main objectives of Senior Managers & Certification Regime is to make sure that Senior Managers understand their responsibilities and can be held to account for the performance of those responsibilities. These proposals optimise several areas of the regime and therefore support the move to increased senior management responsibility.

#### **The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

15. We believe our proposals do not undermine this principle and in tailoring them to different firm types we believe that we have recognised the variety of firms affected.

#### **The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**

16. Our proposals on non-approved individuals performing Systems & Controls functions will support the publication of information on Directory persons, as consulted on in CP18/19.

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

17. We continue to engage with industry and other stakeholders to obtain feedback during the consultation process. The proposals on the legal function aim to ensure the clarity and transparency of policy in this area.

#### **Duty to have regard to the importance of taking action intended to minimise the extent to which business may be used for financial crime**

18. The proposals in this CP are not directly relevant to the minimisation of financial crime, but support the effective implementation of the wider SM&CR. The near-final rules published in PS18/14 addressed the risk of financial crime by transitioning the existing CF 11-MLRO function to the new SMF17-MLRO.

### **Expected effect on mutual societies**

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19. We do not think that our proposals will affect mutual societies more than other firms.

### **Compatibility with the duty to promote effective competition in the interests of consumers**

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20. The proposals in this CP do not directly impact on competition in the interests of consumers.

### **Equality and diversity**

---

21. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
22. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.9 of this CP.

## Legislative and Regulatory Reform Act 2006 (LRR)

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23. We have considered the principles in the LRR for the proposals that consist of general policies, principles or guidance and think that they will help firms understand and meet the regulatory requirements associated with the SM&CR more easily, leading to better outcomes for consumers and market integrity. We also believe the proposals are proportionate and take account of the variety of firms covered.
24. We have had considered the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and believe that the proposals are proportionate and do not create an unnecessary burden on firms, or adversely affect competition.

## Treasury recommendations about economic policy

---

25. These are the most relevant Treasury recommendations to our proposals:
- the government's economic policy – "continuing to strengthen the financial system, improving the regulatory framework to reduce risks to the taxpayer and building resilience, so that it can provide finance and financial services to the real economy and realise better outcomes for consumers, supporting sustainable economic growth and encouraging productive investment."
  - aspects of the government's economic policy that relate to Growth, Better outcome for consumers and Competition.
26. One of our main aims is to make sure that Senior Managers are clear about their responsibilities and are held accountable for their performance of these responsibilities. There are also specific conduct standards that will apply to Senior Managers and financial services staff. Our proposals aim to raise conduct standards and improve culture, with a positive impact on the financial system overall.
27. We believe that our proposals do not undermine the Treasury's Competition recommendations. We have looked at the risk of weakening competitive pressure, putting smaller firms and potential new entrants at a disadvantage and specifically tailored our proposals to reflect how business models differ between firms.

**Q8: Do you agree that these proposals would not result in any direct discrimination against any of the protected groups? Please provide any additional feedback you believe is relevant.**

## Annex 5

### Abbreviations used in this paper

<b>AIFMD</b>	Alternative Investment Fund Managers Directive
<b>APR</b>	Approved Persons Regime
<b>AUM</b>	Assets Under Management
<b>BIPRU</b>	Prudential sourcebook for Banks, Building Societies and Investment Firms (Handbook)
<b>CASS</b>	Client Assets Sourcebook (Handbook)
<b>CBA</b>	Cost Benefit Analysis
<b>CEO</b>	Chief Executive Officer
<b>CF</b>	Controlled Function
<b>COCON</b>	Conduct Rules (Handbook)
<b>CP</b>	Consultation Paper
<b>CRD</b>	Capital Requirements Directive
<b>DP</b>	Discussion Paper
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>F&amp;P</b>	Fitness & Propriety
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>IFPRU</b>	Prudential Sourcebook for Investment Firms (Handbook)
<b>ISPV</b>	Insurance Special Purpose Vehicle
<b>LRRA</b>	Legislative and Regulatory Reform Act 2006
<b>MiFID</b>	Markets in Financial Instruments Directive

<b>MRT</b>	Material Risk Taker
<b>NDF</b>	Non-Directive Firm
<b>PCBS</b>	Parliamentary Commission on Banking Standards
<b>PR</b>	Prescribed Responsibility
<b>PS</b>	Policy Statement
<b>PRA</b>	Prudential Regulation Authority
<b>RMA-B</b>	Section B of the Retail Mediation Activities Return
<b>RMAR</b>	Retail Mediation Activities Return
<b>SIF</b>	Significant Influence Function
<b>SM&amp;CR</b>	Senior Managers & Certification Regime
<b>SMF</b>	Senior Management Function
<b>SMR</b>	Senior Managers Regime
<b>SUP</b>	Supervision Manual (Handbook)
<b>SRA</b>	Solicitors Regulatory Authority
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls (Handbook)
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities
<b>UK</b>	United Kingdom

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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.

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

# Appendix 1

## Draft Handbook text

**INDIVIDUAL ACCOUNTABILITY (AMENDMENT) (No 1) INSTRUMENT 2019****Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
  - (3) section 60 (Applications for approval);
  - (4) section 60A (Vetting candidates by authorised persons);
  - (5) section 61 (Determination of applications);
  - (6) section 62A (Changes to responsibilities of senior managers);
  - (7) section 63E (Certification of employees by authorised persons);
  - (8) section 63F (Issuing of certificates);
  - (9) section 64A (Rules of conduct);
  - (10) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
  - (11) section 137A (The FCA’s general rules);
  - (12) section 137T (General supplementary powers);
  - (13) section 139A (Power of the FCA to give guidance); and
  - (14) regulations 4 and 5 of the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018.
- 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 [a date soon after making] 2019 except as follows:

Annex	Date comes into force
Part 2 of Annex E	[10 June] 2019
Part 1 of Annex F	[10 June] 2019
Annex A	9 December 2019
Part 2 of Annex B	9 December 2019
Part 2 of Annex C	9 December 2019
Part 3 of Annex E	9 December 2019
Part 2 of Annex F	9 December 2019

## Amendments to the Handbook

- D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraphs E, F and G of this instrument.
- E. (1) Amendments to the numbering and location of provisions in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) are set out in the table in Annex A.
- (2) Except as further amended by paragraphs F and G of this instrument, the provisions in column A of the table in Annex A remain in full force and effect.
- F. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below (as amended, where applicable, by paragraph E of this instrument) are amended or, as the case may be, further amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Code of Conduct (COCON)	Annex D
Supervision manual (SUP)	Annex E

- G. In each case in which one of the Annexes listed in column (2) of the table in paragraph F of this instrument says that the module of the FCA’s Handbook of rules and guidance to which that Annex relates is amended by replacing a form in that module as set out in Annex F of this instrument, that module is amended accordingly.

## Notes

- H. In this instrument, notes shown as “*Editor’s note*” are intended for the convenience of the reader and do not form part of the legislative text.

## Citation

- I. This instrument may be cited as the Individual Accountability (Amendment) (No 1) Instrument 2019.

By order of the Board  
[Date] 2019

*[Editor's note:*

- (1) The amendments in this draft instrument are prepared as if the near-final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 (the solo-regulated firms instrument) included in Policy Statement PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) were made and in force.
- (2) The text of the solo-regulated firms instrument was based on a version of the Individual Accountability (Dual-Regulated Firms) Instrument 2018 that was slightly different from the version that was eventually made. We have not marked up the changes needed to bring the solo-regulated firms instrument into line with the Handbook as currently in force.
- (3) The text in this draft instrument takes no account of the amendments proposed in CP18/26 (Claims management companies: applying the Senior Managers and Certification Regime to claims management companies), CP18/28 (Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation), CP18/29 (Temporary permissions regime for inbound firms and funds), CP18/36 (Brexit: Proposed changes to the Handbook and Binding Technical Standards – second consultation) or CP19/2 (Brexit and contractual continuity).]

## Annex A

**Renumbering in the Senior Management Arrangements, Systems and Controls  
sourcebook (SYSC)**

<b>Renumbering in SYSC</b>	
<b>(A) Old numbering</b>	<b>(B) New numbering</b>
22.3.5G(1)	22.4.6G(-1)
22.3.5G(2)	22.4.7G
22.3.6G	22.4.8G
22.4.3	22.4.6G(1) to (3)
22.5.12G(1)	22.8.10G(2)
22.5.12G(2)	22.8.10G(1)
22.7.1R	22.8A.1R
22.7.2G	22.8A.2G
22.7.8G	22.8A.3G
22.8.7G	22.8A.4G
22.8.8G	22.8A.5G
22.8.9G	22.8A.6G

## Annex B

### Amendments to the Glossary of definitions

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

#### Part 1: Comes into force [a date soon after making] 2019

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

*SMCR legal function* (in relation to an *SMCR firm*) has the meaning in SYSC 26.4.10R to SYSC 26.4.11R.

Amend the following definition as shown.

*senior conduct rules staff member* (in *COCON*) a person who:

...

(d) ~~is a non-executive director who~~ comes within row (8) of the table in *COCON* 1.1.2R (a *board director* of a *UK SMCR firm*).

#### Part 2: Comes into force 9 December 2019

Delete the following definition. The text is not shown struck through.

*EEA core SMCR firm* a *core SMCR firm* that is an *incoming EEA firm* or *incoming Treaty firm*.

## Annex C

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

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

### Part 1: Comes into force [a date soon after making] 2019

Amend the following as shown.

#### 4 General organisational requirements

...

#### 4.4 Apportionment of responsibilities

...

*Editor's note:* Some of the changes to SYSC 4.4.6G shown here were also included in the near-final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018. They are included here as we are proposing that these changes should be made earlier.

#### 4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
1	Does an individual to whom a function is allocated under SYSC 4.4.5R need to be an <i>approved person</i> <del>or a certification employee?</del>	<p>An individual to whom a function is allocated under SYSC 4.4.5R will be performing the <i>apportionment and oversight function</i> (CF 8, see SUP 10A.7.1R) and an application must be made under section 59 of the <i>Act</i> for approval of the individual before the function is performed. There are exceptions from this in SUP 10A.1 (Approved persons - Application).</p> <p><del>The <i>apportionment and oversight function</i> does not apply to a relevant authorised person. However, a person performing the role in SYSC 4.4.5R will fall into the certification regime in SYSC 27 (Certification Regime), unless the person performing it is an approved person. A person performing the role in SYSC 4.4.5R may be an approved person</del></p>

		because of another role that they perform (such as being an executive <i>director</i> ).
...	...	...
3	What is meant by “appropriately allocate” in this context?	The allocation of functions should be compatible with delivering compliance with <i>Principle 3</i> , SYSC 4.4.3R and SYSC 4.1.1R. The <del>appropriate regulator</del> <u>FCA</u> considers that allocation to one or two individuals is likely to be appropriate for most <i>firms</i> .
...	...	...
7	If a <i>firm</i> has an individual as <i>chief executive</i> , must the functions be allocated to that individual?	... If the <i>firm</i> chooses to allocate the functions to a <i>director</i> or <i>senior manager</i> responsible for the overall management of a relevant <i>group</i> division, the <del>FSA</del> <u>FCA</u> would expect that individual to be of a seniority equivalent to or greater than a <i>chief executive</i> of the <i>firm</i> for the allocation to be appropriate. See also Question 14.
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> or <i>UCITS qualifier</i> ?	The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5R, but: ... <del>The apportionment and oversight function applies to such a firm, unless it falls within a particular exception from the approved persons regime (see Question 1).</del>
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<del>SYSC 1 Annex 1.1.1R(2) and SYSC 1 Annex 1.1.8R restrict the application of SYSC 4.4.5R for such a firm. Accordingly:</del> ... (2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 4.4.5R(2). However, the systems and controls that must be overseen are those relating to

		<p>matters which the <del>appropriate regulator</del> <u>FCA</u>, as <i>Host State regulator</i>, is entitled to regulate (there is <i>guidance</i> on this in SUP 13A Annex 2). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</p> <p>...</p>
13	What about a <i>firm</i> that is a <i>partnership</i> or a <i>limited liability partnership</i> ?	<p>The <del>appropriate regulator</del> <u>FCA</u> envisages that most if not all <i>partners</i> or <i>senior managers</i>, but this will depend on the constitution of the <i>partnership</i> (particularly in the case of a <i>limited partnership</i>) or <i>limited liability partnership</i>. A <i>partnership</i> or <i>limited liability partnership</i> may also have a <i>chief executive</i> (see Question 5). A <i>limited liability partnership</i> is a <i>body corporate</i> and, if a member of a <i>group</i>, will fall within SYSC 4.4.5R, row (1) or (2).</p>
...	...	...

...

## 22 Regulatory references

...

### 22.8 ~~Additional rules and guidance for all firms~~ Policies and appointed representatives

Policies and procedures

...

22.8.2 G (1) SYSC 22.8.1R does not require a *firm* to create or keep records that are not required under SYSC 22.9.1R (General record keeping rules) or another *rule*.

(2) (1) applies to a *firm* whether or not SYSC 22.9.1R applies to it.

Appointed representatives

- 22.8.3 R ...
- 22.8.4 R When SYSC 22.8.3R applies to an *SMCR firm*, the requirements of this chapter for *firms* that are not *SMCR firms* apply in place of the requirements that only apply to *SMCR firms*. In particular, the following requirements do not apply in relation to an *appointed representative*:
- (1) SYSC 22.2.1R (Obligation to obtain references);
  - (2) SYSC 22.2.2R(4);
  - (3) SYSC 22.2.4R to SYSC 22.2.6R (Obligation to revise references);
  - (4) SYSC 22.4.2R (How to draft the reference);
  - (5) SYSC 22.7.1R (Intra-group transfers); and
  - (6) SYSC 22.9.1R (General record keeping rules).
- 22.8.4A R (1) The *approved person's authorised approved person employer* is responsible for compliance with SYSC 22.8.3R in the case of a requirement:
- (a) to give a reference about an *approved person* whose approval is under SUP 10A.1.15R to SUP 10A.1.16BR (Appointed representatives); and
  - (b) ~~to update any such reference; and~~ [deleted]
- ...
- ...
- ...
- 22.8.6 G (1) ...
- (2) ...
- (3) The *appointed representative* need not give the reference using the template in SYSC 22 Annex 1 (Template for regulatory references given by SMCR firms and disclosure requirements).
- 22.8.6A G If an *appointed representative* asks a *firm* for a reference, the *firm* should give one. The requirements of this chapter apply to the *firm* in the same way as they would if the *appointed representative* were a *firm* (except that the rules listed in SYSC 22.8.4R do not apply).
- ...

## 23 Senior managers and certification regime: Introduction and classification

...

## 23 Annex 1 Definition of SMCR firm and different types of SMCR firms

...

Part Three: Definition of exempt firm

...

3.4 R ...

3.5 R An incoming ECA provider acting as such is an exempt firm.

*Editor's note:* The near-final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 also added some additional material to Part Three of SYSC 23 Annex 1. When the instrument is made that material will be renumbered to take into account the material added in this draft instrument.

...

## 24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

### 24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

...

What the FCA-prescribed senior management responsibilities are

24.2.5 R ...

24.2.6 R Table: FCA-prescribed senior management responsibilities

FCA-prescribed senior management responsibility	Explanation	Reference letter
(1) Responsibility for the firm's performance of its obligations under the senior managers regime	<p>...</p> <p>This responsibility includes:</p> <p>...</p> <p>(4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory</p>	(a)

	references) (and the corresponding <i>PRA requirements</i> ) so far as they relate to the senior managers regime, including the giving of references to another <i>firm</i> about an <i>SMF manager</i> or former <i>SMF manager</i> .	
(2) Responsibility for the <i>firm's</i> performance of its obligations under the <del>employee</del> certification regime	<p>The <del>employee</del> 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>...</p> <p>(2) the requirements in <i>SYSC 22</i> (Regulatory references) so far as they relate to the <del>employee</del> certification regime, including the giving of references to another <i>firm</i> about a <i>certification employee</i> or former <i>certification employee</i>; and</p> <p>...</p>	...
...	...	...

...

## 25 Senior managers and certification regime: Management responsibilities maps and handover procedures and material

...

**25 Examples of the business activities and functions of an SMCR firm**  
**Annex**  
**1G**

Business areas and management functions	Explanation
...	...
(32) Internal operations	
(33) <i>The firm's legal department</i>	
...	

...

**26 Senior managers and certification regime: Overall and local responsibility**

...

**26.4 Exclusions**

...

**26.4.8 G ...**

*Editor's note:* The near-final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 also added some additional material to SYSC 26.4. When the instrument is made that material will be renumbered to take into account the material added in this draft instrument.

Exclusion of the legal function

26.4.9     R     (1)     SYSC 26.3 (Main rules) applies to the SMCR legal function as modified by (2).

(2)     A firm may allocate local or overall responsibility for the SMCR legal function to someone who is not an SMF manager.

26.4.10     R     (1)     The SMCR legal function of a firm means an activity of the firm that consists of one or more of the following:

- (a) the provision of legal advice or assistance to the *firm* or any member of its *group* in connection with the application of the law or with any form of resolution of legal disputes;
  - (b) the provision of representation for the *firm* or any member of its *group* in connection with any matter concerning the application of the law or any form of resolution of legal disputes;
  - (c) a reserved legal activity as defined in section 12 of the Legal Services Act 2007 (Meaning of “reserved legal activity” and “legal activity”) when carried out for the *firm* or any member of its *group*; or
  - (d) any of the activities set out in section 32(1) of the Solicitors (Scotland) Act 1980 (Offence for unqualified persons to prepare certain documents) when carried out for the *firm* or any member of its *group*.
- (2) For the purposes of the definition of the *SMCR legal function*, legal dispute includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any *person's* legal rights or liabilities.
- 26.4.11     R     (1) If a *firm* allocates the functions in (2) to the same *person* as the one to whom it allocates responsibility for activities in SYSC 26.4.10R, the functions in (2) also form part of the *SMCR legal function*. As a result the exclusion in SYSC 26.4.9R(2) also applies.
- (2) A function is covered by this *rule* to the extent that it directly supports the activities in SYSC 26.4.10R.
- 26.4.12     G     (1) The purpose of SYSC 26.4.11R is to treat support services for the legal function as part of the legal function where responsibility for the support services is allocated to the head of the legal function.
- (2) A support service is one that is directly related, but subordinate, to the legal services described in SYSC 26.4.10R. It should be necessary for the successful or better functioning of the main legal services and be an integral part of them.
- (3) One example of a support service is human resources services for the legal staff. This includes recruitment, training, continuing professional development, appraisal and discipline.
- (4) The effect of SYSC 26.4.11R is that if the head of the legal department has overall responsibility for human resources services for the staff of the legal department, those services are covered by the exclusion in SYSC 26.4.9R(2). However, they are not excluded if



...

**27.7 Specification of functions**

...

27.7.4 G ...

Overlap with designated senior management functions

- 27.7.5 G (1) SYSC 27.7.1R(1) means that an FCA-designated senior management function cannot also be an FCA certification function at the same time.
- (2) So an SMF manager performing an activity that forms part of their FCA-designated senior management function is not, by performing that activity, also performing an FCA certification function.
- (3) But if an FCA-designated senior management function does not apply to a firm, performing the function described in the definition of that FCA-designated senior management function can be an FCA certification function.

**27.8 Definitions of the FCA certification functions**

...

Significant management function

...

- 27.8.7 G A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can be an internal support department that has no contact with people outside the *firm*. It may include, for example, human resources, the legal department, operations or information technology.

...

Client-dealing function

...

27.8.23 R ...

- 27.8.23 R (1) This rule qualifies rows (3) and (4) of the table in SYSC 27.8.19R (Table: Activities covered by the client-dealing FCA certification function).
- A

- (2) A person does not perform a function in (1) if their only activities that would otherwise come within the client-dealing FCA certification function do not require them to exercise a significant amount of discretion, judgment or technical skill.

- 27.8.23B G (1) The client-dealing FCA certification function does not apply to purely administrative roles even though they involve customer contact.
- (2) SYSC 27.8.23AR excludes someone who has no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant technical skill.
- (3) SYSC 27.8.23AR is likely to exclude a role that is simple or largely automated.
- (4) There is no need to apply SYSC 27.8.23AR to row (1)(b) or (2)(b) of the table in SYSC 27.8.19R, because a person must also be carrying out the functions in row (1)(a) or (2)(a) for the client-dealing FCA certification function to apply and the functions in row (1)(a) or (2)(a) require judgment and skill.

...

## **27.9      Material relating to several FCA certification functions**

### Legal function

- 27.9.1 G A person performing the function described in SYSC 26.4.9R (head of the legal function) will perform the significant management or the material risk taker FCA certification function, or both.

...

## **TP 7      Bank of England and Financial Services Act 2016: Certification and regulatory references**

### **7.1      Application, purpose and definitions**

...

*Editor's note:* The changes shown to SYSC TP 7 7.1.6R were also included in the near-final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018. They are included here as we are proposing that these changes should be made earlier.

- 7.1.6 R Table: glossary of bespoke terms used in SYSC TP 7

## **Part One: General**

Defined term	Meaning
<b>SMCR insurance firm</b>	...
<b><u>insurance firms commencement SI</u></b>	<u>the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018 (SI 2018/990)</u>

Part Two: Dates	
Defined term	Meaning
...	
<b><u>insurance firms commencement SI</u></b>	<u>the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018 (SI 2018/990)</u>

## 7.2 Certification: The certification transitional period

...

### 7.2.4 G Table: How the certification regime applies in the certification transitional period

Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
...	...	...
<i>SYSC 27.8</i>	Definitions of the FCA certification functions	...
<u><i>SYSC 27.9</i></u>	<u>Material relating to several FCA certification functions</u>	
...	...	...

...

**Part 2: Comes into force 9 December 2019**

Amend the following as shown.

**1 Application and purpose**

...

**1 Annex Detailed application of SYSC  
1**

...

**3.3A R**

...

**Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms**

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
<b>SYSC 4</b>		
...		
SYSC 4.4.1AR	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>
SYSC 4.4.2G	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>
SYSC 4.4.3R	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>
SYSC 4.4.5R	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>

SYSC 4.4.6G	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>	<del>Not applicable</del> <u>As specified in SYSC 4.4.1AR</u>
-------------	---	---

...

#### 4 General organisational requirements

...

#### 4.4 Apportionment of responsibilities

Application

4.4.1A R (-2) This section applies to:

- (a) *a limited scope SMCR firm (other than a firm in SUP 10C Annex 1 7.10R (Table: Limited scope SMCR firms to which no controlled functions apply)); and*
- (b) ...

...

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas SMCR firm</i> which is not an <del><i>incoming EEA firm, incoming Treaty firm or UCITS qualifier EEA SMCR firm</i></del> ?	<p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5R, but:</p> <p>(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a <i>UK</i> establishment with certain exceptions (see SYSC 1 Annex <del>1.1.8R</del> <u>1 2.15R</u>). <del>Note that SYSC 1 Annex 1.1.10R does not extend the territorial scope of SYSC 4.4 for an overseas firm.</del></p> <p>(2) ...</p> <p><u>(3) SYSC 4.4 does not apply to such a firm if it does not have a branch in the United Kingdom.</u></p>

12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <del>incoming EEA firm or incoming Treaty firm</del> <u>EEA SMCR firm</u> ?	...  (4) <del>An incoming EEA firm SYSC 4.4 does not apply to an EEA SMCR firm which has provision only for cross border services is not required to allocate either function if it does not carry on regulated activities in the United Kingdom; for example if they fall within the overseas persons exclusions in article 72 of the Regulated Activities Order.</del>  ...
...	...	...
15	What about <i>incoming electronic commerce activities</i> carried on from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> ?	<del>SYSC does not apply to an</del> <u>An incoming ECA provider acting as such is not an SMCR firm.</u>

...

## 22 Regulatory references

### 22.1 Application

#### General application

...

- 22.1.1A G (1) ~~Despite SYSC 22.1.1R, this chapter distinguishes between SMCR firms and other firms to which this chapter applies. The reason for this is SYSC 22.8.4R, which imposes some requirements on SMCR firms in relation to appointed representatives but fewer than it applies to SMCR firms themselves.~~
- (2) ~~Therefore when this chapter refers to a person to which the requirements of this chapter apply as an employer (current, past or future) but who is not an SMCR firm, it is referring to an appointed~~

~~representative. However it refers to an appointed representative on the basis that the requirements of this chapter only apply to it indirectly, through the SMCR firm that is its principal. [deleted]~~

...

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

Obligation to obtain references (~~applicable to SMCR firms~~)

22.2.1 R (1) If ~~an SMCR a~~ firm (A) is considering:

...

...

...

Obligation to give references

22.2.2 R ...

(4) ~~Where B is an SMCR firm:~~

(a) B must in addition disclose the information in questions (A) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements); ~~and~~ .

(b) ~~B must disclose the information in (a) whether or not A is an SMCR firm.~~

...

...

Obligation to revise references: The main rule (~~applicable to SMCR firms~~)

22.2.4 R If at any time:

(1) ~~an SMCR a~~ firm (B) has given a reference under SYSC 22.2.2R to another firm (A) about an *employee* or *ex-employee* of B (P);

...

...

Obligation to revise references: Finding out who the current employer is (~~all firms~~)

22.2.7 R If at any time:

- (1) ~~an SMCR a firm~~ (B) has given a reference under SYSC 22.2.2R to another firm (A) about an employee or ex-employee of B (P);

...

...

## 22.3 ~~Drafting the reference and the request for a reference~~

~~How to draft the reference~~

- 22.3.1 G ~~There are no requirements about the form in which a firm that is not an SMCR firm should give a reference. [deleted]~~

- 22.3.2 G ~~SYSC 22.4 has requirements about the form in which an SMCR firm should give a reference. [deleted]~~

~~How to draft the request for a reference~~

...

~~Inclusion of additional material~~

- 22.3.5 G (1) ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(-1)]
- (2) ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.4.7G]
- 22.3.6 G ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.4.8G]

## 22.4 ~~Drafting the reference: detailed requirements for SMCR firms~~

~~Purpose of SYSC 22 Annex 1R~~

- 22.4.1 G SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) has two purposes:
- (1) to set out what information ~~an SMCR a firm~~ should disclose under SYSC 22.2.2R(4); and
- (2) to provide a template that ~~an SMCR a firm~~ should use when giving a reference under this chapter.

~~How to draft the reference~~

- 22.4.2 R (1) ~~An SMCR A firm~~ must use the template in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms

and disclosure requirements) when giving a reference under this chapter to another *firm* (A).

...

- 22.4.3 G (1) ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(1)]
- (2) ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(2)]
- (3) ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(3)]

- 22.4.4 G ~~An SMCR~~ A firm should use the template in SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) even if the *firm* asking for the reference does not specifically ask it to.

...

- 22.4.5 R ...

#### Inclusion of additional material

- 22.4.6 G (-1) This chapter sets out minimum requirements for a reference. It does  
22.4.3 ~~22.3.5G(1)~~ not prevent a *firm* from including more than is required by this chapter.
- (1) Therefore SYSC 22.4.2R does not stop ~~an SMCR~~ a firm including matters in the reference not required by the template in SYSC 22 Annex 1R.
- (2) ~~An SMCR~~ A 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 questions in the templates.

- 22.4.7 G If a *firm* does disclose more than is required by this chapter the reference  
22.3.5G(2) should still meet its duties under general law to its former *employee* and the recipient (see SYSC 22.5.3G to SYSC 22.5.5G).

#### Time limits

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

## **22.5 Giving references: additional rules and guidance ~~for all firms~~**

...

**Breach of APER**

- 22.5.12 G (1) [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.8.10G(2)]
- (2) [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.8.10G(1)]

...

**Criminal record checks**

- 22.5.19 G A *firm* giving a reference need not include information from a criminal records check it has carried out under Part V of the Police Act 1997 (Certificates of Criminal Records, &c). The recruiting *firm* should carry out a criminal records check itself if necessary. The main *FCA Handbook* requirements on a recruiting *firm* to carry out a criminal records check are:
- (1) SUP 10C.10.16R (~~an SMCR~~ a *firm* should carry out such a check when appointing an *SMF manager*); and
- (2) ...

**22.5 Giving and updating references: additional rules and guidance for SMCR firms**

...

**Requirement to consider whether there has been a conduct breach**

- 22.6.3 G ...
- (4) The requirement in (1) is disapplied for disciplinary action taken before certain specified dates, where a *firm's* records do not record whether previous conduct subject to disciplinary action amounted to a breach. The date differs between different types of *SMCR firms*. SYSC TP 5 and SYSC TP 7 set out those specified dates and other details.

...

**All relevant information: Interaction with mandatory disclosures**

- 22.6.4 G (1) SYSC 22.2.2R(1) to (3) may require ~~an SMCR~~ a *firm* to disclose information that goes beyond the mandatory minimum information in Part One of SYSC 22 Annex 1R (Template for regulatory

references given by relevant authorised persons SMCR firms and disclosure requirements).

...

...

## 22.7 Getting references: additional rules and guidance ~~for SMCR firms~~

### ~~Intra-group transfers~~

22.7.1 R ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.8A.1R]

22.7.2 G ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.8A.2G]

### Who should be asked to give a reference

22.7.3 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 ~~an SMCR a firm~~ appointing someone to a position that requires a reference may have to get the *employee's* help in identifying their previous *employers*.

22.7.4 G (1) ...

(2) ~~An SMCR A 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

22.7.5 G (1) SYSC 22.2.1R (Obligation ~~of an SMCR firm to try~~ to obtain a references) applies even if the *employer* has already got a reference for the *employee*. For example:

(a) ~~an SMCR a firm~~ should have a reference whenever it renews the certificate of a *certification employee*; and

(b) changing jobs within the same *SMCR firm* may require a reference.

(2) However, the *SMCR 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 (see SYSC 22.7.6G to SYSC 22.7.8G).

22.7.6 G If ~~an SMCR a firm~~ (A):

...

22.7.7 G (1) If ~~an SMCR~~ a firm (A):

...

...

22.7.8 G ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.8A.3G]

When references are to be obtained

22.7.9 G If ~~an SMCR~~ a firm is unable to obtain a reference by the time in column two of the table in SYSC 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.

22.7.10 G (1) Where ~~an SMCR~~ a firm needs to fill a vacancy for a *specified significant-harm certification function* which could not have reasonably been foreseen, the FCA recognises that it may not be reasonable to expect the ~~SMCR~~ firm to obtain references prior to issuing a certificate.

...

(3) If a reference obtained later raises concerns about the person's fitness and propriety, the ~~SMCR~~ firm should revisit its decision to issue the person with a certificate.

22.7.11 G (1) Although this chapter (see SYSC 22.2.3R) only requires ~~an SMCR~~ a firm to try to get a reference for a *person* it is recruiting to perform an *FCA controlled function* or a *PRA controlled function* towards the end of the application process, the FCA would normally expect a firm to have obtained the reference before the application for approval is made.

...

(4) ~~SMCR firms~~ Firms are reminded that the *Act* itself requires a firm to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see SUP 10C.10.14G for more detail). SYSC 22.7.11G(2) does not affect that obligation.

## 22.8 ~~Additional rules and guidance for all firms~~ Policies and appointed representatives

...

Appointed representatives

...

- 22.8.4 R When SYSC 22.8.3R applies to an ~~SMCR firm~~, the requirements of this chapter for ~~firms~~ that are not ~~SMCR firms~~ apply in place of the requirements that only apply to ~~SMCR firms~~. In particular, the following requirements do not apply in relation to an *appointed representative*:

...

- (5) ~~SYSC 22.7.1R~~ SYSC 22.8A.1R (Intra-group transfers); and

...

...

~~Getting and giving a reference where the employee has worked in a group or on secondment~~

- 22.8.7 G ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.8A.4G]

- 22.8.8 G ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.8A.5G]

- 22.8.9 G ~~[deleted]~~ [Editor's note: The text of this provision has been moved to SYSC 22.8A.6G]

- 22.8.10 G (1) ~~This means that any firm (not just one that is an SMCR firm) A firm~~ A firm should try to ensure that its *appointed representative* should consider  
 22.5.12 (2) considers whether it needs to disclose a breach of individual conduct requirements (as defined in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)) when giving a reference under this chapter.
- (2) ~~An~~ Therefore an example of information that may be relevant under SYSC 22.2.2R(1) to (3) is the fact that the *employee* has breached a requirement in *APER*, not just a requirement in COCON.
- (1)

## **22.8A Groups and outsourcing**

### Intra-group transfers

- 22.8A.1 R (1) This rule applies when:

22.7.1

- (a) ~~an SMCR a firm~~ (A) would otherwise have to ask another *person* (B) for a reference under SYSC 22.2.1R; and
- (b) A and B are in the same *group*.

- (2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under SYSC 22.2.1R (Obligation to obtain references).
- (3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.
- (4) If A, in accordance with this *rule*, does not ask for a reference or a full reference it must access the information resources referred to in this *rule* and get the relevant information within the time specified by SYSC 22.2.3R.

22.8A.2    G    (1) ~~SYSC 22.7.1R~~ SYSC 22.8A.1R means that a *firm* recruiting someone from another member of its *group* is not required to request a reference from the other where the *group* has centralised records or alternative measures in place to ensure sharing of relevant information between its members.

- (2) The recruiting *firm* should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

22.8A.3    G    If:  
~~22.7.8~~

- (1) a *firm* (A) appoints someone (P) to a *certification function* or *approved person* position;
- (2) A obtains a reference from an *ex-employer* (B);
- (3) later P transfers to a *certification function* position or an *approved person* position with an *SMCR firm* in A's *group* (C);
- (4) B's reference is:
  - (a) addressed to all *firms* in A's *group*; or
  - (b) otherwise drafted so that it is clear that C may rely on it; and
- (5) C does not need to ask for the reference to be reissued or amended, taking account of SYSC 22.7.6G and SYSC 22.7.7G;

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

Getting and giving a reference where the employee has worked in a group or on secondment

22.8A.4 G If:  
~~22.8.7~~

- (1) a *firm* (A) is thinking of employing someone (P);
- (2) P is *employed* by a group services company (D) that is not a *firm*;
- (3) P (in their capacity as an *employee* of D) performs a function or service for a *firm* (B) in the same *group* as D such that P is also an *employee* of B; and
- (4) A intends to appoint (P) to a position that entitles A to obtain a reference from B;

then:

- (5) ~~(if A is an *SMCR firm*)~~ A should ask both B and D for a reference;
- (6) B is obliged to give the reference if A asks it to ~~(whether or not A is an *SMCR firm*)~~;
- (7) B should ask D to provide it with the information needed to provide a reference in accordance with this chapter;
- (8) D may give a reference but (as it is not a *firm*) it is not obliged to; and
- (9) D and B may give a single joint reference.

22.8A.5 G ~~SYSC 22.8.7G~~ SYSC 22.8A.4G also applies where:  
~~22.8.8~~

- (1) D is not in the same *group* but has seconded P to B; and
- (2) P (in their capacity as an *employee* of D) performed any function or services for B such that P was also an *employee* of B.

22.8A.6 G If:  
~~22.8.9~~

- (1) a *firm* (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another *SMCR firm* (B); and
  - (2) P was an *employee* of other members of B's *group* as well as of B;
- then:
- (3) ~~(if A is an *SMCR firm*)~~ A should ask all the group members that *employed* P for a reference;

- (4) B should give a reference if A asks it to (~~whether or not A is an SMCR firm~~);
- (5) P's *employers* in that group (including any that are not *firms*) may give a single joint reference; and
- (6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which *employer* within the *group*.

## 22.9 Records

General record keeping rules (~~applicable to SMCR firms~~)

- 22.9.1 R (1) ~~An SMCR~~ A firm must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.

...

Time limit for records to be kept (~~applicable to SMCR firms~~)

...

Effect of previous record keeping requirements (~~applicable to SMCR firms~~)

- 22.9.5 G ...
- (2) ~~An SMCR~~ A firm does not breach the requirements of this chapter by failing to include something in a reference or by failing to have records because it destroyed the relevant records before the date this chapter came into force in accordance with the record keeping requirements applicable to it at the time of destruction.

...

...

## 23 Senior managers and certification regime: Introduction and classification

...

### 23.3 Overview of the senior managers and certification regime

...

- 23.3.3 G Table: Summary of the senior managers and certification regime

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
...		
The senior managers regime: Parts that only apply to a limited range of firms		
...	...	...
A <i>firm</i> should ensure that a person becoming an <i>SMF manager</i> has all the information and material that they could reasonably expect to have to perform their responsibilities	...	...
<u>A retail intermediary <i>firm</i> should check whether it meets the financial criteria for being an <i>enhanced scope SMCR firm</i> and report to the FCA when it meets those criteria for the first time or ceases to meet them.</u>	<u>SUP 15.15 (Notification by retail intermediaries of qualifying as an enhanced scope SMCR firm)</u>	<u>Only applies to certain UK retail intermediaries. The full details of who this covers are in SUP 15.15.</u>
...		

[*Editor's note:* The numbering of the Parts of SYSC 23 Annex 1 in this draft instrument is different from the numbering in the near-final rules published with Policy Statement PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) because the current Handbook version of SYSC 23 Annex 1 has more Parts than the version on which the near-final rules was based. Part 8 as shown in this draft instrument was Part 7 in the near-final rules, Part 9 used to be Part 8, Part 10 used to be Part 9 and Part 11 used to be Part 10. The required renumbering and updating of cross-references is not marked up.]

...

## 23 Annex 1 Definition of SMCR firm and different types of SMCR firms

...

Part Eight: Financial qualification condition for being an enhanced scope SMCR firm

The financial qualification tests

8.1 R ...

8.2 R Table: Financial qualification conditions

(1) Qualification condition	(2) <b><u>Reporting How to do the calculation and corresponding reporting requirement</u></b>	(3) Comments
...	...	...
<b>Part Two: Revenue measurements</b>		
(3) The average amount of the <i>firm's</i> total intermediary regulated business revenue (calculated as a three-year rolling average) is £35 million per annum or more	...	...  <u>SYSC 23 Annex 1 8.18R applies this condition to <i>firms</i> to which the reporting requirement in column (2) does not apply in the cases specified in that rule.</u>
...	...	...
...		
Note 3: ...		
<u>Note 4: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a calculation date they refer to the date as of which the calculations in column (2) of Part One of this table are made.</u>		

8.3 G ...

Qualification conditions only apply if reporting requirements apply

8.4 R A Subject to SYSC 23 Annex 1 8.18R, a qualification condition in column  
8.14 (1) of the table in SYSC 23 Annex 1 8.2R ~~does not apply~~ only applies to a *firm* if the corresponding reporting requirement referred to in column (2) of the table ~~does not~~ currently apply applies to the *firm*.

General calculation principles

8.5 R If the applicable financial reporting requirements in column (2) of the table in SYSC 23 Annex 1 8.2R have changed during the relevant period,

~~8.4~~ the calculations must be made in accordance with whatever requirements applied for the applicable period.

~~8.6~~ R The calculations are made on a solo basis.

~~8.5~~

~~8.7~~ R (1) The calculation periods, averaging periods and dates in column (1) of the table in SYSC 23 Annex 1 8.2R are defined so as to be consistent with the financial reporting periods and calculation dates used for the corresponding *data item* in column (2) of that table. The rest of this *rule* gives examples of this principle.

~~8.6~~

...

(4) Where row (2) of column (1) of the table in SYSC 23 Annex 1 8.2R refers to a *firm's* current financial figures it refers to the figures as at the calculation date for its most recent reporting period in column (2).

...

#### Averaging periods

~~8.8~~ R (1) ...

~~8.7~~

(2) When the table in SYSC 23 Annex 1 8.2R specifies that this paragraph (2) applies:

(a) each averaging period ends on the ~~last day of~~ calculation date for a reporting period; and

(b) there is an averaging period that ends on each such day.

(3) ...

(4) The term 'year' in (3) has the meaning in SYSC 23 Annex 1 ~~8.6R~~ 8.7R.

~~8.9~~ G (1) SYSC 23 Annex 1 ~~8.7R(2)~~ 8.8R(2) provides for a *firm's* status to be tested every six months if the relevant *data item* is reported in six-month intervals and to be tested yearly if the relevant *data item* is reported yearly.

~~8.8~~

(2) SYSC 23 Annex 1 ~~8.7R(3)~~ 8.8R(3) provides for a *firm's* status to be tested once a year even if the relevant *data item* is reported in six-month intervals.

#### Requirements where the firm reports more than once a year

8.10 R (1) This *rule* applies to calculations in Part Two of the table in SYSC 23  
~~8.9~~ Annex 1 8.2R.

...

(3) The term year in (2) has the meaning in SYSC 23 Annex 1 ~~8.6R~~  
8.7R.

#### Requirements for calculating average amounts in certain cases

8.11 R When the table in SYSC 23 Annex 1 8.2R specifies that this *rule* applies,  
~~8.10~~ the calculation of the average involves calculating the relevant amount for each reporting period relating to the averaging period, summing those amounts and dividing the result by the applicable number of reporting periods.

#### Adjustments where reporting periods cover irregular periods

8.12 R (1) This *rule* applies where:  
~~8.11~~

...

8.13 G The main example of when SYSC 23 Annex 1 ~~8.11R~~ 8.12R may apply is  
~~8.12~~ where a *firm* changes its accounting reference date.

8.14 G (1) The financial reporting period may be shorter than the  
~~8.13~~ corresponding calculation period.

...

(3) If SYSC 23 Annex 1 ~~8.9R~~ 8.10R applies this does not matter as the calculation is based on the figures for the full year.

(4) If SYSC 23 Annex 1 ~~8.9R~~ 8.10R does not apply, in the example in (2):

...

#### Effect of reporting requirements not applying for full period

8.15 R Subject to SYSC 23 Annex 1 ~~8.14R~~ 8.4R, if the reporting requirement referred to in column (2) of the table in SYSC 23 Annex 1 8.2R did not apply to the *firm* for the whole of its most recent averaging period as defined in SYSC 23 Annex 1 8.2R, the averaging period is shortened to cover the period for which those requirements did apply.

8.16 G Reasons why SYSC 23 Annex 1 8.15R may apply to a *firm* include the following:

...

- (2) the *firm's Part 4A permission* has only recently been varied to include the relevant *regulated activities*; ~~or~~
- (3) the *firm* has only recently become subject to the relevant reporting requirements ~~;~~ or
- (4) the reporting requirement did not exist for the full period (see SYSC TP 7.7.6G for an example).

8.17

G

...

- (2) In this example:

...

- (d) the *firm* is ~~authorised or the relevant regulated activities are included in its permission~~ authorised in February (referred to in this paragraph as the date on which it is authorised).
- (2) The *firm* will not meet the qualification condition before the end of ~~the accounting year in which the firm is authorised~~ Year One, however large its business is in the period from February to June. This is because the calculations are based on calculation periods of a year and ~~the firm will not have data for the year~~ is not over yet.
- (3) Following the end of ~~accounting year in which it is authorised~~ Year One, the assessment of whether the *firm* meets the qualification condition is based on the figures for ~~the accounting year in which it is authorised~~ Year One. There is no adjustment to take account of the fact that the *firm* was only authorised part of the way through that period.
- (4) After the end of ~~the second accounting year~~ Year Two, the averaging period is two years and the figures are taken from the part of Year One during which it was authorised and from Year Two.
- (5) The figures for the next averaging period are taken from the part of Year One during which it was authorised and from Years Two and Three. After the end of the third accounting year there There is no further need for SYSC 23 Annex 1 8.15R.
- (6) In this paragraph:
  - (a) the firm being authorised means the firm being authorised or the relevant regulated activities being included in its permission so that the relevant reporting requirement applies;

- (b) the accounting year in which this occurs is referred to as Year One; and
- (c) subsequent accounting years are referred to accordingly.

Special requirements for calculating intermediary regulated business revenue

8.18      R      The qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R may also apply to a *firm* that meets the following conditions, even though the financial reporting requirement referred to in that row does not apply to it:

- (1) it falls into any of the following categories:
  - (a) its *permission* includes an *insurance distribution activity* in relation to *non-investment insurance contracts*;
  - (b) its *permission* includes a *home finance mediation activity*;
  - (c) it is a *retail investment firm*;
  - (d) it is a *personal investment firm*;
  - (e) it meets both the following conditions:
    - (i) its *permission* includes *advising on P2P agreements*; and
    - (ii) its *permission*, so far as it relates to the activity in (e)(i), is not limited to activities carried on exclusively with or for *professional clients*; or
- (f) it meets both the following conditions:
  - (i) its *permission* includes *designated investment business* or it carries out *designated investment business*; and
  - (ii) its *permission*, so far as it relates to the activity in (f)(i), is not limited to activities or subject to a requirement that it may only carry on activities, exclusively with or for *professional clients* or *eligible counterparties*; and

(2) it is not required to complete Section B of the *RMAR*.

8.19      R      (1) This *rule* deals with how the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R applies to a *firm* in SYSC 23 Annex 1 8.18R.

(2) The calculation is made in accordance with the requirements for Section B (Profit and Loss account) of the *RMAR* and otherwise as

described in column (2) of row (3) of the table in SYSC 23 Annex 1 8.2R.

- (3) The reporting period for the purposes of this Annex is an annual period ending on the *firm's accounting reference date*.
- (4) For the purpose of applying this Annex to a *firm* in SYSC 23 Annex 1 8.18R, a reference in this Annex to:
  - (a) the due submission date for a *data item* is treated as being to the reporting date defined in SUP 15.15.7R;
  - (b) a *firm's* most recent reporting period is the period in (3) whose reporting date (as defined in (4)(a)) has occurred most recently; and
  - (c) a reporting requirement not applying is treated as a reference to a *firm* not meeting the conditions in SYSC 23 Annex 1 8.18R.

- 8.20      G      (1) There is only one qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R.
- (2) Therefore if a *firm* ceases to be in SYSC 23 Annex 1 8.18R because it begins to report using the *RMAR*, SYSC 23 Annex 1 8.4R does not apply and the *firm* will continue to meet the qualification condition as long as its income remains at the necessary level.
- (3) The same applies if the *firm* moves from reporting using the *RMAR* to being a *firm* within SYSC 23 Annex 1 8.18R.
- (4) If a *firm* makes a change of the kind in (2) or (3), the figures for the averaging periods during which this occurs will be made up of figures taken from its *RMAR* and ones calculated under SUP 15.15.

- 8.21      G      SUP 15.15 requires a *firm* within SYSC 23 Annex 1 8.18R regularly to calculate whether or not it meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R and, in certain circumstances, to notify the *FCA* of the results.

...

Part Ten: When a firm becomes an enhanced scope SMCR firm

...

Meeting the financial thresholds in Part 8

- 10.2      R      (1) A Subject to (4), a *firm* meets one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on the due date for submission of the relevant *data item* (see (2) and (3) for the meaning of relevant *data item*).

- (2) Except where (3) applies, the relevant *data item* is the *data item* for the final ~~financial~~ reporting period applicable to the averaging period for which the *firm* first meets ~~that qualification condition~~ the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R.
- (3) Where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R, the relevant *data item* is the one for the reporting period for which the *firm* first meets ~~that qualification condition~~ the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R.
- (4) In the case of a *firm* in SYSC 23 Annex 1 8.18R, the *firm* meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R on the reporting date for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of that row.

...

Part Eleven: When a firm stops being an enhanced scope SMCR firm

...

Ceasing to meet the financial thresholds in Part 7

- 11.2 R A *firm* ceases to meet one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on whichever of the following is applicable:
- (1) the due date for submission of the *data item* for the final ~~financial~~ reporting period applicable to the averaging period for which the *firm* first ceases to meet ~~that qualification condition~~ the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R; or
  - (2) (where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R) the due date for submission of the *data item* for the reporting period for which the *firm* first ceases to meet ~~that qualification condition~~ the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R; or
  - (3) (in the case of a *firm* in SYSC 23 Annex 1 8.18R) the *firm* ceases to meet the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R on the reporting date for the final reporting period applicable to the averaging period for which the *firm* first ceases to meet the condition in column (1) of that row; or
  - (4) the date the relevant reporting requirement ceases to apply as referred to in SYSC 23 Annex 1 ~~8.14R~~ 8.4R.
  - ~~(3)~~

...

## 24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

### 24.3 Who prescribed responsibilities should be allocated to

...

Executive or non-executive

...

24.3.3 G (1) ...

- (2) The relevant *rules* in *COLL* deal with the persons to whom a *firm* should allocate *FCA-prescribed senior management responsibility* (za) (~~*COLL* value for money assessment and independent director requirements~~ Allocation of responsibility for *COLL* compliance to an approved person).

...

## 24 Which FCA-prescribed senior management responsibilities apply to which kind of firm

...

Solo regulated firms

...

4.2 R Table: FCA-prescribed senior management responsibility applying to solo regulated firms

(1) Brief description of responsibility	(2) Reference letter of responsibility	(3) UK core firm	(4) Third country core firm	(5) Enhanced scope firm
...	...	...	...	...
<del><i>COLL</i> value for money assessment and independent director requirements)</del> <u>Allocation of responsibility for</u>	...	...	...	...

<u>COLL compliance to an approved person</u>				
...	...	...	...	...

...

## 27 Senior managers and certification regime: Certification regime

...

### 27.7 Specification of functions

...

Overlap with designated senior management functions

27.7.5 G ...

(3) ...

(4) See SYSC 27.8.7BG for an example of this.

## 27.8 Definitions of the FCA certification functions

...

Significant management function

...

27.8.7A R ...

27.8.7B G (1) An example of SYSC 27.7.5G is that a person performs the significant management FCA certification function if:

(a) the person performs a role coming within the definition of one of the following roles:

(i) an FCA-designated senior management function described in SUP 10C.6A (Systems and controls functions: Finance, risk and internal audit); or

(ii) the chief operations function; and

(b) that FCA-designated senior management function does not apply to the firm.

- (2) For example, if a *core SMCR firm* has a chief risk officer, the chief risk officer will not be performing the *chief risk officer function* because the *chief risk officer function* does not apply to *core SMCR firms*. Instead that person will perform the significant management *FCA certification function*.
- (3) (2) does not apply if the chief risk officer performs that role as part of their job as an executive director. The *executive director function* applies to *core SMCR firms* and so that person will be performing the *executive director function* rather than the significant management *FCA certification function*.

...

**TP 7 Bank of England and Financial Services Act 2016: Certification and regulatory references**

**7.1 Application, purpose and definitions**

7.1.1 R SYSC TP 7 applies as set out in the table in SYSC TP 7.1.2R.

7.1.2 R Table: Application of SYSC TP 7

Type of firm	Parts of SYSC TP 7 that apply
An <del>SMCR insurance firm</del> <i>SMCR insurance firm</i> except one in the following row	...
An <del>SMCR insurance firm</del> <i>SMCR insurance firm</i> that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i> )	...
...	...

...

7.1.6 R Table: glossary of bespoke terms used in SYSC TP 7

Part One: General	
Defined term	Meaning

<b>SMCR insurance firm</b> [deleted]	has the meaning set out in the amendments to the <i>Glossary</i> to be made by the Individual Accountability (Dual-Regulated Firms) Instrument 2018). [deleted]
--------------------------------------	---

...

...

## 7.7 Qualification conditions for FCA-authorised firms

Firm classification: Effect of pre-commencement events

- 7.7.1 R If a *firm* is treated as a *core SMCR firm*, an *enhanced scope SMCR firm* or a *limited scope SMCR firm* immediately before the **general commencement date** for the purposes of SUP TP 12 (Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms) it retains that status after the **general commencement date** unless and until it changes under SYSC 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms).

...

- 7.7.3 G A calculation period, an averaging period or a reporting period as referred to in Part Eight of SYSC 23 Annex 1 (Part Eight: Financial qualification condition for being an enhanced scope SMCR firm) may begin or end before the **general commencement date**.
- 7.7.4

Financial qualification conditions for enhanced scope SMCR firms

- 7.7.4 R (1) This rule applies to a *firm* that:
- (a) does not meet one of the qualification conditions for being an enhanced scope SMCR firm in Part 8 of SYSC 23 Annex 1 at the date in SUP TP 12.23.3R(2); but
  - (b) meets it between that date and the **general commencement date**.
- (2) The one-year period referred to in Part 10 of SYSC 23 Annex 1 (When a *firm* becomes an enhanced scope SMCR firm) begins on the date the *firm* met that qualification condition, even though that date is before the **general commencement date**.
- 7.7.5 G The situation in SYSC TP 7.7.4R may apply to a *firm* because, for example, its accounting reference date falls between the date in SUP TP 12.23.3R(2) and the **general commencement date**.

Consumer credit reporting

- 7.7.6      G    (1)    SYSC 23 Annex 1 8.15R deals with cases in which the period in  
7.7.3 relation to which the financial calculations are made to test whether a  
*firm* meets one of the financial qualification conditions for being an  
*enhanced scope SMCR firm* is adjusted because the relevant  
reporting requirements did not apply for the whole period. SYSC 23  
Annex 1 8.16G gives examples of why this may happen.

...

## Annex D

## Amendments to the Code of Conduct sourcebook (COCON)

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

Amend the following as shown.

# 1 Application and purpose

## 1.1 Application

...

To whom does it apply?

...

### 1.1.2 R Table: To whom does COCON apply?

Persons to whom COCON applies	Comments
... ..	...
(6) Any <i>employee</i> of an <i>SMCR firm</i> not coming within another row of this table, except one listed in column (2) of this row (6) of this table.	<p>(A) This row (6) does not apply to an <i>employee</i> of an <i>SMCR firm</i> who only performs functions falling within the scope of the following roles:</p> <p>...</p> <p>(o) <u>taking part in following activities of the <i>firm</i>:</u></p> <p><u>(i) the <i>firm's</i> activities as a data controllers or processors controller;</u> or</p> <p><u>(ii) the <i>firm's</i> activities of data processing;</u></p> <p><u><del>under</del> as defined in the <i>data protection legislation</i>, but subject to Note (1) of this table;</u></p> <p>...</p>
(7) [deleted]	

(8) ...	
<p><b>Note (1):</b> A function is only within paragraph (o) of column (2) (Comments) of row (6) of this table if the function does not require the <i>employee</i> concerned to exercise a significant amount of discretion or judgment.</p>	

...

## Annex E

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where a cross-reference is amended by paragraph F of this instrument, that change is not shown.

## Part 1: Comes into force [a date soon after making] 2019

Amend the following as shown.

**10C FCA senior managers regime for approved persons in SMCR firms**

...

**10C.7 Other overall responsibility function (SMF18)**

...

10C.7.5 R ...

Head of the legal function

10C.7.6 R A person does not perform the other overall responsibility function by having responsibility for the SMCR legal function under SYSC 26.3.

- 10C.7.7 G
- (1) Being the chief legal adviser of a firm will not by itself involve performing an FCA-designated senior management function.
  - (2) That is because the activity of advising does not by itself come within the definition of a designated senior management function. In turn that means that it is excluded from all the FCA-designated senior management functions in this chapter by SUP 10C.3.10R (Definition of FCA-designated senior management function).
  - (3) However, being the head of a firm's legal department is likely to involve management for the purpose of the definition of designated senior management function (see SUP 10C.3.11G and SUP 10C.3.12G for the detailed definition).
  - (4) The purpose of SUP 10C.7.6R (together with SYSC 26.4.9R(2)) is to ensure that a firm can appoint someone as the head of its legal function who is not an SMF manager.

- (5) However, that does not mean that the head of a *firm*'s legal function cannot be an *SMF manager*. For example, they could be an executive director performing the *executive director function*.

## 10C.8 The other local responsibility function (SMF22)

...

10C.8.8 R ...

### Head of the legal function

10C.8.9 R A person does not perform the other local responsibility function by having responsibility for the *SMCR legal function* under SYSC 26.3.

10C.8.10 G The guidance in SUP 10C.7.7G also applies to SUP 10C.8.9R.

...

## 10C.11 Statements of responsibilities

...

### Ceasing to carry on some functions

10C.11.12 R ...

- (2) Where the ~~change~~ matter to be notified to the *FCA* ~~meets the conditions in SUP 10C.11.7D(3)(a) and (b)~~, under (1) is part of an arrangement under which:

- (a) the *firm* is also required to make an application or notification about the *FCA-approved SMF manager* to the *PRA* that involves sending a *statement of responsibilities* for that *FCA-approved SMF manager* in relation to the same *firm* to the *PRA*; but
- (b) the *firm* is not required to give any other notice or make any application about the *FCA-approved SMF manager* under this chapter directly to the *FCA*;

the *firm* must provide the revised *statement of responsibilities* to the *FCA* by including it with the application or notice to the *PRA*.

...

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

...

Notifications about fitness, disciplinary action and breaches of COCON

10C.14.18 R ...

- (2) This *rule* does not apply to anything required to be notified under SUP 10C.14.5R (Form C) or SUP 10C.14.7R (Qualified Form C).

...

## 10C What functions apply to what type of firm Annex 1

Part One: Introduction

...

1.3 G ...

- (3) Another reason would be if the *rules* defining the *FCA controlled function* refer to a *rule* elsewhere in the *Handbook* and the latter only applies to certain types of *firm*. For example, SYSC 1 Annex 1 (Detailed application of SYSC) cuts back the application of some of the *required functions*.

...

...

## TP 11 Bank of England and Financial Services Act 2016: Approved persons in insurers

...

## 11.2 Conversion of existing approvals

...

11.2.12 G ...

11.2.13 R The notes to the tables in SUP TP 7.2.3R and SUP TP 8.2.3R continue to apply after the **commencement date** to the *FCA-designated senior management function* that **corresponds** to the **pre-implementation controlled function** to which those notes apply.

11.2.14 G SUP TP 7.2.3R and SUP TP 8.2.3R deal with the absorption of certain *FCA controlled functions* into *PRA controlled functions*. SUP TP 11.2.13R allows those arrangements to continue after the **commencement date**.

...

**Part 2: Comes into force [10 June] 2019**

Amend the following as shown.

[*Editor's note:* We propose to put the glossary of defined terms that was included in *SUP* TP 12.22.1R and *SUP* TP 12.22.2R in the near-final draft of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 included in Policy Statement PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) into *SUP* TP 12.1. The rest of *SUP* TP 12.22 will become *SUP* TP 12.23, amended as follows. The consequent renumbering is not shown. The glossary as moved is not shown in full but changes that we propose to make are shown below.]

**TP 12      Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms**

**12.1      Application, ~~and~~ purpose and definitions**

...

~~12.1.5~~      ~~G      *SUP* TP 12.22 has a glossary of terms used in *SUP* TP 12 which have meanings that only apply in *SUP* TP 12. These terms appear in bold type in *SUP* TP 12~~

12.1.5      R      The terms in the first column of the table in ~~*SUP* TP 12.22.2R~~ *SUP* TP 12.1.6R, where they appear in bold in *SUP* TP 12, have the meanings in the corresponding entry in column 2 for the purposes of *SUP* TP 12.

12.1.6      R      Table: glossary of bespoke terms used in *SUP* TP 12

~~12.22.2~~

Part One: General	
Defined term	Meaning
...	...
core SMCR firm, enhanced scope SMCR firm, limited scope SMCR firm, non-	...

<del>UK</del> <u>overseas</u> SMCR firm	
...	

Part Two: Fixed dates	
Defined term	Meaning
...	...
Form O start date	...
<u>Enhanced firm cut-off date</u>	[1 <sup>st</sup> September] 2019
...	

...

...

## 12.2 Conversion of existing approvals

...

12.2.7 G ...

(2) For example:

...

(c) The convertibility of the partner function to the executive director function in Part One of the table only applies to a ~~non-UK~~ an overseas SMCR firm that is a partnership.

...

## 12.21 Reporting under SUP 15.11

...

## 12.22 Calculations for retail intermediaries

12.22.1 R This section applies to a *firm* to which SUP 15.15 (as set out in the Individual Accountability (FCA-Authorised Firms) Instrument 2019) applies.

- 12.22.2 R SUP 15.15 (Enhanced scope SMCR firm retail intermediaries) (as set out in the Individual Accountability (FCA-Authorised Firms) Instrument 2019) applies before the **commencement date**.
- 12.22.3 R The first averaging period (as referred to in SUP 15.15) for which a *firm* must carry out the calculation is the most recent one whose final reporting period has a reporting date that falls on or before the **enhanced firm cut-off date**.
- 12.22.4 R The notification obligations in SUP 15.15 do not apply in relation to the calculation in SUP TP 12.22.3R.
- 12.22.5 G The reason for the *rule* in SUP TP 12.22.4R is that the *firm* will be required to give the FCA a Form K instead if it meets the relevant qualification condition for being an **enhanced scope SMCR firm**.
- 12.22.6 G SUP TP 12.22.4R does not affect the definition of “reporting date” for the purpose of the calculations for SUP TP 12.23 or SYSC 23 Annex 1.
- 12.22.7 G (1) The result of a calculation subsequent to the one under SUP TP 12.22.3R but made before the **commencement date** may be that the *firm* meets the relevant qualification condition. In that case the *firm* should notify the FCA in accordance with SUP 15.15 as applied by SUP TP 12.
- (2) (1) applies even though SUP TP 12.23.3R(2) means that the *firm* will not be treated as an **enhanced scope SMCR firm** for the purposes of this Annex.
- (3) A *firm* should also notify the FCA if it ceases to meet the qualification condition before the **commencement date**.
- (4) Where (3) applies, the *firm* may also need to withdraw its Form K.

## 12.23 Deciding which category a firm is in

- 12.23.1 R (1) Between the **first notification date** and the **commencement date**,  
~~12.22.3~~ the question of:
- (a) whether a *firm* is a **solo-regulated SMCR firm** for the purposes of SUP TP 12; and
- (b) (if it is) into which category it falls;
- is determined in accordance with SYSC 23 Annex 1 (as set out in the Individual Accountability (FCA-Authorised Firms) Instrument 2018) even though the relevant parts of that chapter are not in force for other purposes.

- (2) ~~However Part Nine of SYSC 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms) is adjusted so that a *firm* ceases to be an **enhanced scope SMCR firm** on the date it ceases to meet the last qualification condition that it met (as referred to in Part Nine), not one year after that date. [Editor's Note: This provision has been moved to SUP TP 12.23.5R]~~
- (2) (1) does not apply to a *firm* that is already an *SMCR firm* before the commencement date. Such an *SMCR firm* cannot be a **solo-regulated SMCR firm** for the purposes of SUP TP 12.
- (3) (1) is subject to the rest of SUP TP 12.23.
- 12.23.2 G (1) The effect of ~~SUP TP 12.22.3R~~ SUP TP 12.23.1R(2) is that if a *PRA-regulated SMCR firm* changes its *permission* in a way that would turn it into a **solo-regulated SMCR firm**, the conversion arrangements in SUP TP 12 will not apply to it.
- 12.22.4 (2) SUP TP 12.15 will however apply and the *firm* can use this to apply for the approvals it needs because of its change of category.
- 12.23.3 R (1) Part Ten of SYSC 23 Annex 1 (When a firm becomes an enhanced scope SMCR firm) is adjusted for the purposes of this Annex so that a *firm* is an **enhanced scope SMCR firm** at any time if at that time it meets one of the qualification conditions in that Annex, not one year or three months after it first meets the relevant condition.
- (2) (1) does not apply in relation to a qualification condition for being an **enhanced scope SMCR firm** in Part Eight of SYSC 23 Annex 1 (Financial qualification condition for being an enhanced scope SMCR firm), unless the *firm* meets the qualification condition at the **enhanced firm cut-off date**.
- 12.23.4 G The result of SUP TP 12.23.3R(2) is that a *firm* will not be treated as an **enhanced scope SMCR firm** under Part Eight of SYSC 23 Annex 1 for the purposes of this Annex unless it meets the relevant conditions at the **enhanced firm cut-off date**.
- 12.23.5 R ~~However Part Nine~~ Part Eleven of SYSC 23 Annex 1 ~~(Definition of SMCR firm and different types of SMCR firms)~~ When a firm stops being an enhanced scope SMCR firm) is adjusted for the purposes of this Annex so that a *firm* ceases to be an **enhanced scope SMCR firm** on the date it ceases to meet the last qualification condition that it met (as referred to in Part Eleven), not one year after that date.
- 12.22.3(2)
- 12.23.6 G If a *firm* changes from being an **enhanced scope SMCR firm** to a **core SMCR firm** or a **limited scope SMCR firm** after it has sent the *FCA* its Form K, it should notify the *FCA* as described in SUP 15.6 (Inaccurate, false or misleading information).
- 12.22.5

- 12.23.7 R (1) This *rule* modifies the *rules* for making an election to become a **core SMCR firm** or an **enhanced scope SMCR firm** in accordance with the procedure set out in SYSC 23 Annex 1 (as set out in the Individual Accountability (FCA-Authorised Firms) Instrument 2018) for the purposes of ~~SUP TP 12.22.3R~~ this Annex.
- ~~12.22.5~~
- (2) A *firm* may make such an election on or after the **Form O start date**.
- (3) The version of Form O in ~~SUP TP 12.23~~ SUP TP 12.24 replaces the version in SYSC 23 Annex 2R.
- (4) The election takes effect for the purposes of ~~SUP TP 12.22.3R~~ this Annex on the **first notification date** or, if it is made after that date, immediately.
- (5) If the election is made on or after the **first notification date** the *firm* must at the same time make the following notifications and applications (based on the type of **SMCR firm** it has elected to become):
- (a) any notification required by SUP TP 12.5, SUP TP 12.6 or SUP TP 12.8; and
- (b) any applications under SUP TP 12.15 if the *candidate* is to perform the relevant function on the **commencement date**.
- 12.23.8 G SYSC TP 7.7 (Qualification conditions for FCA-authorised firms) explains how this section affects the period after the **commencement date**.

## 12.24 Forms

### ~~12.23~~

12.24.1 R Form K

~~12.23.1~~

...

12.24.2 R Form O

~~12.23.2~~

[Replace the form titled “Notification of change to firm classification under the Senior Managers & Certification Regime (Pre-Commencement version) (Form O)” with the version in Part One of Annex F of this instrument]

...

**Part 3: Comes into force 9 December 2019**

Amend the following as shown.

**10A FCA Approved Persons in Appointed Representatives**

...

**10A.1 Application**

- 10A.1.16A R (1) The *customer function* is the only *controlled function* in this chapter that applies to an *appointed representative* that is an *SMCR firm* and has a *limited permission* to carry on a *regulated activity* prescribed for the purposes of section 39(1E)(a) of the *Act*.
- (2) The *customer function* applies to the *appointed representative* in relation to the carrying on of the *regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility.

...

**10C FCA senior managers regime for approved persons in SMCR firms**

...

**10C.6B Systems and controls functions: Other**

...

The chief operations function (SMF24)

- 10C.6B.2 R ...
- (2) A *person* has overall responsibility for managing all or substantially all the matters described in (1) for the purposes of this *rule* even if one or more other *persons* have responsibility for:
- ...
- (c) the *SMCR legal function*; or
- (d) any part of the *firm* responsible for advising other parts of the *firm*.
- (e)

- (3) (2) applies to a *firm* whether or not the requirements in (2)(a) or the functions in (2)(b) or (2)(c) apply to it.

...

...

## 10C What functions apply to what type of firm Annex 1

### Part One: Introduction

...

1.3 G ...

- (3) Another reason would be if the *rules* defining the *FCA controlled function* refer to a *rule* elsewhere in the *Handbook* and the latter only applies to certain types of *firm*. For example, SYSC 1 Annex 1 (Detailed application of SYSC) cuts back the application of some of the *required functions*. ~~For example, SYSC 1 Annex 1 (Detailed application of SYSC) and SYSC 4.4 (Apportionment of responsibilities) cut back the application of the *limited scope function*.~~

...

...

### Part Seven: Functions applying to limited scope firms

...

7.4 R Table: Controlled functions applying to limited scope SMCR firms except sole traders and authorised professional firms

Part One (UK and non-EEA)					
(1) Brief description of function	(2) Function number	(3) General	(4) <u>Insurance distribution firms</u>	(4) (5) <del>Insurancee distribution and credit</del> <u>Credit firms</u>	(5) (6) Consumer credit appointed representat ives
Governing functions					

The governing functions that apply to core SMCR firms	Various	...	<u>×</u>	...	...
Required functions					
Compliance oversight function	SMF 16	...	<u>×</u>	...	...
Money laundering reporting function	SMF 17	...	<u>✓</u>	...	...
Limited scope function	SMF 29	...	<u>✓</u>	...	...

Part Two (EEA firms)					
(1) Brief description of function	(2) Function number	(3) General	(4) <u>Insurance distribution firms</u>	(4) (5) <u>Insurancee distribution and credit Credit firms</u>	(5) (6) Consumer credit appointed representatives
Required functions					
Money laundering reporting function	SMF 17	...	<u>✓</u>	...	...

Notes to the table
<p>Note (1): The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 7.1R. Therefore:</p> <p>(1) column three (General) refers to SUP 10C Annex 1 7.1R(1);</p> <p>(2) column four (Insurance distribution <del>and credit firms</del>) refers to SUP 10C Annex 1 7.1R(2) <del>and SUP 10C Annex 1 7.1R(3); and</del></p> <p>(3) column five (Credit firms) refers to SUP 10C Annex 1 7.1R(3); and</p> <p>(3) column <del>five</del> <u>six</u> (Consumer credit appointed representatives) refers to SUP 10C Annex 1 7.1R(4).</p>
...

...

7.10 R Table: Limited scope SMCR firms to which no controlled functions apply

Function	Comments
...	...
<del>An EEA SMCR firm falling within row (5) of the table in SYSC 23 Annex 1 6.4R (distribution of non-investment insurance contracts)</del>	
...	...

- 7.11 G (1) As explained in SUP 10C Annex 1 1.3G, the full range of *FCA controlled functions* that are applied to a class of *firm* by this Annex may not apply to every *firm* in that class.
- (2) For example, in the case of a *limited scope SMCR firm* that is a *sole trader*:
- (a) In practice it is unlikely that the *governing functions* will apply to a *sole trader* (see SUP 10C.4A.2G).
- (b) The *money laundering reporting function* does not apply to a *sole trader* with no employees (see SYSC 6.3.9R).
- (3) Another example is a *firm* falling within row (5) of the table in SYSC 23 Annex 1 6.4R (distribution of *non-investment insurance contracts*). SYSC 1 Annex 1 2.11R means that the *money laundering reporting function* does not apply to many or most such *firms*.

...

## 15 Notifications to the FCA

### 15.1 Application

...

SMCR firms

- 15.1.7 R The following apply only to *SMCR firms*:
- (1) *SUP 15.2.5G (Purpose); and*
  - (2) *SUP 15.11 (Notification of COCON breaches and disciplinary action)- ; and*
  - (3) *SUP 15.15 (Enhanced scope SMCR firm retail intermediaries).*

...

## 15.11 Notification of COCON breaches and disciplinary action

...

Timing and form of notifications: conduct rules staff other than SMF managers

- 15.11.13 R ...
- (6) *(3)(a)(i) applies whether or not the firm is a limited scope SMCR firm.*

...

Insert in the appropriate place a new section, SUP 15.15, as follows. The text is not underlined.

## 15.15 Notification by retail intermediaries of qualification as an enhanced scope SMCR firm

Application: General

- 15.15.1 R Subject to *SUP 15.15.3R*, this section applies to a *firm* that meets the following conditions:
- (1) it meets the conditions in *SYSC 23 Annex 1 8.18R* (Special requirements for calculating intermediary regulated business revenue); and
  - (2) it is not excluded from being an *enhanced scope SMCR firm* by the flow diagram in *SYSC 23 Annex 1 1.2R* (Flow diagram: Types of SMCR firm).
- 15.15.2 G *SUP 15.15.1R(2)* means that this section does not apply to:
- (1) an *SMCR banking firm* or an *SMCR insurance firm*; or

- (2) a *firm* that is excluded from the enhanced regime as defined in Part 7 of SYSC 23 Annex 1 (Exclusion from enhanced regime).

Application: Firm moving between different reporting requirements

- 15.15.3 R (1) This section also applies to a *firm*:
- (a) that meets the conditions in SUP 15.15.1R for part of an averaging period; and
  - (b) is subject to the reporting requirement in column (2) of row (3) of the table in SYSC 23 Annex 1 8.2R (Table: Financial qualification conditions) for another part of that averaging period.
- (2) When this section applies to a *firm* in (1), it applies in respect of the averaging period in question.
- (3) Averaging period has the same meaning as it does in Part 8 of SYSC 23 Annex 1.

Application: Firm is an enhanced scope firm for another reason

- 15.15.4 G This section applies even if the *firm* meets one of the qualification conditions in SYSC 23 Annex 1 for being an *enhanced scope SMCR firm* other than the one referred to in SUP 15.15.6R.

Purpose

- 15.15.5 G The purpose of this section is to require certain *firms* to calculate whether or not they meet the qualification condition for being an *enhanced scope SMCR firm* based on total intermediary regulated business revenue. In certain cases a *firm* should report the result of the calculation to the FCA but this section does not require regular reports.

Obligation to make calculations

- 15.15.6 R A *firm* must calculate, for each averaging period (as defined in SUP 15.15.3R), whether or not it meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R (Table: Financial qualification conditions).
- 15.15.7 R (1) A *firm* must complete the calculation no later than 30 *business days* after the end of the averaging period in question.
- (2) If the completion date in (1) falls on a day which is not a *business day*, the completion date is the first *business day* after the date in (1).
- (3) This section refers to the date in this *rule* as the ‘reporting date’.

- 15.15.8 G The calculations in this section are made in the same way as they are for Section B of the *RMAR*.
- 15.15.9 G (1) The amount of work required by *SUP* 15.15.6R will vary between *firms*.
- (2) In some cases the *firm's* total intermediary regulated business revenue will be so small or large that the *firm* will need to do little work to establish whether or not it meets the qualification condition referred to in *SUP* 15.15.6R.
- (3) In some cases a *firm's* total income (intermediary regulated business revenue and all its other income) may be below the qualification amount. The *firm* may have accounts that it has prepared to the necessary standard for other purposes (such as statutory accounts) that show this. In this case the *firm* may need to do virtually no additional work to establish whether it meets the qualification condition.
- (4) In some cases the *firm* may need to calculate the precise amount of its total intermediary regulated business revenue. In that case the *firm* may need to do the same amount of work it would have to do if it had to report to the *FCA* under Section B of the *RMAR*.

#### Obligation to notify the FCA

- 15.15.10 R If any of the circumstances set out in the table in *SUP* 15.15.12R occur, a *firm* must notify the *FCA* of that fact.
- 15.15.11 R (1) The *firm* must make the notification in *SUP* 15.15.10R no later than the date specified in the table in *SUP* 15.15.12R.
- (2) The notification must also include the additional information, and meet the other requirements, set out in column (3) of that table.
- 15.15.12 R Table: Circumstances to be notified to the FCA

What has to be notified	When it has to be notified	Additional information and comments
(1) The <i>firm</i> meets the qualification condition after it has previously not met it.	The reporting date for the last reporting period of the averaging period for which it first meets the qualification condition.	The notification must include the dates of the averaging period in question.  The notification obligation applies if

		the <i>firm</i> meets the qualification condition in its first averaging period after the <i>firm</i> becomes a retail intermediary.
(2) The <i>firm</i> ceases to meet the qualification condition after it has previously met it.	The reporting date for the last reporting period of the averaging period for which it first ceases to meet the qualification condition.  This is subject to (3).	The notification must include the dates of the averaging period in question.
(3) The <i>firm</i> ceases to be a retail intermediary where immediately before it met the qualification condition.	30 <i>business days</i> after it ceases to be a retail intermediary	The notification obligation does not apply if the <i>firm</i> continues to meet the qualification condition.
Note One: The notification obligation applies whether this is the first time the event in column (1) has occurred or whether it has happened before.		
Note Two: “Qualification condition” means the qualification condition referred to in SUP 15.15.6R.		
Note Three: “Averaging period” is defined in SUP 15.15.3R and reporting date is defined in SUP 15.15.7R.		
Note Four: “Reporting period” is defined in SYSC 23 Annex 1 8.19R.		
Note Five: A <i>firm</i> is a retail intermediary if this section applies to it.		

- 15.15.13 G A *firm* should not include the amount of its total intermediary regulated business revenue in a notification under SUP 15.15.10R.
- 15.15.14 G
- (1) This section does not require a *firm* regularly to notify the FCA whether or not it meets the qualification condition for each averaging period.
  - (2) Instead this section requires a *firm* to notify the FCA when it first meets the qualification condition and if it ceases to.
  - (3) So, for example, if the *firm* notifies the FCA that it meets the qualification condition, there is no need for any further notifications unless and until it ceases to meet the qualification condition.

- (4) Similarly, if the *firm* never meets the qualification condition, it will never have to notify the *FCA* under this section.
- (5) There is no need for a *firm* to notify the *FCA* if it ceases to be a retail intermediary as defined in this section because it has started to submit an *RMAR*, as long as it continues to meet the qualification condition.
- (6) “Averaging period” and “qualification condition” are defined in the notes to the table in *SUP* 15.15.12R.

#### How to submit notifications

- |          |   |   |
|----------|---|---|
| 15.15.15 | R | A <i>firm</i> does not have to use the form in <i>SUP</i> 15 Annex 4R (Notification form) to make a notification under this section but must include the details required by Section A of that form (Personal Details). |
| 15.15.16 | G | Subject to <i>SUP</i> 15.15.15R, <i>SUP</i> 15.7 (Form and method of notification) applies to notifications under this section.   |

...

Replace the form in *SUP* 15 Annex 7R (Form H: Form for the notification of disciplinary action relating to conduct rules staff (other than SMF managers) in SMCR firms) with the version in Part Two of Annex F of this instrument.

## **Annex F**

### **Handbook forms**

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

#### **Part 1: Comes into force [10 June] 2019**

Notification number  
(for FCA use only)

## Form O – Notification of change to firm classification under the Senior Managers & Certification Regime (Pre-Commencement version)

FCA Handbook Reference: SUP TP 12

Terms defined in the *FCA Handbook* are italicised and should be construed accordingly.

This form can only be used by solo-regulated SMCR *firms*. It is not relevant to dual regulated SMCR *firms*, appointed representatives or SMCR *firms* that are defined as an *enhanced scope SMCR firm* because they meet the qualification criteria in SYSC 23 Annex 1.

*Limited scope SMCR firms* and *core SMCR firms* can use this form to notify the FCA that they agree to be subject to the rules for *enhanced scope SMCR firms*, set out in SYSC 23 Annex 1. *Limited scope SMCR firms* can use this form to notify the FCA that they agree to be subject to the rules for *core SMCR firms*, set out in SYSC 23 Annex 1.

The pre-Commencement version of Form O can be submitted up to six months before the regime takes effect. If it is submitted three months or less before the regime takes effect, *firms* will need to submit the supporting documentation listed in Section 2 at the same time.

The opt-up will take effect at Commencement. To withdraw a notification, *firms* must write to us before the opt-up takes effect. Once the opt-up has taken effect, *firms* can use Form O to revert to the SMCR classification defined in SYSC 23 Annex 1. This will be effective one year from the date of notification.

*Firms* opting-up should ensure they understand and are in a position to comply with the relevant rules, set out in the FCA's Senior management arrangements, Systems and Controls (SYSC), Supervision (SUP), Code of Conduct (COCON) sourcebooks. The decision should be made at the appropriate levels and approved at *governing body* level. As a result of opting-up, *firms* will be subject to rules relating to additional Senior Management Functions and Prescribed Responsibilities. *Firms* opting-up to *enhanced scope SMCR firm* classification will also be subject to requirements on Responsibilities Maps, Handover Procedures and Overall Responsibilities.

[Commencement Date]

Name of *firm*

Firm Reference Number (FRN)

Financial Conduct Authority

12 Endeavour Square

Stratford

London E20 1JN

United Kingdom

Telephone +44 (0) 300 500 0597

E-mail [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk)

Website <http://www.fca.org.uk>

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above

## Contact Details

## Section 1

### 1.1 Contact for this notification (at the *notifying firm*)

Title	
First name	
Surname	
Job title	
Business address	
Postcode	
Phone number	
Email address	

## Notification that the firm is opting-up

## Section 2

### 2.1 Changes to the SMCR classification of the firm

Please indicate the type of notification you are making.

Notification type	Firm response
Core SMCR firm agreeing to be subject to the rules for <i>enhanced scope SMCR firms</i>	<input type="checkbox"/>
Limited scope SMCR firm agreeing to be subject to the rules for <i>core SMCR firms</i>	<input type="checkbox"/>
Limited scope SMCR firm agreeing to be subject to the rules for <i>enhanced scope SMCR firms</i>	<input type="checkbox"/>

### 2.2 Supporting documents

Please tick to indicate which documents are being submitted with this notification. If this notification is submitted three months or less before the regime takes effect, firms will need to submit the supporting documentation listed at the same time. Supporting documents must be submitted at least one week before Commencement.

Supporting documents	Firms opting-up to <i>Enhanced scope SMCR firm</i> classification	Limited Scope SMCR firms opting-up to <i>core SMCR firm</i> classification
Form A applications for new <i>senior management functions</i>	<input type="checkbox"/>	<input type="checkbox"/>
Form K – Conversion notification	<input type="checkbox"/>	<input type="checkbox"/> *
		*Only required if a CF2 Non-Executive Director is going to perform the SMF9 – Chair function

## Declarations and signatures

## Section 3

In this declaration, the authorised *firm* making the notification is referred to as the “*firm*”.

The person signing on behalf of the *firm* confirms that:

- they have read this declaration in full;
- they have the authority of the *firm's governing body* to make this notification;
- the *firm's* governing body understands their regulatory responsibilities following the opt-up, as set out in the *FCA's* Senior management arrangements, Systems and Controls (SYSC), Supervision (SUP), Code of Conduct (COCON) sourcebooks;
- the *firm's* governing body understands that, once the opt-up takes effect, the *notifying firm* will not be able to revert to its previous *SMCR* classification (as defined in SYSC 23 Annex 1) for at least one year.

It is a criminal offence, knowingly or recklessly, to give the *FCA* information that is materially false, misleading or deceptive (see sections 398 and 400 of the Financial Services and Markets Act 2000). The *notifying firm* must notify the *FCA* immediately if there is a change to the information in this form and/or if inaccurate information has been provided.

For the purposes of complying with *data protection legislation*, please read the *FCA's* privacy notice at <https://www.fca.org.uk/data-protection>. This notice will tell you what to expect when the *FCA* collects personal information, including how and why we use your personal information and who to contact if you have any queries or wish to exercise your rights.

Name of the authorised *firm*

Name of *person* signing on behalf of the authorised *firm*

Position

Signature

Date

**Part 2: Comes into force 9 December 2019**

Application number  
(for FCA use only)

## Form H - Notification of Disciplinary Action relating to *conduct rules staff* (other than *SMF managers*) in *SMCR firms*

FCA Handbook Reference: SUP 15 Annex 7R

10 December 2018

Name of *firm*  
(as entered in 2.01)

Financial Conduct Authority  
12 Endeavour Square  
Stratford London  
E20 1JN  
United Kingdom  
Telephone +44 (0) 845 606 9966  
Facsimile +44 (0) 207 066 0017  
E-mail [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk)  
Website <http://www.fca.org.uk>

### Contact Details Section 1

Contact for this notification

1.01	Title	<input type="text"/>
1.02	First Name	<input type="text"/>

<b>1.03</b>	Surname	
<b>1.04</b>	Job Title	
<b>1.05</b>	Business address	
<b>1.06</b>	Post code	
<b>1.07</b>	Phone number	
<b>1.08</b>	Email address	
<b>1.09</b>	Mobile No	

## Firm Identification Details

## Section 2

**2.01** Name of *firm*

--

**2.02** *Firm* Reference Number (FRN)

--

## Fitness and Propriety - Notifications under section 64C of the Financial Services and Markets Act 2000 Section 3

This section should be completed by a *firm* to:

- (a) make an annual notification of disciplinary action (as defined in section 64C (Requirement for *relevant authorised persons* to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000) if the reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of the conduct rules set out in the *FCA's* Code of Conduct (*COCON*) Sourcebook; or
- (b) make a follow up notification to update a notification that has been previously made by the *firm* in relation to (a); or
- (c) confirm that there is nothing to be reported under (a) or (b)

Is the *firm* making a nil return (see paragraph (c) of the introduction to this section)?

YES ☐ NO ☐

If the *firm* has answered "Yes", please go straight to Section 5. If the *firm* has answered "No", please go to Section 4.

*Firms* must notify us if they have taken disciplinary action against a *person* subject to our conduct rules in their last reporting period under SUP 15.11, where that person was in breach of our conduct rules. Disciplinary action against a *person* means issuing a formal written warning, suspension or dismissal of that *person*, or reducing or recovering any of that *person's* remuneration. As a reminder, disciplinary actions against *SMF managers* for a breach of our conduct rules must be reported to us within 7 days via the appropriate form.

A *credit union* is not required to make a nil return (see SUP 15.11. If a *credit union* has nothing to notify for a particular reporting period, it should not send a Form H to the *FCA* for that period.

## Disciplinary Action Details

## Section 4

For each individual that is the subject of a notification under this Form, please provide the details requested below, in so far as applicable.

A	B	C	D	E	F	G	H	I	J	K	L	M
Title	Surname	Forename(s)	IRN (See note 1)	Date of Birth (See note 1)	National Insurance Number (See note 1)	Passport Number (See note 1)	Nationality (See note 1)	Job Title / Position And Department / Division	Has the person, at any time during the reporting period, been (a) certified to perform an FCA specified significant harm function? If yes, please specify which one(s) or (b) a standard nonexecutive director? (see note 2)	Please identify the relevant conduct rule(s) that have been breached which form the basis of the disciplinary action taken  Refer to Conduct Rules	Please provide more information in relation to the conduct rule(s) breached.  Please also state here whether the firm is updating a previous notification or is making a new notification.  Free text description (2000 characters only. Anything greater than this please provide an attachment.)  (See note 3)	Please provide information as to the disciplinary action taken: <ul style="list-style-type: none"><li>• issuing of a formal written warning</li><li>• suspension or dismissal of the person</li><li>• reduction or recovery of any of the person's remuneration</li></ul> Free text description (2000 characters only. Anything greater than this please provide an attachment.)  (See note 4)

Note 1:  
(a) If an Individual reference Number (IRN) is available for a *person* about whom a notification is being made, please complete column D but do not complete columns E, F, G or H.  
(b) If an IRN is not available for a *person* about whom a notification is being made, but that *person* has a national insurance number, please complete columns E and F but do not complete columns G or H. (c) If neither an IRN nor a national insurance number is available for a *person* about whom a notification is being made, please complete columns E, G and H.

Note 2: If the answer is Yes, please state which of the listed functions the *person* performed. The term "*standard non-executive director*" is defined in the Glossary.

Note 3: If the *firm* is updating a previous notification, please confirm this in this column but include the details in column M (see note 3).

Note 4:  
(a) If the *person* about whom the notification is being made is appealing against the *firm's* decision, please include details here.  
(b) If the *firm* is updating a previous notification, please include the details in this column. This includes (1) any appeal made by the subject of the notification subsequent to a previous notification or (2) the outcome of any appeal previously notified. (c) The *firm* should specify which of the listed types of disciplinary action it has taken.

**Declarations and signatures****Section 5****Declaration**

It is a criminal offence, knowingly or recklessly, to give us information that is materially false, misleading or deceptive. Even if you believe information has been provided to us before (whether as part of another notification or otherwise) or is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this notification. If there is any doubt about the relevance of information, it should be included.

The *firm* confirms that the information provided is accurate and complete to the best of the *firm's* knowledge. The *firm* will notify the *FCA* if there is a material change to the information provided. In addition to other regulatory responsibilities, *firms* have a responsibility to disclose to the *FCA* matters of which it or they would reasonably expect to be notified. Failure to notify the *FCA* of such information may lead to the *FCA* taking disciplinary or other action against the *firm*. The *firm* authorises the *FCA* to make such enquiries and seek such further information as it thinks appropriate to verify information that it considers relevant to this notification. The *firm* understands that the *FCA* may require it to provide further information or documents at any time.

For the purposes of complying with data protection legislation, please read the *FCA's* privacy notice at <https://www.fca.org.uk/data-protection>. This notice will tell you what to expect when the *FCA* collects personal information, including how and why we use your personal information and who to contact if you have any queries or wish to exercise your rights.

By signing below, the person submitting this form on behalf of the *firm* confirms that this form is accurate and complete to the best of their knowledge and they have read and understood the notes to this form.

Name of the *firm*

Name of *person* signing on behalf of the *firm*

Position

Signature

Date

