

## Consultation Paper

### CP25/21\*\*\*

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# Senior Managers & Certification Regime Review Consultation Paper

July 2025

## How to respond

We are asking for comments on this Consultation Paper (CP) by **7 October**.

Please respond to this CP using our electronic [survey](#).

Alternatively, you can send your response via email to: [cp25-21@fca.org.uk](mailto:cp25-21@fca.org.uk).

or in writing to:

Governance and Cross Cutting  
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12 Endeavour Square  
London E20 1JN

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[cp25-21@fca.org.uk](mailto:cp25-21@fca.org.uk)

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# Contents

<b>Chapter 1</b>	Summary . . . . .	<b>Page 4</b>
<b>Chapter 2</b>	The wider context. . . . .	<b>Page 8</b>
<b>Chapter 3</b>	Effectiveness, scope and proportionality . . . . .	<b>Page 9</b>
<b>Chapter 4</b>	The operation of the SM&CR . . . . .	<b>Page 16</b>
<b>Annex 1</b>	List of Questions . . . . .	<b>Page 42</b>
<b>Annex 2</b>	Cost Benefit Analysis. . . . .	<b>Page 43</b>
<b>Annex 3</b>	The FCA's objectives and regulatory principles: Compatibility statement. . . . .	<b>Page 56</b>
<b>Annex 4</b>	Abbreviations used in this paper. . . . .	<b>Page 60</b>
<b>Appendix 1</b>	Draft Handbook text	

## Chapter 1

# Summary

### Why we are consulting

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- 1.1** We are consulting on measures to improve the efficiency and effectiveness of the Senior Managers & Certification Regime (SM&CR), with the purpose of streamlining processes and reducing burden on firms while maintaining the core principles and benefits of the regime. This consultation, which is published in parallel with the Prudential Regulation Authority's (PRA) [consultation](#), is the first stage of the reform, with our intention to consider additional changes in the next stage following the consultation of His Majesty's Treasury (HMT or Treasury) on the legal aspects of the regime.

### Background of the SM&CR

- 1.2** The SM&CR is an individual accountability regime. It seeks to promote safety and soundness, reduce harm to consumers and strengthen the functioning of the market by making financial services professionals individually accountable to their employers and to the regulators. It also aims to ensure that all financial services staff meet expected standards of conduct. It is set out in the Financial Services and Markets Act 2000 (FSMA) and implemented through the FCA Handbook and through PRA rules for dual-regulated firms.

### The SM&CR Review

- 1.3** In December 2022, the then Government announced that the Treasury, FCA and PRA would begin reviews of the SM&CR. In March 2023, we published Discussion Paper [DP1/23: Review of the Senior Managers and Certification Regime](#) (DP) jointly with the PRA. This invited views on the regime's effectiveness, scope, and proportionality, and on potential improvements. The Treasury launched a concurrent [Call for Evidence](#) (CfE).
- 1.4** This Review is an opportunity for us to assess the extent to which the regime has met its objectives and to consider how it could be more effective and efficient. Alongside promoting our operational objectives, we considered how improvements can also advance our secondary objective to support the international competitiveness and growth of the UK economy in the medium to long term.
- 1.5** Responses to the DP showed wide support for the SM&CR and its aims, and a general agreement that the regime is meeting its objectives. But respondents also highlighted specific areas where they considered the effectiveness and efficiency of the regime could be improved and regulatory burden reduced.

## Proposals in Phase 1 of the reform

- 1.6** The proposals in this Consultation Paper (CP) reflect the feedback received to the DP. They aim to increase the efficiency and effectiveness of the regime and reduce regulatory burden, while ensuring the core principles and benefits of the SM&CR remain.
- 1.7** We have been working closely with the Treasury and PRA on this Review. As the SM&CR is set in legislation, the Treasury has in parallel published a consultation on potential legislative changes to the regime. If legislative changes are made, it will enable wider changes to be made to increase flexibility in its application. So this consultation is the first stage of our reforms and we are making these proposals now so that firms can realise the benefits sooner rather than later.
- 1.8** This CP covers solo and dual-regulated firms, and the PRA is consulting concurrently on changes to the SM&CR for dual-regulated firms. We have worked closely with the PRA to develop a consistent and coordinated set of proposals for consultation. We recommend that firms regulated by both the FCA and the PRA also review the PRA's [CP18/25](#) 'Review of the Senior Managers and Certification Regime (SM&CR)' to understand all the relevant changes being proposed, including those that would be applied only by the PRA.
- 1.9** In this first phase of reforms we are proposing to: [to be replaced with table summarising key changes and referring to the relevant sections]
- improve the efficiency of the 12-week rule, which allows someone to cover for a Senior Manager without being approved, under certain conditions
  - streamline the Senior Management Function (SMF) approval process, including planning potential changes to processes and communications
  - increase the validity period of criminal record checks for SMF applications
  - allow more time to report updates to Statements of Responsibilities (SoRs)
  - remove overlap in certification roles and provide guidance on annual certification to help firms streamline the process
  - allow more time for firms to update specified Directory information
  - provide guidance in areas such as: the applicability of key SMF roles; allocation of Prescribed Responsibilities (PRs); and application of Conduct Rules and related reporting requirements
  - change guidance about the period in which firms should provide regulatory references about individuals upon request from a hiring firm
  - raise the thresholds for becoming an Enhanced SM&CR firm
  - make technical changes to the Handbook to align with some of the PRA's proposals
- 1.10** We detail these proposals in Chapter 4 along with feedback to the DP.

## Further changes we are looking to explore in Phase 2 of the reform

**1.11** We welcome Treasury's decision to consult on legislative changes to the regime. If changes to legislation are brought forward as outlined in Treasury's consultation then we would explore how we could make use of both of the flexibilities proposed to reduce the number of pre-approvals and the number of roles included in the regime. We also plan to explore additional changes to further streamline the regime. Key changes we would explore to further reduce regulatory burden include looking at how we can:

- reduce the number of SMF approvals, by removing SMF roles or reducing pre approvals;
- provide more flexibility to appoint interim SMFs before seeking approval by expanding the use of the 12-week rule;
- further streamline the SMF assessment process, e.g. the documents that are requested and the relevant systems;
- reduce the frequency of submission of SoRs, review our list of PRs, and simplify the Management Responsibilities Maps;
- design a streamlined regime to replace certification in a way that minimises burden and complexity while ensuring fitness and propriety of individuals;
- remove the Directory and explore with industry alternative ways to ensure consumers have other sources of information they require; and
- streamline Conduct Rule breach reporting.

**1.12** To inform phase 2 of our reforms we invite views on the potential changes set out above. We are interested in the impact of these changes on firm burden, and whether these changes would have any unintended or adverse consequences on the objectives of the regime. We also invite any other ideas to reduce the burden of the regime whilst maintaining its benefits.

**Question 1:** **To what extent do you support the further changes we are considering in phase 2 of the reform (summarised in paragraph 1.11). Are there any other changes you suggest? We would welcome views on the impact (positive or negative) of each potential change and on any suggested additional improvements.**

## Who this applies to

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**1.13** This CP will apply to all solo-regulated and dual-regulated firms already in the scope of the SM&CR, referred to in this CP as SM&CR firms, including third country branches.

**1.14** While this is not an exhaustive list, this consultation may also be of interest to:

- industry groups/trade bodies
- consumer groups and individual consumers
- policy makers and other regulatory bodies
- industry experts and commentators
- academics and think-tanks

## Outcomes we are seeking and measuring success

**1.15** The outcomes we seek to measure are set out below. We expect the proposed changes to promote our operational objectives and our secondary objective of supporting the international competitiveness and growth of the UK economy. We also welcome views on other potential success measures.

Outcome we seek	What will this achieve?	How will we measure success?
<b>Increased proportionality of SM&amp;CR requirements</b>	<p>Proportionality is already a key feature of the SM&amp;CR with different requirements applying to different firms depending on size and complexity.</p> <p>We expect the proposed changes to result in a further reduction in the administrative burden of compliance, while standards of governance and accountability are maintained.</p> <p>We would expect to see:</p> <ul style="list-style-type: none"> <li>• reduced compliance costs for firms</li> <li>• fewer requests for forbearance from firms seeking to manage changes in SMFs</li> <li>• Statement of Responsibility (SoR) submissions to be less frequent</li> <li>• fewer cases of inappropriate allocation of PRs to SMFs</li> <li>• fewer firms in scope of the Enhanced Regime thresholds</li> </ul>	<p>Views from respondents on the Cost Benefit Analysis in this CP.</p> <p>The frequency of SoR submissions, particularly for dual-regulated and Enhanced SM&amp;CR firms.</p> <p>Number/percentage of PR allocations on which we have to engage firms.</p> <p>Number of firms in scope of the Enhanced Regime thresholds.</p>
<b>Improved efficiency of SM&amp;CR requirements</b>	<p>Reduced compliance burden and costs.</p> <p>Firms and the FCA can redirect resources.</p>	
<b>Greater clarity on the application of some SM&amp;CR requirements</b>	<p>Higher levels of compliance in the SM&amp;CR areas in which we provide updated or new guidance.</p> <p>A reduced administrative burden on firms but with no consequential reduction in the benefits of the regime.</p>	<p>Number of SM&amp;CR related inquiries from firms on relevant areas.</p> <p>Views from firms, consumer groups and other relevant stakeholders.</p>

## Next steps

**1.16** Please respond to the questions in this CP by 7 October, using our electronic [survey](#) or one of the other methods in the 'How to respond' section. We will review the feedback and develop final regulatory requirements for publication in a Policy Statement (PS) expected in mid-2026.

## Chapter 2

# The wider context

## Background

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### Our Discussion Paper on the SM&CR

- 2.1** We set out the full background to the SM&CR in DP1/23. This CP summarises feedback to the DP and the wide-ranging engagement undertaken. We received 140 responses and also engaged, together with the PRA and Treasury, in roundtable discussions with firms and trade bodies. We also consulted with the FCA Panels.

### Links to our statutory objectives

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- 2.2** The SM&CR aims to enhance the personal accountability of senior managers and improve standards of conduct in firms overall. Feedback suggests the SM&CR achieves these objectives. Our proposals aim to increase the efficiency and effectiveness of the regime and reduce unnecessary regulatory and compliance burden. We also expect our proposed guidance to clarify relevant rules and our expectations of firms and individuals. This will lead to better compliance by firms, increased consistency in the application of the regime across firms, better consumer outcomes and enhanced market integrity. A more efficient regime will also support competition between financial services firms, to the benefit of consumers.

### Secondary international competitiveness and growth objective

- 2.3** A robust accountability regime underpins our approach to outcomes focused and future proof regulation. It contributes to the UK financial sector's reputation for high standards and can avoid the need for future prescriptive regulation, thus supporting the UK's competitiveness and growth. The changes that we are proposing will make the regime more efficient, and should help the UK be a more attractive place to do business and a place where talented individuals want to work.

### Consultation paper structure

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- 2.4** The subsequent chapters of this CP follow the structure of the SM&CR DP, to allow readers to cross-reference more easily.
- In Chapter 3 we look at the extent to which the regime is effective in meeting its objectives as well as the SM&CR's scope and proportionality.
  - In Chapter 4 we consider the feedback on specific elements and requirements under the SM&CR and set out our proposed changes where relevant. This chapter includes all of our proposals for changes to the SM&CR in Phase 1.



## Chapter 3

# Effectiveness, scope and proportionality

- 3.1** In this chapter, we give an overview of the feedback on the effectiveness, scope, and proportionality of the SM&CR as set out in Chapter 3 of the DP. It covers questions 1-12 of the DP. These views and our responses to them inform our proposals for the changes detailed in Chapter 4 of this CP.

## Overall view of the SM&CR's effectiveness

### Summary of feedback

- 3.2** Questions 1 – 5<sup>1</sup> in the DP sought views on the extent to which the SM&CR has met its aims. The overall view was that the SM&CR is a valuable regime, and that it is generally meeting its objectives. The table below shows this. Figures are based on the scores given by respondents who used the DP survey questions, combined with our analysis of sentiment in responses that did not use the survey.

**Table 1: Overall view of the SM&CR's effectiveness**

	Agree/ Strongly Agree	Disagree/ Strongly Disagree
The SM&CR has made it easier to hold individuals to account	89%	2%
The SM&CR regime has improved safety and soundness and conduct within firms	71%	8%
The fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles	78%	5%
The SM&CR has made it easier for firms to hold staff to account and take disciplinary action when appropriate against them	57%	12%

- 3.3** Many respondents said that SM&CR had the overall effect of improving governance, behaviours and culture within firms. Most also said that the fitness and propriety requirements support firms in appointing appropriately qualified individuals. But respondents also highlighted areas where the efficiency and effectiveness of the regime could be improved and where processes were burdensome.

<sup>1</sup> Question 4 asked respondents to provide suggestions for ensuring that appropriately qualified individuals are not deterred from taking up relevant Senior Manager roles, and is not summarised in the table.

## Our response

- 3.4** We have identified opportunities to streamline and refine the regime, and ways to improve its efficiency. To respond to feedback, Chapter 4 sets out our proposals for change in this first phase of the reform.

## Collective decision-taking

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### Summary of feedback

- 3.5** Question 6 of the DP sought views on whether the specific accountabilities of individual directors, established by the SM&CR, complement the collective responsibility of the board of directors or decision-making committees and whether this could be improved.
- 3.6** Most respondents agreed or strongly agreed that the SM&CR does this well. Some stated that increased accountability had improved board vigilance and that non-executive directors, owing to increased clarity around their responsibilities, felt able to challenge more robustly where appropriate. Others said that where an individual SMF had a specific responsibility, boards were now more inclined to look to them for guidance and answers to questions in that area.
- 3.7** A minority of respondents expressed opposing views. Some said that individual accountability created a risk that some SMFs might act in silos and focus on protecting themselves from firm or regulatory action, rather than work collaboratively in the wider interests of the firm and its customers.

## Our response

- 3.8** We do not propose to make changes to collective responsibility. We agree with most respondents that individual accountability complements collective accountability. Firms are expected to manage their governance and decision-making processes effectively and efficiently.

## Enforcement and the SM&CR

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### Summary of feedback

- 3.9** Questions 7 and 8 of the DP sought views on the role of enforcement in promoting individual accountability under the SM&CR and on potential challenges and improvements to our approach to enforcement.
- 3.10** There was overall agreement that enforcement is a key component of the SM&CR, and that it promotes individual accountability. Many respondents considered that effective enforcement was key for the SM&CR to continue to achieve its aims, and said that it supported internal people management and more effective compliance.

- 3.11** But several respondents said that there have been too few enforcement outcomes against individuals under the SM&CR. They were concerned that the threat of enforcement would become a waning deterrent, which would weaken individual accountability and hinder the effectiveness of the SM&CR. Respondents also fed back that, where we have used enforcement against individuals, investigations and cases have often taken too long. They emphasised the impact an investigation might have on the individual, both on their career and wellbeing.

## Our response

- 3.12** The SM&CR was designed to improve firms' culture by emphasising individual accountability. It is a standard part of our supervisory engagement with firms and authorisations processes and should not be seen as primarily an enforcement tool. Our enforcement of the SM&CR is nevertheless important and necessary for deterrence. As of 8 July 2025, we have opened 98 investigations into suspected breaches of COCON. These have led to 8 financial penalties on individuals, 6 of those accompanied by prohibitions and not including a number of other penalties we have decided to impose but that are subject or potentially subject to appeal. 22 of those investigations are ongoing and more such penalties can be expected.
- 3.13** We have also continued to impose sanctions under the predecessor rules to the SM&CR (the Approved Persons Regime), for misconduct that would have been subject to the SM&CR if it had applied at the time of that misconduct. Since 2022, we have imposed 26 sanctions on individuals for such misconduct.
- 3.14** We have also publicly adapted, in the past 18 months, our general approach to enforcement, streamlining our investigation portfolio to drive pace and focus. We expect future SM&CR investigations to result in speedier outcomes as a result.

## Scope of the SM&CR

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### Summary of feedback

- 3.15** In question 9 of the DP, we asked whether the scope of the SM&CR is appropriate. Most respondents that answered this question agreed that it was. However, there was feedback about the scope of certain aspects of the SM&CR, the Certification Regime and the number of SMFs.
- 3.16** The views of those that disagreed on the scope varied. Some argued that smaller firms should not be included in the SM&CR framework, for example, credit rating agencies. Others expressed concerns about potential 'scope creep' as new topics become a regulatory focus. Climate change, AI, and the Consumer Duty were given as examples. Respondents generally considered that there was no need to change the SM&CR to address these issues, including that no new SMFs or PRs were needed.

- 3.17** There was also specific mention of the Consumer Duty Board champion role. Some argued that this role was similar to some of the requirements under the SM&CR, such as Prescribed Responsibilities, and that future policies should not include a requirement of having a champion.

## **Our response**

- 3.18** We are not proposing significant changes to the scope in the first phase of our reforms. We support the Treasury's commitment to consult on removing the current Certification Regime from legislation to be replaced with a more proportionate regime. That consultation will also provide greater opportunity to reduce the number of SMF roles that are required under the regime. We will explore these reforms in the next phase of our work.
- 3.19** The requirement for a Consumer Duty Board Champion has already been removed. We announced, as part of our broader package of reforms to support growth, that from 27 February 2025 we no longer expect firms to have a Duty champion, although they can retain the role should they wish to do so.
- 3.20** Our views and proposals on SMF roles, Prescribed Responsibilities, the scope of the Certification Regime and the Directory are set out in detail in Chapter 4.

## **Competition and international competitiveness**

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### **Summary of feedback**

- 3.21** In question 10 of the DP, we sought views on how potential changes to the SM&CR could help enhance competition or the UK's international competitiveness. Most respondents said that the SM&CR supported competition and enhanced the UK's international competitiveness by ensuring high standards of conduct and individual accountability are maintained. Some noted that several countries have either introduced or were looking to introduce regimes which draw upon SM&CR concepts. But some respondents said some operational requirements created unnecessary administrative burdens that might deter some firms from locating in the UK.

### ***Foreign candidates considering performing SMF roles***

- 3.22** A few respondents said some foreign individuals who are considering taking an SMF role in a UK firm might be deterred from doing so in light of the personal accountability applied by the SM&CR. However, many respondents saw personal accountability as positive, and considered that this helps ensure the right people who are willing to accept the responsibility needed take on roles in the UK.
- 3.23** Some respondents said that we do not appropriately take into account relevant experience and approvals from other jurisdictions of foreign SMF candidates. Some called for increased alignment of the SM&CR with other comparable international individual accountability regimes, primarily to reduce the time and effort required to get

such Senior Managers approved. Singapore, Hong Kong, Australia and the Republic of Ireland were given as examples. Of these, some respondents, foreign banks in particular, called on us to recognise approvals of individuals by regulators from other jurisdictions so that such individuals would be allowed to perform SMF roles without being approved by the UK regulators.

- 3.24** There was feedback that some candidates living outside the UK are apprehensive about moving to the UK to take up an SMF role under the 12-week rule before their application has been approved. They said this might deter relevant foreign candidates from applying or firms appointing them in the first place. To resolve this, some suggested such candidates should be allowed to conduct the SMF role under the 12-week rule from the foreign country, until their application is determined.
- 3.25** In addition, some respondents sought more clarity on the definition and expectations in relation to SMF 7 – Group entity senior manager function – which in some cases affects international groups and Senior Managers in them.

## Our response

### *General feedback*

- 3.26** The feedback supports our view that the SM&CR is helping to advance our operational objectives and supports the UK's competitiveness. As we detail in the annex to the DP, the introduction of the SM&CR established the UK as a global leader on individual accountability. Since then, other countries have introduced or started developing accountability regimes that build on aspects of the SM&CR.
- 3.27** We agree that a more efficient and streamlined regime that reduces unnecessary or low value compliance costs to firms, would further advance the UK's competitiveness. We set out details on our proposals to address potential inefficiencies in Chapter 4.

### *Foreign candidates considering performing SMF roles*

- 3.28** Section 61 of FSMA requires that we do not approve an SMF application unless we are satisfied that the candidate is fit and proper. This legal requirement requires us to assess SMF candidates ourselves before approving them.
- 3.29** This means we assess every candidate applying for a new SMF role, including applications for individuals that already perform an SMF role or are in a similar position, whether or not they are in the UK, and plan to perform an additional or different SMF role. In our experience, this is beneficial as different roles may require different knowledge, competency and experience.
- 3.30** We recognise the importance of supporting the free flow of foreign talent into the UK and the positive effect this has on UK competitiveness and growth. We already take into consideration the approvals of foreign regulators and experience of candidates working outside the UK as part of the SMF assessment process, just as we would consider any relevant UK experience. On average, the processing times for applications from overseas candidates are similar to those for domestic candidates.

- 3.31** Where a foreign candidate has appropriate relevant experience for the role they are applying for, our assessment often focuses on other aspects of the prospective role, for example their understanding of the UK regulatory system. In our experience, this is important because there are significant differences in the regulatory frameworks in different jurisdictions, including how accountability regimes operate (see the international comparison annex of the DP). And it is important to consider candidates' knowledge of the UK environment and its regulation before they begin to perform an SMF role.
- 3.32** We have heard both through the DP feedback and anecdotally that some firms and individuals may experience challenges when applying for approval, and this can be especially true for overseas firms or individuals less familiar with the UK regulatory system. We would therefore welcome feedback in this consultation on firms' experience of applying for approval, particularly where they have experienced unnecessary friction or uncertainty in the process and how this compares to other overseas jurisdictions. Please provide this feedback in question 2.
- 3.33** We appreciate there might be difficulties for some foreign SMF candidates moving to the UK before an application for their role is approved. We consider that, where an SMF application has been submitted for a foreign candidate who is performing the role under the 12-week rule (which we are proposing to amend – see Chapter 4), that our requirements should not act as a barrier to the candidate temporarily performing the role from abroad, if needed, until the application is determined. After approval, it nevertheless remains important that Senior Managers spend time in the UK consistent with their responsibilities.
- 3.34** To further help firms and individuals who are applying for SMF roles, we have added more information to our [website](#) about the SMF approval process as a whole and on how approvals from other jurisdictions are considered. This should give firms and candidates a better understanding and certainty about the SMF approval process. We give more detail in Chapter 4.

## Proportionality

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### Summary of feedback

- 3.35** Question 11 of our DP sought views on the proportionality of the SM&CR. Most respondents agreed it was applied proportionately to both firms and individuals. Many considered that the regime was proportionately applied to solo-regulated firms in the form of the tiers and the different requirements that applied to each category.
- 3.36** A handful of respondents considered that some of the thresholds for a solo-regulated firm becoming an Enhanced firm should be raised. They considered that since the thresholds have not been updated since they were introduced, that they might now capture firms that should not be Enhanced, due to inflation and rising asset prices.

## Our response

- 3.37** In line with the feedback that the regime is generally applied proportionately to firms of different sizes and in different markets, we do not propose major changes in this phase of the reform. Proportionality was a guiding principle in the design of the SM&CR. The extent of the regulatory requirements on firms corresponds with the level of risk they pose, and considers the size, complexity and the markets in which the relevant firms operate. Also, the regime imposes no requirements on firms to adopt specific organisational or governance structures. Firms only need to apply for approval of SMF roles where the relevant function will be performed by an individual at the firm (in some cases, non-SM&CR rules require firms to have certain SMFs, for example SMF16, SMF17).
- 3.38** However, we recognise that inflation has been high in recent years and are therefore proposing to change relevant thresholds for becoming an Enhanced SM&CR firm to account for that, as we detail in Chapter 4.

## Chapter 4

# The operation of the SM&CR

- 4.1** Chapter 4 of the DP invited views on potential improvements to the SM&CR. We asked detailed questions about the requirements under the SM&CR. We also asked respondents to highlight issues with current requirements and give views on potential improvements. This chapter sets out respondents' views and our response and proposals for change to streamline the regime in this phase of the reform.

## The Senior Management Function assessment process

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### Summary of feedback

- 4.2** In question 12 of the DP, we invited views on the SMF assessment process. This was a key area of feedback. Respondents said the process often takes too long, including us sometimes not meeting the 3-month statutory period for determination. Some said that the uncertainty around when an application would be determined caused issues for firms and individuals. Others said this also negatively affects the competitiveness of the UK and ability to attract talent. Generally, respondents wanted individuals to be able to begin to perform SMF roles sooner and for the process to be smoother.
- 4.3** Some respondents acknowledged that SMF applications were now typically assessed more quickly. Most, however, still called for changing and streamlining the process.
- 4.4** A number of respondents suggested that delays in the SMF assessment process could be addressed by changing the process for some roles. They said that certain 'lower risk' SMF applications could be subject to less scrutiny or a different process and so determined quicker. Other respondents considered that some of the current SMF roles should not require regulatory approval at all, or that they would be subject to a notification. Some respondents called these ideas a 'two-tier' approach. This feedback was made particularly by and in relation to dual-regulated firms and Enhanced SM&CR solo firms to which more SMF roles apply.
- 4.5** Many respondents also considered that changing the 12-week rule could help resolve the issue and make changes in SMFs easier for firms to manage. The view was that the existing 12-week rule was not sufficiently flexible to help firms react to changes in senior management (see section on the 12-week rule).
- 4.6** Several respondents also asked for more information on the SMF assessment process and for more engagement with applicant firms. Some also said the systems and forms used in the process were inefficient in places and increased burden on firms.
- 4.7** There were also suggestions for making changes to some requirements in relation to an SMF application, including on criminal record checks, and regulatory references. We detail these in the relevant sections below.



## Our proposals

- 4.8** We have already made significant improvements in this area, taking robust action to improve the processing times of SMF applications. As set out in our [Oct 2022 Authorisations update](#), we have taken steps to reduce the overall workload relating to SMF applications. Consequently, open SMF applications have reduced from approximately 2,800 at the beginning of 2022 to approximately 800 (end-June2025). Our latest Authorisations operating service metrics show that we are now determining over 99% of FCA-led Senior Manager applications within the statutory 3-month time period. To increase transparency, we also publish the lower quartile, median, and upper quartile of the range of calendar days taken for determination in each category of application. This shows that most applications are not only determined within the 3-month period but significantly ahead of the statutory deadline, with a median determination time of 41 days. Nonetheless, we believe we can further improve and streamline the process, and set out those improvements in the proposals section below.
- 4.9** We agree with respondents that the SMF assessment process should be proportionate. Proportionality already exists in our SMF assessment processes, and we apply differing levels of scrutiny to applications using a risk-based approach. We appreciate, however, that the way in which proportionality is applied might not have been visible enough to firms and individuals. To improve visibility we recently provided additional information on the SMF assessment process, as we detail in our proposals section below and invite views on what firms may find most useful.
- 4.10** We have also been engaging more with industry to provide greater transparency of our approach. For example, we conducted a joint PRA/FCA seminar on SMF applications in October 2024, to help dual-regulated firms better understand our expectations.
- 4.11** The level of scrutiny we apply to applications depends on several factors and risks associated with the firm and the skills and experience of the individual. This includes, the nature of the SMF role, the market in which the firm operates, the firm's governance structure, and its specific circumstances. For example, the assessment of whether a candidate is competent for the role of Chief Financial Officer (CFO) in one firm may be different to the assessment for the CFO role in another firm depending on the circumstances.
- 4.12** We are not proposing to remove any SMF roles or require notification in place of approval in this CP. However, in the next phase of the reform, we will explore removing some SMF roles and streamlining the SMF assessment process further. We invite views on this in question 1.

## Changes to Form A

- 4.13** As we detail below, we have already made changes to Form A (which firms must use to apply for an individual to perform SMF roles) to improve its usability. We will now make additional changes to the form to set out that some of the documentation requested in the form can be reduced or consolidated where appropriate. We will make clear that the evidence setting out the skills gap analysis, competency assessment and learning and development plan can be included in a single document rather than separate ones, where appropriate.

### ***Provide more information about the SMF process***

- 4.14** We have enhanced the information on our webpages to make the SMF application process clearer, including best practice information. This includes detailing what firms need to do before completing an application; what happens once an application is submitted; and what the firm and the individual can expect during the application process. We also explain more clearly the existing proportionality in the SMF application process.
- 4.15** In response to feedback about international candidates and how approvals from other jurisdictions are recognised, we added specific information to support SMF applications from foreign candidates. This includes more information on how these are considered, and what firms and candidates can expect. Firms that wish to discuss a potential application for a candidate currently based overseas, or a candidate who has no prior UK financial services experience, are invited to contact us through their usual supervisory contact. More information on our approach to foreign candidates is set out in chapter 3.
- 4.16** We welcome feedback to this consultation on firms' experience of applying for approval, particularly where they have experienced unnecessary friction or uncertainty in the process and how this compares to other overseas jurisdictions.
- 4.17** We are also proposing changes in relation to criminal record checks and guidance on regulatory references to further streamline and expedite the process (see below).

### ***FCA initiatives to improve systems***

- 4.18** Before publishing the SM&CR DP, we had already begun work with users of our online forms to understand their experiences of submitting different applications. The feedback and responses to the DP were consistent with previous comments by users in identifying inefficiency, poor user journey, opaque language, inadequate data validation and duplicative requests as particular areas that could be improved.
- 4.19** To address these challenges, a programme of work is underway to simplify and digitise our online forms to make the application process more efficient. We are redesigning forms to improve clarity of language and accessibility and to provide better guidance. We are also implementing better data validation where possible – some information will be pre-populated, and duplicative requests for information will be removed.
- 4.20** The first form to already undergo improvements was Form A. This is one of the longest and most used forms. Some of the improvements we have made to Form A are: a checklist of information firms need to complete before starting an application; less duplication in the employment history section; improved data validation and pre-population; integration of the Statement of Responsibilities into the Form A, so firms will not be required to complete a second application for this; improved help and guidance throughout; easier navigation and an improved layout. A large number of users were involved in testing these changes and gave positive feedback.
- 4.21** We have also digitised Form B (used to withdraw an SMF application) and are working on improved versions of other forms which will be released over the course of the programme.

- 4.22** As we are not proposing changes to rules or guidance in this section, we are not formally consulting on these. We do, however, welcome views on the types of communications that would be most helpful to firms and individuals, and areas most useful to cover.

**Question 2a:** Please provide feedback on your experience of applying for SMF approval, particularly where you have experienced unnecessary friction or uncertainty in the process and how this compares to other overseas jurisdictions.

**Question 2b:** On which priority areas would firms welcome more information, guidance, or changes to forms, noting our intention to review and improve most application forms?

## Criminal records checks and disclosure

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### Summary of feedback

- 4.23** In question 13 of the DP, we sought views on the processes around criminal records checks (CRCs). There was broad agreement that CRCs are helpful for assessing fitness and propriety of individuals, and that disclosing criminal offences as part of the SMF assessment process was effective in supporting the aims of the SM&CR.
- 4.24** Most feedback was directed at the processes surrounding the requirement, rather than the requirement itself. Key feedback related to: (i) the perceived 3-month period that CRCs are valid for, which some said was too short and required them to get new CRCs for the same SMF candidate in some cases; (ii) the requirement to get CRCs for individuals applying for an SMF role who are already approved for a different SMF role, which some said was not needed; (iii) reporting historic misdemeanours in SMF applications, which some argued might have no relevance to the role applied for; and (iv) the challenges in getting foreign CRCs.
- 4.25** Some respondents also said the requirement to undertake CRCs annually as part of fitness and propriety assessments is disproportionate. However, there is no such requirement (see Handbook guidance at SUP10C.10.23A G).

### Our proposals

#### *The length of time CRCs are valid for*

- 4.26** There is no rule or guidance on the validity period for CRCs. However, the SMF application forms ask for an explanation if the check was not undertaken within the 3 months prior to the submission of the application. In light of feedback that a 3-month period was too short, we propose to set the validity period for CRCs obtained for an SMF candidate to 6 months. This would provide clarity and sufficient time for firms to use CRCs already obtained for an SMF candidate as part of the due diligence process in the SMF application.

### ***Criminal Records Checks for individuals already approved by the FCA***

- 4.27** We propose to remove the requirement for firms to undertake CRCs where an existing SMF holder is applying for an SMF in the same firm or group. We believe this would reduce burden and costs for firms for internal moves by expediting the application process and removing the costs of getting the CRC. We also consider this would not increase risk, since SMFs are obliged to disclose relevant information about criminal proceedings to the regulator, and since other requirements to disclose convictions (eg, in Form A/E) would remain in place.
- 4.28** Firms would remain responsible for determining whether the individual is fit and proper for the SMF role. So, they may choose to undertake CRCs where needed, especially where they have not conducted one for some time.

### ***Queries on reportable misdemeanours***

- 4.29** All criminal convictions are potentially relevant to a fitness and propriety assessment, so we are not proposing to change this requirement. The seriousness of the offence, the length of time since it occurred, and rehabilitation are taken into consideration as part of the SMF assessment process. Being convicted of an offence does not mean that an application would necessarily be refused.

### ***Criminal Records Checks from overseas***

- 4.30** We continue to expect firms to get a criminal records check from foreign countries where appropriate (per SUP 10C.10.21G), and to check for foreign convictions even if the firm does not get a formal certificate. We acknowledge this may be harder than getting checks in the UK, but consider these to be important for the assessment of fitness and propriety. It would also be inconsistent to require these checks for domestic candidates but not for overseas ones.

### **Question 3: Do you agree to our proposals for changes to criminal record checks and disclosures?**

## **Senior Manager Regime – the 12-week rule**

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- 4.31** The existing 12-week rule allows firms to appoint an individual to cover for a Senior Manager (SMF) who is absent, without being approved by the regulators, where the absence is temporary or reasonably unforeseen and the appointment is for less than 12 consecutive weeks.

### **Summary of feedback**

- 4.32** In question 14 of the DP, we sought views on whether the 12-week rule was effective in helping firms manage changes in SMFs. There was considerable negative feedback on this. The general view was that the existing rule is not fit for purpose and does not sufficiently help firms manage changes in SMFs. Around 40% of respondents disagreed or strongly disagreed that it provides sufficient help to firms in managing changes in SMFs.

- 4.33** Respondents said that a 12-week period was too short. They said that appointing a replacement SMF and receiving regulatory approval within 12 weeks is often unrealistic considering the employment market, what an SMF appointment entails, and the time it takes the regulators to determine an application. Some argued that a 12-week period does not align with our 3-month statutory time limit for determining applications. That is, even if a firm applies immediately after an SMF leaves, it might still breach the rule if the regulators take the full 3-month statutory timeframe to determine the application.
- 4.34** The result is that, when SMFs change, firms often find themselves in breach, or at risk of breaching the rules. In such cases, firms often seek to address this by seeking regulatory forbearance. However, respondents said that requests for forbearance can lead to inconsistent approaches, both in terms of differences between the FCA's and PRA's approaches and within each regulator depending on the team handling the issue. This in turn increases uncertainty for firms and creates burden for both firms and the regulators in dealing with forbearance requests.
- 4.35** Some respondents also said there was ambiguity about when the 12-week rule is available to use. They said that it is sometimes unclear whether specific circumstances make an absence of an SMF 'temporary or reasonably unforeseen'. As a result, different firms applied the rule in varying and inconsistent ways.
- 4.36** Respondents advocated for increasing the period of temporary appointments under the rule. Some also advocated for firms to be able to use the rule in wider circumstances to help manage changes in SMFs and avoid having to seek forbearance or risk being in breach of the rule.

## **Our proposal**

- 4.37** We acknowledge the feedback that the 12-week rule does not always give firms sufficient flexibility to manage changes in SMFs. To advance primary and secondary objectives, our proposals aim to balance improving the usefulness of the 12-week rule for firms in managing changes in SMFs, while ensuring good standards of governance and accountability are maintained.

### ***12 weeks to submit an application rather than to get a decision***

- 4.38** We propose to change the 12-week rule so that firms that use it would have 12 weeks to submit an application for an SMF, rather than 12 weeks to get a decision on an application. Once an application has been submitted, the person performing the role under the 12-week rule could continue to perform it until the application is determined by us. As long as a firm submitted an application within the 12-week period, it would not have breached the rule.
- 4.39** This change would clarify what firms must do when SMFs change under the 12-week rule, regardless of the time it takes us to assess the application. This would remove uncertainty for firms on application processing times. It would also give firms more time to appoint the correct individual with the right competence and fitness for the role rather than rush to bring in a candidate in order not to breach the rule.

- 4.40** 12 weeks should be enough for firms to submit a good quality application. The DP feedback, which suggested extending the 12-week period to 6 months, supports this (as 3 of these 6 months would have notionally been taken up by the SMF assessment process). We believe this proposal is better than extending the period to 6 months, as it gives firms more certainty about the requirement that applies to them and provides reassurance they would not breach the rule as long as they have submitted an application on time and per the requirements.
- 4.41** Our proposal means that firms would need to apply within the 12 weeks either for a replacement permanent candidate or for an interim one, and the rule would apply in either case. This means that, where recruiting a permanent candidate would take longer than 12 weeks, firms should apply for an interim SMF within the 12 weeks, who would hold the role until a suitable permanent candidate is found and approved.
- 4.42** However, it would be beneficial to both firms and us if firms applied for a permanent candidate rather than an interim one. This would avoid submitting 2 applications for the same vacancy. A firm with good succession plans should be well positioned to do so. In either case, we would expect applications to be of a high standard.
- 4.43** In the next stage of the reform, we will explore expanding this further and allowing firms more flexibility in appointing interim SMFs before seeking formal approval. We encourage respondents to provide views on this in question 1.

### ***Guidance on when the proposed new 12-week rule can be used***

- 4.44** We expect firms to use the 12-week rule only when this is necessary and appropriate. In many cases, SMF departures would be reasonably foreseen, e.g., an SMF leaving with significant notice, retiring, or a fixed-term contract coming to an end. In such cases, firms should make use of succession plans and notice periods to undertake their recruitment, and not use the 12-week rule.
- 4.45** Our aim is to ensure the rule is used in appropriate circumstances, while ensuring that firms do not unreasonably use it in a way that might adversely affect standards of governance and accountability or the need for firms to effectively plan for SMF changes. We propose guidance that we expect firms to:
- Use the rule reasonably.
  - Use the rule as infrequently as reasonably possible.
  - Have in place and operate effective and up-to-date succession plans as appropriate.
  - Use notice periods effectively to identify candidates to fill the place of the departing SMF.
  - Apply for approval for the permanent SMF replacement as soon as reasonably possible.

### ***Applying the Senior Manager Conduct Rules to the individual performing the SMF role under the proposed new 12-week rule***

- 4.46** To ensure that when a firm uses the 12-week rule, it maintains high standards of governance and accountability, we also propose that the person performing the SMF role under the 12-week rule would be subject to the Senior Manager Conduct Rules during the 12-week period (and beyond until the SMF application is determined). This would mean that the person providing cover under the rule would be personally accountable for their conduct in overseeing the areas under their responsibility. It would also avoid potential gaps in accountability during the period.

### ***Measures to further strengthen the rule and avoid misuse***

- 4.47** To further ensure the rule operates in line with its intended purpose, we propose to add rules and guidance that firms should: (i) ensure the individual performing the role under the 12-week rule is fit and proper; (ii) submit a good quality application.

### ***Allocation of PRs when the 12-week rule is used***

- 4.48** Only SMFs can hold Prescribed Responsibilities (and the appointment under the 12-week rule is not an SMF until an application for them is approved). We propose not to change the current requirements about the reallocation of PRs when the 12-week rule is used. Firms would still need to reallocate any PRs that the absent SMF held to other SMFs. However, we intend to explore further streamlining changes to PRs in phase 2 of the reform, as detailed above. As is the case currently, firms can appoint an existing SMF under the 12-week rule and would be able to assign the PRs to that SMF.
- 4.49** Firms would also not need to submit updated Statements of Responsibilities (SoRs) to the regulator until the absence has reached 12 weeks. If the absent SMF returns by week 12, this means no updated SoRs would need to be submitted (though the firm would still need to reallocate the PR(s) and change the SoR internally).
- 4.50** In addition, the submission of the revised SoRs to us would be subject to the proposed changes for all SoR submissions, making submissions periodic, as we detail below. This would mean that, in many cases, firms would not need to submit the revised SoRs/ Management Responsibilities Map (where applicable) to us when using the 12-week rule.

A non-SMF (A) is covering for an absent SMF (B), and the firm reallocates B's PRs to another SMF (C). In the 12th week, an application is submitted for A to replace B, and A continues to act as an SMF while their application is being determined. Under the proposed new rules, the firm would not need to submit an updated SoR for C until the next periodic submission date after B had been absent for 12 weeks. It may well be that by this time A would have been approved for the SMF role, and the PR(s) would go to them, in which case the firm would not need to submit a revised SoR for C.



### ***Notification of the use of the 12-week rule***

- 4.51** We propose that firms would not be required to notify us routinely of the use of the 12-week rule. If we were to introduce such a notification requirement it would significantly increase the burden of using the rule, would hinder its efficiency, and would be inconsistent with our secondary objective of supporting the international competitiveness and growth of the UK economy. Also, firms should report the use of the 12-week rule if there is something about the appointment that we would reasonably expect to know, e.g., under Principle 11 (Relations with regulators).

**Question 4:** Do you agree with our proposed changes to the 12-week rule?

## **Senior Management Functions and Prescribed Responsibilities**

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### **Summary of feedback**

- 4.52** In question 15 of the DP, we sought views on the Senior Management Functions and Prescribed Responsibilities we designated.
- 4.53** Most respondents agreed the current SMFs were appropriate. Some respondents considered that there should be fewer SMFs roles and fewer approvals by the regulators. Others said that we should create additional SMF roles. The key areas of feedback were: reducing the number of designated SMFs in dual-regulated and Enhanced solo firms; having 'tiers' for SMFs with different approval requirements; creating new SMFs; and clarifying when the SMF7 and SMF18 roles applied.
- 4.54** Most respondents agreed that the existing set of PRs was appropriate. The key areas of feedback were: combining or consolidating certain PRs into a single one and removing some PRs inherent in the nature of an SMF role; making more PRs available to Core firms, given there are more available to Enhanced SM&CR firms; allowing splitting of PRs where it better reflects responsibilities within a firm; and allowing SMF18s to hold more PRs than the rules currently permit (at present they are only allowed to hold PR Z – responsibility for CASS).

## **Our proposals**

### ***Senior Management Functions***

#### ***The existing suite of SMFs***

- 4.55** Most of the feedback suggests the existing suite of SMFs is appropriate. For solo-regulated firms there are already proportionality measures in place (the 3 SM&CR tiers), with a limited number of SMFs and PRs applicable to the vast majority of firms that are either Core or Limited Scope firms.



- 4.56** In this phase of the reform we are not proposing to remove SMF roles or add additional ones. This was not widely supported and might create unnecessary complexity and burden for firms. Further, given the variation in firms' structures, roles that might be justifiable as an SMF at certain firms (eg, Head of HR) would be inappropriate to be SMFs in others. It would also lead to firms and the regulator spending more time on SMF applications than is necessary and would result in additional costs for firms.
- 4.57** However we plan to explore whether SMF roles could be reduced or applications for approvals reduced, in the next phase of the reforms to further streamline the regime. We invite views on this in question 1 above.

***Further guidance on SMF7 – Group entity senior manager at solo-regulated firms***

- 4.58** This function applies to certain individuals who have significant influence over the management or conduct of the affairs of an entity in the group. There is already extensive Handbook guidance about the SMF7 definition. However, in light of feedback about perceived inconsistency around its applicability, we propose to add guidance to help firms determine whether a person is captured by this function. This includes guidance on whether entities have 'sufficient discretion' to make decisions.
- 4.59** We would reiterate that the applicability of the SMF7 depends on the specific situation at a particular firm and the nature of a particular corporate group and its arrangements. Where a certain role is considered an SMF7 in one group, the same role in a different group might not be. We expect our guidance for solo-regulated firms to reduce the number of SMF7 applications made by firms.
- 4.60** The PRA is also consulting to broaden the definition of SMF7 for dual-regulated firms to include owners and controllers in certain circumstances given the particular relevance to the PRA's statutory objectives. Dual-regulated firms should refer to this. The PRA is also consulting on changes to resolution administrators and Treasury appointed directors. We propose technical changes to our Handbook to align with their proposals.

**Question 5: Do you agree with our proposals on SMF7?**

***Further guidance on SMF18 – Other overall responsibility function***

- 4.61** We have seen that some firms allocate SMF18 to individuals whose role might not fit the definition of the function. For example, where the application is for an individual who is not the most senior person responsible for a business area or activity. To help firms avoid this, and to reduce the burden on firms and us in handling such applications, we propose to amend Handbook guidance to emphasise the considerations a firm should have when determining if the SMF18 function applies. We may challenge firms on applications that do not appear to meet this definition as part of our SMF assessment process. We expect this to reduce the number of SMF18 applications by dual-regulated and Enhanced solo firms to which the function applies.

**Question 6: Do you agree with our proposals on SMF18?**

### ***Prescribed Responsibilities***

- 4.62** Since most feedback was that the existing PRs are appropriate and fit for purpose, we are not proposing to make changes to the existing set of PRs at this stage. In the next phase of the reform, we will explore removing PRs to further streamline the regime. We invite views on this in question 1.
- 4.63** We do not agree that the PRs related to implementation of the SM&CR requirements (i.e., PRs a, b, b-1, and c) should be consolidated into one PR. For firms that do allocate them to one person, this would not materially reduce administrative burden, whereas firms that allocate these PRs to more than one SMF would have to split the PR, which would be burdensome. While certain PRs may be inherent in an SMF's role description in some firms, we believe the benefit of removing PRs in those cases is minimal and likely outweighed by disruption for other firms in which this is not so.

### ***Splitting PRs***

- 4.64** We would normally expect a PR to be given to a single SMF and not be split. However, we recognise that splitting a PR is sometimes necessary to more accurately reflect how accountability is allocated within a firm. Our existing rules do not prevent splitting and firms can split PRs where appropriate and we are proposing additional guidance on this for further clarity. However, we would generally expect that splitting a PR would more likely be appropriate in larger firms with complex arrangements.

### ***PRs that an SMF18 is allowed to hold***

- 4.65** Each PR should be given to the Senior Manager who is the most senior person responsible for the relevant activity or area. In most cases this would not be the SMF who holds the 'other overall responsibility function', given the nature of the SMF18 function. However, in some cases it may be appropriate for an SMF18 to hold certain PRs, such as firms with unusual arrangements, or in situations where they are required to reallocate PRs of an absent SMF (eg, covering the role under the 12-week rule). We consider therefore that the rules should not prevent firms from doing so and propose to amend the rule to remove this restriction in relation to solo-regulated firms. We are not proposing to apply this change to dual-regulated firms where agreement from both regulators is required. Where a dual-regulated firm believes this may be appropriate in their individual circumstances and meets the relevant statutory tests, they would continue to have the option of seeking agreement from both regulators using a waiver. We would welcome feedback on both approaches.

### ***Guidance on allocation of PRs***

- 4.66** We propose providing Handbook guidance on the allocation of FCA-designated PRs (including, for dual-regulated firms, PRs shared with the PRA). This would provide transparency on what we generally consider appropriate and reduce the likelihood of firms and the FCA needing to discuss proposed PR allocations. We recognise that many firms will already have allocated PRs in a way they consider appropriate and, in some cases, will have discussed this with us. We do not expect firms to reconsider their allocations simply to align with the guidance.

**Question 7: Do you agree with our proposals on Prescribed Responsibilities?**

## Thresholds for becoming an Enhanced SM&CR firm

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### Summary of feedback

- 4.67** Most respondents to our DP agreed that the SM&CR was applied proportionately to both firms and individuals.
- 4.68** A handful of respondents considered that the thresholds for a solo-regulated firm becoming an Enhanced firm should be raised, in particular the Assets Under Management (AUM) threshold. They said that too many firms might fall into the Enhanced category due to asset value fluctuations and inflation, and that the additional requirements of being an Enhanced firm would be burdensome and not needed for such firms. There was similar feedback to the question about the scope of the SM&CR (see above).

### Our proposals

- 4.69** The Enhanced category only applies to a small number of firms whose size, complexity and potential impact on consumers or markets warrant correspondingly higher accountability standards. Only c. 550 firms are currently categorised as Enhanced, c. 1% of all SM&CR firms. Many of these have opted-up to Enhanced status for various reasons, rather than being caught by the thresholds.
- 4.70** Firms categorised as Enhanced SM&CR firms are subject to additional requirements including: more roles requiring FCA approval as an SMF; additional PRs; Responsibilities Maps; and adhering to certain handover procedures. They are also subject to our Operational Resilience requirements which aim to ensure that systems of larger firms are more resilient for consumers, firms and financial markets.
- 4.71** There are six thresholds for firms becoming Enhanced, which apply to different financial markets. Three of these are linked to financial criteria:
- Assets under management of £50 billion or more calculated as a 3-year rolling average.
  - Total intermediary regulated business revenue of £35 million or more per annum calculated as a 3-year rolling average.
  - Annual revenue generated by regulated consumer credit lending of £100 million or more calculated as a 3-year rolling average.
- 4.72** These thresholds came into force in 2019 when the SM&CR for solo-regulated firms was introduced and have not been updated since.
- 4.73** Although there has not been an appreciable increase in the number of firms meeting the Enhanced thresholds since the regime began, we recognise that inflation has been high in recent years.

- 4.74** To ensure the thresholds remain appropriate and catch only the largest and most complex firms, and to increase proportionality and support growth, we propose to raise the financial criteria thresholds for becoming an Enhanced SM&CR firm listed above by updating them for inflation. Using historical inflation data, we propose to apply a 30%<sup>2</sup> increase to the thresholds, rounding figures where applicable for simplicity and clarity. The proposed changes are as follows:

Threshold	Current level	Proposed level
Assets under management	£50bn	£65bn
Total intermediary regulated business revenue	£35m	£45m
Annual revenue generated by regulated consumer credit lending	£100m	£130m

- 4.75** We also propose to create a mechanism that updates these thresholds periodically so that they remain in line with inflation in future. We propose that this update to the thresholds would be done every 5 years. The 5-year period is suggested to avoid too frequent changes, on the one hand, and appropriately reflect changes in inflation on the other. It also aims to ensure firms do not drop in and out of the Enhanced regime due to frequent changes. In a Bank of England target inflation environment of c. 2%, this would amount to c. 10% change every 5 years, but the update would also be frequent enough to account for higher inflation rates, as experienced in recent years. More frequent updates would make the change smaller and less significant, and could be difficult to track.
- 4.76** We estimate that c. 20-30 firms that are categorised as Enhanced currently may fall below the revised thresholds, and that additional firms that may have been caught by it in future as they grow would not be. Firms that have chosen to opt-up to the Enhanced category will remain Enhanced regardless of raising the thresholds, unless they choose to opt down.
- 4.77** These thresholds also have proportionality built into them. They operate on a 3-year rolling average which aims to reflect sustained growth, and as a further mitigant, firms that have passed the threshold are given a 1-year transition period before moving to the Enhanced SM&CR category. This should also help mitigate the potential risk of firms coming in and out of the Enhanced regime.

**Question 8: Do you agree with our proposals to raising the thresholds for becoming an Enhanced SM&CR firm?**

2 Representing the approximate inflation rate since we initially consulted on the thresholds in CP17/25 in 2017.

## The Duty of Responsibility

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### Summary of feedback

- 4.78** In Question 16 of the DP, we sought views on the Duty of Responsibility which applies to SMFs. The Duty of Responsibility received positive feedback. Most respondents considered that it supported personal accountability and led to notable improvements in the conduct and accountability of Senior Managers. Some considered it to be a 'step change' and said that it helped focus the minds of SMFs on their areas of responsibility.
- 4.79** Several respondents asked for further guidance on the 'reasonable steps' we would expect to be taken to avoid misconduct occurring in an SMF's area of responsibility, both in the context of the Duty of Responsibility and the Conduct Rules.
- 4.80** A minority of respondents, while agreeing with the objectives of the Duty of Responsibility, considered it to be superfluous to the Senior Manager Conduct Rules which aim to achieve the same outcomes. In particular, some respondents referred to the PRA case against Mr. Abarca in which the Senior Managers Conduct rules were used but not the Duty of Responsibility.

### Our proposals

- 4.81** The Duty of Responsibility is set in legislation and changes to it can only be made by changing the law. In light of the feedback that the Duty of Responsibility is useful and supports the aims of the SM&CR, we do not consider it is necessary to change it. We consider its role in helping to focus the minds of Senior Managers on their responsibilities to be valuable.
- 4.82** We agree with respondents that there is overlap between the Senior Manager Conduct Rules and the Duty of Responsibility, and that in many cases following either route would lead to the same result. We consider however that the Duty of Responsibility continues to perform a useful role, and that this overlap does not cause significant issues and is generally handled effectively by firms.
- 4.83** In response to requests for further information on reasonable steps, we refer to our comments in PS18/16 (see also DEPP 6.2.9-E). These are about the Duty of Responsibility, but also apply to consideration of reasonable steps under the Senior Manager Conduct Rules. We continue to believe that it is not possible to cover all potential circumstances and have decided not to provide further examples on 'reasonable steps' given the wide variety of situations and contexts in which reasonableness could be considered.

## Statements of Responsibilities (SoRs) and Management Responsibilities Maps (MRMs)

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### Summary of feedback

- 4.84** In Question 17 of the DP, we sought views on SoRs and MRMs. Respondents to the DP generally said that SoRs and MRMs were valuable tools in supporting accountability and increasing clarity in firms.
- 4.85** Feedback focused on the process of updating and submitting revised SoRs to the regulator(s). Respondents said the process of making these submissions each time a change is made is an administrative burden that adds little value. They considered that these updates were too frequent, particularly in larger firms that have more SMFs, and that the process of submitting the SoRs (and MRMs) using Form J and our Connect system was cumbersome and time consuming.
- 4.86** On MRMs, respondents fed back that these documents are sometimes very complicated and hard to manage. They argued that the scope of MRMs should be simpler. Some respondents also stated that when a firm is making several linked SMF applications in a short space of time, it is burdensome to have to produce and maintain several separate MRMs simultaneously, showing the changes in stages pending approval of each SMF application.

### Our proposals

#### *Periodic submission of SoRs*

- 4.87** The submission of SoRs to the regulator is required by the legislation. In support of growth and being a smarter regulator, while keeping in line with the legislation, we propose to streamline the submission of updated SoRs, by allowing periodic submissions. Under our proposal, firms would still have to keep SoRs (and, for relevant firms, MRMs) up to date at all times at the firm, but they would not need to submit them to us each time they make a change. Instead, we would allow submission of changed SoRs on a periodic basis and no later than every 6 months after the last submission.
- 4.88** This would reduce the administrative burden on firms as they would have more time to comply with the requirement to submit these documents.
- 4.89** Solo-regulated firms, if they wished, could gather all SoRs that had changed across the last 6 months and submit only the latest version of each (together with 1 up to date MRM, where relevant), all at once. Flexibility is built in and firms that have made changes to any of their SoRs could choose when to submit their updates, within the 6-month limit since their last update. As now, firms that have made no changes to SoRs would not be required to submit anything.

- 4.90** For dual-regulated firms, the PRA proposes in its CP published concurrently that these firms would have up to 6 months to submit updated SoRs/MRMs, but if more than one change was made during the period would still be required to submit all the relevant versions (and not the latest version only as under the proposal for solo-regulated firms). This is so that the regulators would hold a complete audit trail of all changes made to SoRs and MRMs in these firms. We propose to align with the PRA's proposal to maintain a consistent standard for dual-regulated firms and welcome feedback on both approaches. For this proposal to function optimally, we may need to make changes to our systems. We will consider what changes may be needed and what implementation period will be required.
- 4.91** We are also consulting on making minor changes to the existing guidance at SUP 10C.11.6G, 'Revised statements of responsibilities: meaning of significant change'. Our proposed changes aim to set out more clearly and clarify when a change is material enough that it requires submission of an updated SoR to us.

### ***Management Responsibilities Maps***

- 4.92** We are not proposing to change the scope of what should be included in MRMs. While we appreciate MRMs can be complicated documents, we consider them to be of great value, particularly in larger and more complex firms. We remind firms of our existing [guidance on SoRs and MRMs](#), and firms may also wish to consult the FCA's own published MRM.
- 4.93** On concerns about having multiple versions of an MRM when making linked SMF applications, we propose to include guidance that clarifies that firms can, in these circumstances, submit just 1 MRM showing the future state that will apply assuming all the changes are approved.
- 4.94** We will explore potential additional changes to SoRs and MRMs in the next phase of the reform, to reduce the frequency of submissions and simplify MRMs. We invite views on these in question 1.

**Question 9:** Do you agree with our proposals on SoRs and MRMs?

**Question 10:** Do you agree with our proposal to align with the PRA on SoR submission requirements for dual-regulated firms?

## **Certification Regime**

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### **Summary of feedback**

- 4.95** In question 18 of the DP, we sought views on the Certification Regime. The overall view was the Certification Regime is well-established and many of its features can be valuable. There was considerable feedback however that some aspects of certification are overly burdensome to firms.



- 4.96** Feedback focused on the annual re-certification process being burdensome. Some considered there was little value in re-certifying when no changes to the role have occurred, and suggested more time should be allowed between re-certifications. There were also misperceptions about what is required as part of certification, for example, that a certificate needed to be provided in hard copy, that annual criminal record checks are required, or that the re-certification process is a stand-alone process that is managed separately rather than incorporated into existing processes.
- 4.97** In addition, there was feedback about the scope of certification. Respondents said that the Certification Regime captures too many roles, and that some functions are applied inconsistently. Some felt that the regime in some cases captures roles that are too junior, purely because they involve dealing with clients or require qualifications. In particular, some respondents argued that 'administrative overseers', who are in scope as they require qualifications, are quite junior staff, such as team leaders and should not be subject to certification.
- 4.98** Others felt that only customer-facing staff should be certified, and other roles should be taken out of scope of certification completely. For example, those holding the CASS operational oversight function and managers of certified staff. There was also feedback that there was often significant overlap between several of the non-customer facing categories, such as Material Risk Takers with the Significant Management function, and respondents questioned whether it was necessary for individuals to be certified for each individual function.
- 4.99** There was feedback that some functions, in particular 'Significant Management' and 'Client Dealing', are applied inconsistently by different firms. Firms said they would welcome clearer guidance on the scope of these functions.

## Our proposals

- 4.100** The Treasury has committed to consult on replacing the current provisions of the Certification Regime in legislation. We support this intention and will work with Treasury on developing a more proportionate regulatory approach in the next phase of the reform. We are considering how to design a streamlined replacement regime if legislative changes are made, that ensures people that are not SMFs are fit and proper for their roles, while minimising burden on firms. We invite views on this in question 1.
- 4.101** To help firms ahead of potential legislative changes and to streamline requirements in the meantime, we propose to make some changes and welcome views on this basis. If legislation proceeds quickly, the changes we propose below might apply for only a short period. Applying these changes that are designed to streamline the regime should be straightforward in most cases, but firms can choose to continue to apply their existing approaches where relevant, rather than adopt to proposals below, until the Certification Regime is replaced.



### ***Streamlining the process of certification and re-certification***

- 4.102** The requirement for firms to certify on appointment and then at least annually, including issuing them with a certificate, is set in legislation. The Treasury invited views on the regime in its Call for Evidence.
- 4.103** However, it appears some firms may have 'gold-plated' the requirements set out in FSMA and in our rules. For instance, some firms report they conduct criminal records checks on certified staff, on appointment and on an annual basis, which they may do if they consider appropriate, but is not a requirement.
- 4.104** To help streamline the process of certification and re-certification, within the confines of the legislation, we propose to provide additional guidance. This would clarify that the certificate can be provided digitally rather than in hard copy (but must still be in writing as required by legislation), that firms can embed re-certification within existing processes such as performance reviews, and that firms can conduct the certification process proportionately when there are no changes from the previous year.

### ***Scope – removal of duplication***

- 4.105** There was considerable support for keeping most client-facing roles, (eg, 'functions requiring qualifications' and 'client dealing') as Certification Functions so we do not propose changing the scope of these. A handful of respondents questioned whether administrative overseers should remain in scope of certification, arguing that while they are required to have qualifications they are relatively junior members of staff. Our view is that the aspects of the firm's business that they oversee are important and could cause consumer harm (for instance, the processing of claims in life insurance, or administration of various aspects of stakeholder pensions). Therefore, we do not propose to change the scope in respect of administrative overseers at this time.
- 4.106** We have looked for opportunities to reduce the scope of certification while maintaining its benefits in ensuring individuals are fit and proper for their roles, and in keeping with the legislation. We propose to change the scope of the Certification Regime by removing duplication in the following cases where the same individuals currently need to be certified for separate functions. Doing this would reduce the number of certification roles by c.15%. We propose to remove the requirement for separate certification as:
- an FCA Material Risk Taker where an individual at a dual-regulated firm is also certified by the PRA in one of its certification functions (Material Risk Taker, Significant Risk Taker, or Key Function Holder) at the same firm.
  - a Significant Management Function holder where the individual is also certified as an FCA Material Risk Taker at the same firm.
  - the manager of a certification employee if the individual is already certified for another certification function at the same firm.
- 4.107** These changes would mean that where there is duplication as above, the duplicative roles will not be in scope of the Certification Regime and therefore would not be on the Directory. This would also reduce the compliance burden in updating the Directory.

- 4.108** Under these proposals, any individual performing the function of FCA Material Risk Taker, Significant Management Function holder or manager of a certification employee without holding one of the additional certification functions listed above would continue to be required to be certified for these roles.
- 4.109** Apart from these changes, we propose to keep the scope of certification for non-customer facing roles unchanged ahead of any wider legislative changes.

### ***Scope – meaning of ‘significant management’ and ‘client dealing’***

- 4.110** We are not proposing to add to existing guidance on the scope of ‘significant management’ (SYSC 27.8.5G – SYSC 27.8.9G) or client dealing (SYSC 27.8.18R – SYSC 27.8.22B G). We consider current guidance provides necessary flexibility to reflect the internal arrangements of different firms and that there is sufficient guidance and detail on these already.

### ***Scope – certification of SMFs***

- 4.111** Firms and trade bodies have previously asked us about certification where an individual is also a Senior Manager. We propose to provide guidance that Senior Managers may need to be certified to perform certification roles, if the role is distinct and separate from their SMF role. This would include, for example, if a Senior Manager wanted to carry out a role requiring qualifications such as advising on investments. This does not mean, however, that a Senior Manager would automatically need to be certified where they engage with customers. In many instances, client engagement would be a normal and expected part of an SMF’s role and would not require certification.

### **Question 11: Do you agree with our proposals on certification?**

## **Directory of certified and assessed persons**

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### **Summary of feedback**

- 4.112** In Question 19 of the DP, we sought views on the directory of certified and assessed persons (Directory). We asked whether it captures the appropriate types of individuals, and whether the requirements for keeping it up to date are appropriate.
- 4.113** Most respondents agreed that the Directory worked well and that it served its purpose of giving consumers and businesses a means to check and monitor individuals working at firms. Firms also said they use it to cross check information about a Directory Person before hiring them. There was general agreement that, if retained, the Directory must be kept up to date, or it would lose its value.

- 4.114** On scope, some respondents said that certain certification roles should not need to appear on the Directory, as they are not customer-facing roles. They called for roles such as Significant Management Function, Material Risk Takers and proprietary or algorithmic trading not to be in scope of the Directory. A small minority of respondents said that credit unions should not be required to update the Directory, in light of their profile.
- 4.115** On keeping the Directory up to date, respondents said that 7 working days for updating the required information was difficult and burdensome and that firms should have longer to make updates. They also said that the systems for updating the Directory were inefficient. They mentioned in particular delays in processing data uploads, and that the system only enables removing a record at firm level rather than for multiple firms in the same notification (as the SMF processes allow).

## Our response

### *Scope of the Directory*

- 4.116** The Directory includes information on all certified roles. We propose to reduce the scope of the Directory by reflecting the changes to the scope of certification set out above. We are not proposing other changes to the scope at this stage ahead of wider legislative changes to the Certification Regime.
- 4.117** We recognise that the information on the Directory serves 2 main purposes at present. It enables consumers to check client facing roles and enables firms to check the employment history of staff they are considering hiring, as well as being a source of intelligence for us and other regulators. If changes to legislation are made, we will revisit whether the Directory is required, and if not, whether any of this information needs to be retained or made available in a different mechanism.
- 4.118** On credit unions, we have decided to keep the Directory requirements for this important and growing sector, pending phase 2 of the reforms.
- 4.119** In the next phase of the reform, we will explore additional changes to the Directory and invite views on what could change, including on potentially removing the Directory and exploring with industry alternative ways to improve other sources of information available to consumers. We invite views on this in question 1.

### *The requirement to keep the Directory up to date*

- 4.120** We propose to allow firms more time to update most of the information on the Directory, extending this to 20 business days for most updates. This strikes a balance between giving firms more time to make updates to reduce burden, and ensuring that key information on the Directory is kept sufficiently up to date.
- 4.121** We propose to retain the 7 working day timescales for updating details about staff departures from firms. When an individual leaves a firm, this is more critical information and the need for up-to-date information on the Directory is increased, particularly due to the increased risk of fraud. It would also limit risk of consumer confusion where an individual may be shown under 2 firms simultaneously having left one and joined another.

### ***Potential changes to systems***

- 4.122** We recognise the challenges raised by respondents about the current processes and systems. They will feed into the wider work being undertaken to improve the way information is reported to and used by us.

**Question 12:** **Do you agree with our proposal to change the timescales for updating the Directory?**

## **Regulatory references**

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### **Summary of feedback**

- 4.123** In Question 20 of the DP, we sought views on whether regulatory references helped firms make better-informed decisions about the fitness and propriety of candidates. There was general agreement that regulatory references are useful in helping employers ensure relevant individuals are fit and proper for their roles.
- 4.124** The most common criticism was the time taken to receive regulatory references following a request, with some saying that this delays recruitment of key personnel. About a third of respondents stated that firms tend to use the full 6 weeks when it was possible to respond more quickly, and that some firms fail to respond to requests for references at all. Conversely, a minority of respondents considered that 6 weeks to provide a reference was sometimes challenging, particularly in larger firms with more complex structures.
- 4.125** Most respondents said the regulatory reference template was fit for purpose. A few said that references do not always contain useful information for assessing fitness and propriety. Some said this was more often the case with foreign firms or non-financial services firms, and that it was harder to get references from them. They suggested removing the requirement to request references from such firms.
- 4.126** Some commented that the questions in the template were designed not to invite the kind of disclosures that might prove difficult for an individual. Conversely, a handful of respondents said that Question G of the template, which directs firms to provide 'any other information that might reasonably be considered relevant to an assessment of whether an individual is fit and proper', was too broad in scope. They contended that the question might allow malicious actors to include irrelevant information intended to be obstructive to the individual subject of the reference.

### **Our proposals**

#### ***Timeframe for providing regulatory references***

- 4.127** We propose to amend the guidance to firms to provide regulatory references to within 4 weeks of the request, to speed up the process. We engaged with industry professionals responsible for recruitment on what an appropriate timescale would be. They said that 4 weeks was a reasonable period for most firms to process and deliver a regulatory reference and would help firms shorten the recruitment processes.

- 4.128** We acknowledge that there may be instances where references might take longer to prepare. For example, in firms with more complex structures or for certain roles that require input from many sources. So, we are proposing a 4-week period in guidance rather than proposing a rule, but expect that firms provide references on requests as soon as possible.
- 4.129** Since most respondents considered the template is appropriate, we are not making substantive changes to it. We also continue to consider it important that firms request references from all relevant previous employers. We are proposing some guidance on what may need to be included in a regulatory reference if an employee leaves the firm before an investigation into potential misconduct was concluded. Although we believe this is already happening in practice, we also propose a change to SYSC 22.2 to explicitly require firms to provide regulatory references to firms applying for authorisation, and not only to firms that are already authorised as the rule currently says.

**Question 13: Do you agree with our proposals on regulatory references?**

## Conduct Rules

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### Summary of responses

- 4.130** In question 21 of the DP, we sought views on whether the Conduct Rules are effectively promoting good conduct across all levels of the firm.
- 4.131** Most respondents agreed that the Conduct Rules are effective in doing so and only a small minority disagreed. Most respondents felt the rules provided a useful framework for setting out standards, or helpfully reinforced existing behavioural expectations within firms.
- 4.132** Some respondents asked for further guidance on issues relating to the Conduct Rules, including on non-financial misconduct (NFM). Other feedback included comments or questions about the legislative definition of disciplinary action including suspension, which some said is unfairly treated as a reportable breach where the suspension is a temporary measure; and concerns that the new Conduct Rule relating to the Consumer Duty was unclear or caused unnecessary complexity.
- 4.133** DP responses and our previous experience with firm queries and reports have shown confusion about the relationship between the Conduct Rules and disciplinary processes, and misunderstandings about when a breach needs to be reported to us.

## Our proposals

### *General*

- 4.134** Given the feedback, we continue to consider the Conduct Rules to be generally useful and effective, and are not proposing rule changes in this phase of the reform. However, we propose to add guidance to further support firms in considering how to apply the Conduct Rules. We believe this guidance will help reduce burden on firms in interpreting the requirements, avoid potentially applying them incorrectly, reduce overall costs, and reduce inconsistency of application between firms.
- 4.135** We propose guidance to:
- reiterate that only Conduct Rule breaches where specified disciplinary action was taken by the firm need to be notified to the regulator.
  - highlight that the notification requirements for breaches under SUP 15.11 are separate to any other reporting requirements.
  - outline matters that the regulator might expect notification about pursuant to Senior Manager Conduct Rule 4.
  - clarify the impact of legal privilege and Senior Manager Conduct Rule 4.
  - clarify when cases in which the firm suspended an individual, or reduced or recovered their remuneration, need to be notified to the regulator.
  - clarify regulatory reference expectations where an individual has breached a Conduct Rule and disciplinary action was not taken.
- 4.136** In the next stage of the reform, if legislative changes are made, we will explore what further changes could be made to further streamline the process of reporting Conduct Rule breaches to reduce firm burden. We invite views on this in question 1.
- 4.137** The proposed guidance in this consultation is general to the operation of the Conduct Rules. We are currently consulting separately on whether any further guidance is needed to help firms understand non-financial misconduct in the context of our Conduct Rules ([CP25/18](#)).

### *Reporting Conduct Rule breaches and consideration of breaches*

- 4.138** Although the regulators can take action against individuals at all levels of a firm for a Conduct Rule breach (and this remains an important feature of the regime), the main way the rules operate is internally at firms.
- 4.139** Behaviours which potentially breach the Conduct Rules can range from minor issues for which formal action by a firm may be disproportionate, to matters of serious regulatory concern. We propose additional guidance to reaffirm that only breaches where disciplinary action (as defined in FSMA) was taken should be reported to us as a Conduct Rule breach (noting it may still need to be reported to us under a different rule, eg, PRIN 11, SUP 15.3 or SUP 10C). We also clarify here that whether certain behaviour is a breach of the Conduct Rules does not depend on whether disciplinary action was taken.

- 4.140** We propose guidance to clarify the relationship between the notification requirements for COCON in SUP15.11 and other notification requirements in the Handbook, as we have seen some confusion that might lead to under-reporting.
- 4.141** In addition, we propose to incorporate into the Handbook previous non-Handbook clarifications (reflecting comments made in CP19/4) about Senior Managers ensuring that the firm complies with the obligations under Principle 11 and SUP 15 to notify us about the business of the firm for which they are responsible. This includes information that may need to be disclosed to us even if it is referred to in parallel legally privileged communications.

### ***Suspension and recovery or reduction of remuneration defined as 'disciplinary action'***

- 4.142** The definition of 'disciplinary action' is set in legislation, in FSMA S64C. It includes 'suspension' and 'reduction or recovery of any of the person's remuneration'.
- 4.143** We propose guidance to clarify that where the reason for a suspension is to remove someone from work before an investigation into a potential Conduct Rule breach has concluded, rather than as a sanction resulting from the breach, then this would not be reportable as a Conduct Rule breach under SUP15.11. This would avoid potentially unfair consequences for individuals that are suspended due to a suspected Conduct Rule breach, and a subsequent investigation concludes that there was no breach or that the breach was not serious enough to require disciplinary action.
- 4.144** Similarly, we propose to include guidance that where a person's remuneration has been reduced or recovered, firms should only report under SUP15.11 if the reason for the reduction or recovery was a sanction arising from a Conduct Rule breach. Firms may adjust remuneration in a range of circumstances, including for example in cases of poor firm or business unit performance where the individual would not be considered 'personally culpable' per the definition in COCON 3.1.3.

### ***The impact of a Conduct Rule breach on assessment of fitness and propriety and on regulatory references***

- 4.145** A Conduct Rule breach does not inherently render an SMF holder or Certification Function holder no longer fit and proper. Firms must assess fitness and propriety on a case-by-case basis. We are proposing guidance to clarify that not all Conduct Rule breaches need to be included in regulatory references. A breach does not need to be included in a regulatory reference if the firm did not take disciplinary action (as defined in FSMA) because it did not consider the conduct to be serious enough to warrant it, and if it believes that the breach is insufficiently severe or serious to impact an assessment of fitness and propriety. Both conditions above need to be met for the breach not to be included in a regulatory reference. In CP25/18 we have also consulted on guidance on relevant factors to consider when assessing the impact on fitness and propriety after a Conduct Rule breach.



**Question 14: Do you agree with the proposed guidance on the Conduct Rules?**

***Non-Handbook clarifications on the Conduct Rules***

***Impact on individuals and firms' consideration of root causes***

- 4.146** A handful of respondents expressed concern about how errors, rather than intentional acts, might have serious consequences on an individual's career when these are considered and handled as Conduct Rule breaches. There was also some concern raised that the Conduct Rules might drive firms to focus on attributing blame or for individuals to protect their own position, and that this might hinder constructive engagement and impede firms' ability to understand root causes of issues and mitigate systemic problems.
- 4.147** We clarify that Conduct Rule breaches vary in significance and magnitude. The degree of impact on an individual should stem from the specific facts of the breach, not just the fact that a breach had occurred. As set out above, some breaches do not need to result in disciplinary action, be reported to us, appear on regulatory references or result in an individual being considered not fit and proper. Firms that improve their practices in light of this should be able to identify and address systemic issues.

***Non-financial misconduct (NFM)***

- 4.148** The changes we propose to the COCON in this consultation are intended to improve their general operation. In relation to NFM issues specifically please refer to CP25/18.

***Individual Conduct Rule 6 (You must act to deliver good outcomes for retail customers)***

- 4.149** We do not believe that further guidance is necessary to help clarify how Conduct Rule 6 applies. The training that firms give their staff should enable them to understand their obligations under the Consumer Duty and the Individual Conduct Rules. In [FG22/5: Final non-Handbook Guidance for firms on the Consumer Duty](#) we provided greater clarity about how the scope of a person's job and their seniority may affect what is expected of them under Conduct Rule 6.

***Further clarification on how to identify a Conduct Rule breach***

- 4.150** COCON contains extensive guidance on identifying breaches, particularly in COCON 3, including on 'reasonable steps' and whether someone is 'personally culpable', which is a necessary component of a Conduct Rule breach.
- 4.151** CP25/18 includes 2 flowcharts illustrating the considerations for determining if conduct has breached the Conduct Rules on pages 13-14. It also contains proposed guidance on the scope of the Conduct Rules (at COCON 1.3) that is relevant to the consideration of all potential breaches. Given the existing information we do not propose further examples or guidance on the identification of breaches.



## Other issues

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### Summary of responses

- 4.152** In question 22 of the DP, we invited views on any other areas that had not been covered. An additional issue that came up in a small number of responses was how the use of Artificial Intelligence (AI) should be treated under the SM&CR, with different views expressed. Some considered that no changes to the SM&CR were needed in relation to AI as the regime was already set-up in a way that enables it to address such issues. Others considered that creating a new and separate SMF or a new PR for AI would be desirable, to ensure robust individual accountability for it.

### Our response

- 4.153** We agree with respondents that the use of AI and machine learning in financial services provides opportunities that may enable firms to offer better products and services to consumers, improve operational efficiency, increase revenue, and drive innovation. The use of AI can also pose novel challenges for firms and regulators and impact existing risks to consumers, the safety and soundness of firms, market integrity, and financial stability.
- 4.154** Our [April 2024 AI Update](#) set out how our existing rules, such as the SM&CR, apply to firms' use of AI. Taking into account feedback to our SM&CR DP as well as the joint FCA-PRA AI discussion paper, we do not consider it necessary to make any new rules on the application of the SM&CR in the context of AI at this stage. But we are looking at the use of AI in financial services separately and the support we provide firms to safely and responsibly adopt AI through the FCA's [AI Lab](#).

## Annex 1

### List of Questions

- Question 1:** To what extent do you support the further changes we are considering in phase 2 of the reform (summarised in paragraph 1.11). Are there any other changes you suggest? We would welcome views on the impact (positive or negative) of each potential change and on any suggested additional improvements.
- Question 2a:** Do you agree with our intention to improve forms, systems, communications and engagement with firms in relation to the application process?
- Question 2b:** On which priority areas would firms welcome more information, guidance, or changes to forms?
- Question 3:** Do you agree to our proposals for changes to criminal record checks and disclosures?
- Question 4:** Do you agree with our proposed changes to the 12-week rule?
- Question 5:** Do you agree with our proposals on SMF7?
- Question 6:** Do you agree with our proposals on SMF18?
- Question 7:** Do you agree with our proposals on Prescribed Responsibilities?
- Question 8:** Do you agree with our proposals on raising the thresholds for becoming an Enhanced SM&CR firm?
- Question 9:** Do you agree with our proposals on SoRs and MRMs?
- Question 10:** Do you agree with our proposal to align with the PRA on SoR submission requirements for dual-regulated firms?
- Question 11:** Do you agree with our proposals on certification?
- Question 12:** Do you agree with our proposal to change the timescales for updating the Directory?
- Question 13:** Do you agree with our proposals on regulatory references?
- Question 14:** Do you agree with the proposed guidance on the Conduct Rules?

## Annex 2

# 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 impacts of our proposals to streamline and improve the efficiency of Senior Manager & Certification Regime (SM&CR) requirements in this phase. 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.
3. Based on the analysis presented in this CBA, our view is that the SM&CR proposals should result in savings to firms that will significantly outweigh the familiarisation costs.

## The market

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4. The SM&CR consists of three parts: the Senior Managers Regime, the Certification Regime, and the Conduct Rules. Together, these elements aim to improve conduct and individual accountability by shaping the incentives of firms in the financial services sector and their senior managers. Overall, the regime seeks to reduce misconduct, increase the likelihood of instances of misconduct being identified and broaden the scope for firms and the regulators to take regulatory actions.
5. On its launch in 2016, the SM&CR applied only to banks, building societies, credit unions and PRA-designated investment firms. It was then extended to insurers, in 2018, and to solo-regulated firms (firms regulated only by the FCA) in 2019. The introduction of the SM&CR did not require firms to change their governance structure or hire new people to fill specific roles.
6. The Senior Managers part of the SM&CR applies differently to solo-regulated firms depending on their categorisation. At the time of writing, there are approximately 550 Enhanced firms, 17,000 Core firms, and 18,800 Limited Scope, as well as 1,200 dual-regulated firms. Our SM&CR proposals in this consultation affect all three categories of solo-regulated firms.
7. The Certification Regime covers specific functions that are not Senior Management Functions but can have a significant impact on consumers, firms and markets. These roles are called Certification Functions and include firms ensuring, among other things, that they have identified the individuals that need to be certified and assessed whether

they are fit and proper, both on appointment and on an ongoing basis. The Conduct Rules require basic standards of individual conduct, for which all staff are accountable. Additional Conduct Rules also apply to Senior Managers.

## Problem and rationale for intervention

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8. By shaping the incentives and actions of firms and their senior managers, the SM&CR aims to reduce the harm associated with misconduct to consumers and markets. It therefore contributes towards our operational objective to protect the integrity of the UK financial system.
9. These benefits need to be balanced against the ongoing costs that the SM&CR imposes on firms, as set out in our previous cost benefit analyses of the introduction and extension of the regime. Ongoing costs are primarily the staff time required to undertake mandatory processes as well as the restrictions that regulatory deadlines place on firms' other activities.
10. The overarching theme in responses to our 2023 discussion paper was that the SM&CR was meeting its aims, but, at the same time, stakeholders highlighted aspects of the regime they considered could be made more efficient. For example, certain rules and processes could be amended to be less costly for firms, while maintaining a robust and fit for purpose regime.
11. The rationale for our intervention is therefore to reduce the ongoing costs that the SM&CR imposes on firms and the FCA, without compromising the aims of the regime. Improved regulatory efficiency is consistent with our statutory objective to promote effective competition in the interests of consumers.

## Drivers of harm

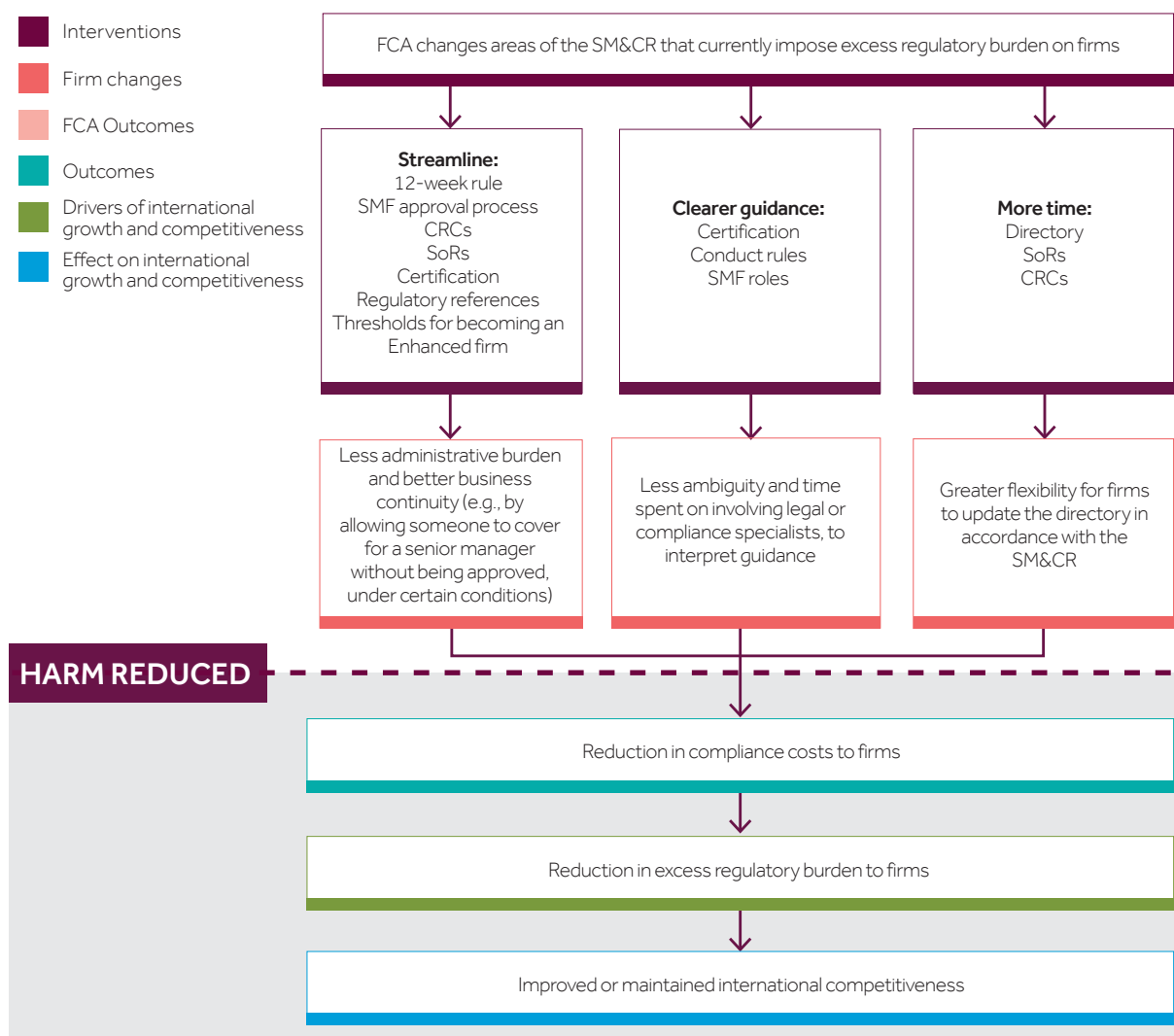
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12. The current SM&CR is not functioning as efficiently as it could, leading to unnecessary compliance costs for firms. Feedback to the 2023 Discussion Paper and the PRA's 2020 evaluation indicates that, while the SM&CR regime is generally seen as proportionate, certain elements impose excessive administrative burdens. For example, firms reported that the 12-week rule for Senior Management Function changes is particularly inefficient, with inconsistent forbearance practices from the FCA adding further uncertainty and complexity.
13. These mandatory processes include the requirement to submit a Statement of Responsibilities (SoR), in which firms need to set out the accountabilities of each Senior Manager, when changes are made to it. Some deadlines for SM&CR processes can also create opportunity costs for firms by diverting resources from competing activities.

## Proposed interventions and causal chain

- 14.** We propose to make changes to areas of the SM&CR in this phase of the reform, as detailed in Chapters 3 and 4 of this consultation. These proposals aim to improve regulatory efficiency (the identified harm) by removing unnecessary elements of the rules whilst retaining the elements of the current regime that are not excessively burdensome to firms. There are no additional requirements on firms resulting from these proposals, only changes to reduce burden and clarify existing requirements where DP respondents indicated there was some ambiguity.
- 15.** Figure 1 below sets out a causal chain detailing how we expect our SM&CR proposals in this phase to lead to benefits. We have grouped our proposals together into 3 categories for simplicity. Some of these are changes to processes, including changes to forms and communications which are considered because they may contribute to the overall impact of the proposed remedy package.

**Figure 1: Causal chain for our SM&CR proposals**



- 16.** Through the causal chain, we have considered whether our proposals lead to greater risks materialising, for example greater non-compliance or greater incidence of misconduct. Our proposals focus on streamlining certain processes under the SM&CR but maintain its core elements and its enforcement, on providing additional guidance which would aid compliance, and on giving firms more time to complete certain activities which should also support greater compliance. We therefore conclude that the risk of unintended consequences is low.

## Baseline and key assumptions

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- 17.** It is necessary to establish a baseline against which to assess the costs and benefits of an intervention to ensure that only those attributable to the intervention are considered. Our analysis makes several assumptions:
- all price estimates are in nominal terms using GDP deflators produced by the Office for Budget Responsibility (OBR)
  - when estimating net present value of costs and benefits, we use a 3.5% discount rate as per The Treasury's Green Book and a ten-year appraisal period
  - we assume full compliance with the SM&CR proposals
- 18.** In our analysis, the estimates of one-off and ongoing costs are based on our standardised cost model (SCM), in which costs depend on a firm's size. The model differentiates between large, medium, and small firms, basing this classification using data on firms' annual FCA fee blocks, and ranking them accordingly. We define the highest-ranking c.180 firms as large, the next highest-ranking c.1,100 firms as medium, and all remaining firms (c.36,000) as small. We report mean average cost estimates. As these figures are mean averages, individual firms may experience higher or lower costs than those set out below. Additionally, it should be noted that our classification of firms by size (small, medium and large), in the SCM, differs from the SM&CR firm categorisation (Core, Enhanced, Limited Scope and dual-regulated); the two methods of defining firms should therefore not be conflated. We have chosen to use the SCM classification as it is in line with our CBA framework.
- 19.** To assess the costs and benefits of our SM&CR proposals, we compared the expected outcomes of the proposed intervention against the rules that apply currently. The counterfactual is therefore that the existing SM&CR rules and guidance would continue. In the absence of intervention, we assume that the identified harm will persist and inefficiencies remain.
- 20.** We assume that all firms will take advantage of streamlined rules to adopt less burdensome processes where our proposals allow. In addition, we assume for simplicity that relevant FCA supervisory costs are directly proportional to the number of data queries to the FCA's Supervision Hub. Moreover, we assume that firms already comply with their SYSC obligations.

## Summary of costs and benefits

- 21.** In the sections below, we have assessed the costs and benefits arising from each of the elements of the proposed policy changes in relation to the SM&CR.
- 22.** We have conducted a breakeven analysis to contextualise the benefits (compliance cost savings) to each firm in scope of our proposals. This illustrates the benefits that would need to be realised for the proposed changes to be net beneficial. The main finding from our breakeven analysis is that each firm in scope, would need to incur compliance cost savings greater than £1,167 across 10 years, for the proposals to be net beneficial to them, or around £117 a year. We therefore consider it highly likely that the savings to firms will far outweigh the costs to firms of complying with the SM&CR rules, making our proposals in this phase, net beneficial to firms.

**Table 1: Net direct costs to firms**

	Total (Present Value) Net Direct Cost to Business (10 years, 3.5% discount rate, all firms)	Equivalent annual net direct cost to business (per year, per firm)
Total net direct cost to business (costs to businesses – benefits to businesses)	<b>£43.6m</b>	<b>£117</b>

- 23.** Table 2 summarises the breakeven threshold, illustrative benefits, and estimated costs as a result of the SM&CR proposals, over the 10-year appraisal period. We explore these figures in more detail in the following subsections.

**Table 2: Summary of costs, breakeven threshold and illustrative benefits from changes to the 12-week rule and Certification Regime**

	Total one-off costs (£m)	Total ongoing (annual) benefits	
		Min (£m)	Max (£m)
Familiarisation	43.6	–	
Illustrative benefit from changes to the 12-week rule and Certification Regime: <i>Limited scope firms</i>	–	0.4	1.7
Illustrative benefit from changes to the 12-week rule and Certification Regime: <i>Core firms</i>	–	20.3	29.0
Illustrative benefit from changes to the 12-week rule and Certification Regime: <i>Enhanced firms</i>	–	12.9	21.4
Illustrative benefit from changes to the 12-week rule and Certification Regime: <i>Dual-regulated firms</i>	–	1.7	2.4
<b>Total</b>	<b>43.6</b>	<b>35.3</b>	<b>54.5</b>
Average breakeven benefit per firm (£)	–	117	

24. We expect that firms will only incur one-off familiarisation and legal costs due to the proposed changes. We do not expect firms will incur additional ongoing costs as the proposed changes are to existing requirements and do not create any new compliance activities for firms over and above existing rules.
25. We expect our proposals to lead to benefits to firms from less staff time required to be spent on existing SM&CR processes and navigation of our rules, and benefits from greater flexibility where we allow more time to comply with certain rules.
26. It is not reasonably practicable to provide a full quantification of benefits from all the proposed changes in this phase, due to a lack of data. We have provided a qualitative description of the channels through which firms will realise benefits from the proposed changes. Our view is that the SM&CR proposals should result in savings to firms that will significantly outweigh the familiarisation costs.
27. We also provide a breakeven analysis to demonstrate the per-firm benefits that our proposals need to reach to outweigh our estimated costs. We estimate that, on average, each firm covered by SM&CR rules (across all 3 categories) would need to incur compliance cost savings of around £117 per year over 10 years for the proposals to be net beneficial to them. Relative to the scale of our proposals to streamline elements of the SM&CR, we consider this to be a low threshold. It is important to note that whilst these calculations have been calculated over a 10 year period, the costs and benefits to firms may disproportionately occur in the first few years of this 10 year period.
28. For two elements of our proposals where we have deemed the data quality and assumption base to be stronger, we have presented an illustration of the quantified benefits that would arise, subject to several assumptions.

## Benefits of the SM&CR proposals

### *Benefits for firms*

29. As discussed in the main document, we expect that firms will get benefits from the proposals through 4 main channels.
- **Reducing the amount of time firms need to spend on SM&CR-related compliance activities**
  - **Reducing ambiguity in firms' interpretation of guidance** through providing additional guidance and clarifying issues raised with us
  - **Keeping the requirement on firms constant for some compliance activities, but allowing them more time to comply**
  - **Keeping the requirements on firms, but raising the threshold at which firms qualify.**
30. We demonstrate the potential magnitude of some of our proposals, by illustrative quantifications for some of our proposals.



### ***Benefits for the FCA***

- 31.** We expect benefits for the FCA to arise from several elements of our proposed changes:
- We expect the proposed guidance in relation to allocation of PRs will reduce the need for the FCA to engage and challenge firms on potential inappropriate allocation of PRs.
  - We expect our guidance on certain SMF roles to reduce unnecessary applications for certain roles, the SMF18 function in particular, which would result in time savings for our authorisations teams.
- 32.** Ultimately, we expect these benefits to lead to reallocation of resources towards other activities within the FCA rather than a reduction in funding costs. Due to uncertainty, we do not consider it reasonably practicable to quantify these benefits.

### ***Wider benefits***

- 33.** Although consumers are not directly affected by our proposals, it is possible that lower compliance costs for firms could be passed through to prices of financial services, depending on the nature of competition in different markets. Given the range of markets the SM&CR relates to, we would expect any impacts of the proposals in the first phase of the reform to be small.
- 34.** While our proposals are consistent with our secondary competitiveness and growth objective, we expect any impacts to be modest. Our streamlining proposals support the secondary objective via a 'proportionate regulation' driver of productivity. However, relative to the overall costs of regulation and other factors, our proposals are likely only one of several factors that contribute to making UK financial services a more attractive place to participate.

## **Costs of the SM&CR proposals**

### ***Costs to firms***

- 35.** As the proposals are designed to reduce the regulatory burden of complying with existing SM&CR rules, we expect firms to only incur one-off familiarisation and legal costs. We expect that approximately 37,000 firms affected by our interventions will read and familiarise themselves with the relevant proposals in this consultation. Following familiarisation with the proposals, we expect firms to conduct a legal review of the proposals.
- 36.** There are elements of the 12-week rule that could in theory impose additional costs to firms, such as the requirement for a temporary replacement under the 12-week rule to be an employee and subject to Senior Manager Conduct Rules. However, these elements form a relatively small part of the 12-week rule and are not considered in isolation. Our section on illustrative benefits from the 12-week rule explains why the overall impact of the 12-week rule is expected to be net positive.

37. Table 3 shows all the costs we expect authorised firms to incur as a result of the proposals.

**Table 3: Summary of costs**

	Costs	
	One-off (familiarisation)	Ongoing (annual)
To firms	£43.6m	-

38. We use standardised cost assumptions to calculate familiarisation and legal costs. We have estimated familiarisation costs to firms based on assumptions on the time required to read 55 pages of non-legal text in the consultation paper, relating to the SM&CR, and an additional 70 pages of legal instrument relating to the SM&CR. We assume there are 300 words per page and reading speed is 100 words per minute. We estimate that familiarisation for large firms will require 20 members of staff to read the document, with an average salary of £68 per hour, including overheads. For medium-sized firms, we assume 5 staff members with an average salary of £63 per hour, including overheads. For small firms, we assume 2 staff members with an average salary of £52 per hour, including overheads. Based on approximately 180 large firms, 1,100 medium-sized firms and 36,000 small firms, we expect total familiarisation costs of £43.6m across the sector.

### **Costs to consumers**

39. We do not anticipate any costs to consumers as a result of our proposals. Incentive structures remain unchanged by our proposals, and hence we do not expect to see an increased likelihood of misconduct by regulated firms.

### **Breakeven analysis for the SM&CR proposals**

40. To estimate the breakeven benefits, we first calculated the total quantified costs that we estimate firms would incur over the 10-year appraisal period, in present value terms. This is £43.6m. We then divided this by the total number of authorised firms (c.37,000) subject to the SM&CR. We estimate the breakeven benefit per year per firm by dividing the breakeven benefit per firm by the number of appraisal years (10 years). The breakeven figures have been discounted using a 3.5% discount rate.
41. On average, each firm would need to incur compliance cost savings greater than £1,167 across 10 years, for the proposals to be net beneficial to them, or around £117 a year (Table 4).

**Table 4: Breakeven analysis**

	Per firm across 10-year appraisal period (present value terms)	Per firm per year over 10-year appraisal period (present value terms)
Average breakeven benefit based on all firms in scope	£1,167	£117
Average breakeven benefit based on large firms in scope	£16,000	£1,600
Average breakeven benefit based on medium-sized firms in scope	£5,200	£520
Average breakeven benefit based on small firms in scope	£1,000	£100

- 42.** These average breakeven figures mask variation by firm size. Repeating the analysis but distinguishing by firm size implies, to be net beneficial on average, that each large firm in scope of our proposals would need to benefit by at least £16,000, each medium-sized firm by at least £5,200, and each small firm by at least around £1,000 from the proposed changes over 10 years.
- 43.** It should be noted that the average breakeven threshold of £1,167 is skewed due to the disparities in breakeven benefits across firms of different sizes and the fact that a large proportion of the firms in scope are considered small, according to the FCA's classification of firms in the standardised cost model. It is also assumed that larger firms will have comparatively more compliance activities to conduct so that the benefits to them could be larger.

### ***Illustrative benefits to firms***

- 44.** This section presents illustrative quantified benefit estimates for three of our proposals, where the assumptions underpinning calculations are relatively more robust. Based on the illustrative analysis below, we believe the average benefits per firm from the entire set of our proposals over the 10-year appraisal period will greatly exceed the £1,167 breakeven threshold.
- 45.** These illustrative estimates are compiled from the following sources:
- **2016 compliance cost survey.** We have used our survey of firms conducted in Q4 of 2016. The survey was conducted prior to consulting on the original rules as an estimate of the ongoing costs associated with our rules, and provided ex-ante cost estimates broken down by area of SM&CR rules.
  - **Subsequent inflation.** The 2016 compliance cost figures have been appropriately adjusted using the OBR's GDP deflators (recommended by The Treasury's Green Book) to reflect prices in the financial year at the time of writing this CBA (2024/25).

- **Supervisory expertise on potential savings.** Using internal expertise, and drawing on responses to our DP, we have made a number of assumptions about the percentage compliance cost savings to firms, resulting from reducing the excess regulatory burden on them.

46. As the 2016 figures were presented as a range, we present our illustrative benefit estimates in the subsections below as minimum and maximum figures.

### 12-week rule

47. To illustrate the estimated benefits from proposed changes to the 12-week rule, we start with the total ongoing compliance cost of the Senior Managers Regime (SMR) part of the SM&CR from the 2016 compliance cost survey (Table 5).

**Table 5: Average annual cost to firms of complying with the SMR (uplifted 2024/5 prices)**

	Enhanced, per firm £		Core, per firm £		Dual-Regulated, per firm £		Limited Scope, per firm £	
	Min	Max	Min	Max	Min	Max	Min	Max
Senior Managers Regime (2016/17 prices)	44,000	76,500	3,000	4,600	2,700	3,800	70	300
Senior Managers Regime (uplifted to 2024/25 prices)	56,000	97,500	3,800	5,800	3,400	4,800	90	400

48. To estimate potential benefits we adjust the lower and upper bounds of the ranges according to the following assumptions. Firstly, supervisory information on the existing SM&CR indicates that based on the “hurdles” firms need to overcome, the current approvals process accounts for approximately 50% of total SMR compliance activities. Secondly, of this 50%, 80% represent costs incurred by firms as a result of either replacing one SMF manager with another existing one, or replacing an existing SMF manager with a new appointment.

49. The amount by which our proposal will streamline the 12-week rule is uncertain. We assume there will be a 30% cost saving to relevant firms from changes to the 12-week rule. This assumption has been informed by supervisory expertise; however, due to difficulties in estimating cost savings ex ante, this assumption should be treated with caution.

50. Therefore, in summary, the relevant calculation to calculate the illustrative benefits is:

$$\text{Uplifted lower/upper bound SMR compliance cost} \times 0.5 \times 0.8 \times 0.3$$

51. Table 6 shows the estimated illustrative benefits from changes to the 12-week rule over the 10-year appraisal period (discounted using a 3.5% discount rate).

**Table 6: Illustrative benefits per firm, from changes to the 12-week rule, over 10 years**

	Enhanced, per firm £		Core, per firm £		Dual- Regulated, per firm £		Limited scope, per firm £	
	Min	Max	Min	Max	Min	Max	Min	Max
12-week rule	57,800	100,700	4,000	6,000	3,500	4,900	90	400

52. Nearly 50% of the c.37,000 firms in scope are Core, Enhanced or dual-regulated. Therefore, based on the estimates above, changes to the 12-week rule alone would yield these firms benefits greater than the £1,167 breakeven threshold.

### **Certification**

53. We take a similar approach to illustrate the benefit from removing overlaps in certification roles (i.e., the same individual who is certified for more than one certification function). Much of the observed overlaps are only relevant to Core, Enhanced and dual-regulated firms. The 2016 compliance cost survey estimated the average annual cost of complying with the Certification Regime as follows:

**Table 7: Average annual cost to firms of complying with the Certification Regime (uplifted 2024/5 prices)**

	Enhanced, per firm £		Core, per firm £		Dual-regulated, per firm £	
	Min	Max	Min	Max	Min	Max
Certification Regime (2016/17 prices)	11,500	12,300	1,500	1,900	600	1,000
Certification Regime (uplifted to 2024/25 prices)	14,600	15,600	1,900	2,400	800	1,300

54. Using our supervisory expertise and data on the current population of certified individuals, we estimate the removal of duplication will remove 10-20% of total certification costs. The 10-20% range reflects the extent of observed overlaps among certified individuals, according to different assumptions. We have taken a midpoint of 15% to illustrate the potential reduction in certification costs should our proposals eliminate this duplication. Using the ex-ante survey estimates, the illustrative estimated costs saved from clarifying these roles over the 10-year appraisal period are set out in Table 8.

**Table 8: Illustrative benefits per firm, from removing overlaps in certification roles, over 10 years**

	Core		Enhanced		Dual-regulated	
	Min	Max	Min	Max	Min	Max
Certification	£2,400	£3,200	£18,800	£20,200	£1,000	£1,700

- 55.** Enhanced, Core and dual-regulated firms make up nearly 50% of the firm population affected by the SM&CR. Based on Table 8, we expect all of these firms (Enhanced, Core and dual-regulated) to realise benefits greater than the £1,167 breakeven threshold, on average, based on the removal of overlap in certification roles.

### ***Raising the thresholds for becoming an Enhanced SM&CR firm***

- 56.** Our proposal to raise the thresholds for becoming an Enhanced SM&CR firm to account for inflation may benefit firms in three ways. Firstly, some current Enhanced firms will become Core firms, creating ongoing savings in compliance costs from more proportionate requirements, in particular from having fewer SMFs. Secondly, our proposal will also prevent affected firms from having to comply with specific operational resilience requirements for Enhanced firms. Thirdly, some firms that, as they grow or via 'fiscal drag', would have met the thresholds under the counterfactual will take longer to qualify as Enhanced firms, saving them the additional compliance costs in the interim period.
- 57.** However, the number of firms that will be affected by the proposal is uncertain, partly because a number of firms voluntarily 'opt-up' into Enhanced status. Our assumption is that the proposal will affect a small but uncertain fraction of Enhanced firms. Due to this uncertainty, we do not provide an estimation for the reduction in costs to firms that downgrade from Enhanced to Core status. However, we are confident there will be a reduction in costs to firms downgrading, due to the removal of operational resilience requirements. Firms downgrading will no longer be subject to the administrative costs of doing so, primarily submitting fewer Form Cs and Form Js, and would not be required to have Management Responsibilities Maps.

### ***Combined illustrative benefits***

- 58.** The estimated total illustrative benefits from the proposed changes to the Certification Regime and 12-week rule are presented in Table 11.
- 59.** Comparing these illustrative estimates with the breakeven costs outlined above, we consider it probable that our package of proposals will deliver benefits significantly in excess of the breakeven threshold.

**Table 11: Illustrative benefits across all firms, from changes to the 12-week rule and Certification Regime, over 10 years**

	Min (£m)	Max (£m)
Limited scope	0.4	1.7
Core	20.3	29.0
Enhanced	12.9	21.4
Dual-regulated	1.7	2.4
<b>Total</b>	<b>35.3</b>	<b>54.5</b>

## Monitoring and evaluation

Our provisional approach to monitoring the impact of our proposed rules are set out in Chapter 1 of this CP in the section 'Outcomes we are seeking and measuring success'. The potential supervisory success measures, on which we are seeking views, relate to the reduction in compliance costs and regulatory burden outcomes in our causal chain (see Figure 1).

## Annex 3

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

1. The proposals set out in this consultation aim to improve outcomes for consumers and markets by reducing harm and promoting competition and positive change. We consider improving the SM&CR will help us advance one or more of our objectives, as set out in this consultation paper.
2. Our proposals to reduce costs and improve efficiency can also contribute to supporting our secondary objective to facilitate, subject to aligning with relevant international standards, the international competitiveness of the economy of the UK and its growth in the medium to long term. This could increase the attractiveness of the UK as a place to invest and do business, both within the UK and globally for financial services workers, which can help facilitate the medium to long-term growth and international competitiveness of the UK economy.
3. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles required of us by s 3B FSMA, as further detailed below.

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

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4. We consider that the proposed measures in this consultation are a proportionate use of our resources. The updated rules and guidance should help firms and individuals to better understand their obligations under the SM&CR. Further, firms having a better understanding of their obligations under the regime should help the FCA use its resources more efficiently and economically by reducing the amount of time spent resolving issues stemming from the application of the SM&CR.

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

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5. We consider our proposals to be proportionate to the benefits. Our assessment of the costs and benefits of these proposals is set out in Annex 1.

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

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6. We do not consider our proposals to have an effect on this.



## **The responsibilities of senior management**

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7. Many of the proposals set out in this consultation are focused on the obligations of Senior Managers under the SM&CR. This is set out in more detail in Chapters 1- 4.

## **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**

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8. Our approach to proportionality is set out in Chapter 3, explaining the scope, thresholds, and examples of application.

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

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9. Our proposals aim to streamline information published on the Register.

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

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10. This consultation paper sets out our policy justification for these proposals, CBA and compatibility with our legal duties. The consultation is open for 3 months and we welcome responses from all stakeholders. We will consider all responses before whether to proceed to make rules and in the form proposed in this consultation. This is subject to the approval of the FCA Board.
11. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) FSMA). We do not consider our proposals to be relevant in this regard.
12. We engaged with our statutory panels during the policy development process between 2022 and 2024.

## **Expected effect on mutual societies**

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13. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

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

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14. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.

## Treasury recommendations about economic policy

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15. This section explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
16. We consider that our proposals are consistent with the aspects of the Government's economic policy to which the Financial Conduct Authority should have regard. In the remit letter from the Chancellor of the Exchequer to the FCA on 9 December 2022, the Chancellor affirms the FCA's role in protecting consumers, promoting competition in financial services and protecting and enhancing the integrity of the UK financial system. The FCA has regard to this letter and the recommendations within.
17. The development of the proposals in this CP had begun and completed before the Treasury issued on 14 November 2024 a new set of recommendations about aspect of the Government's policy to which the FCA should have regard. The FCA acknowledges these recommendations, and our view is that the proposals would support them. We will continue to have regard to the new recommendations when finalising the changes at the Policy Statement stage.

## Supporting the Government's objective of medium to long-term economic growth in the interests of consumers and businesses

18. The proposals contained in this paper support the Government's objective of medium to long term economic growth in the interests of consumers and businesses. Reducing compliance and regulatory costs would allow firms to invest more time and resources on developing a wider range of products and services that better meet customer needs. Some of the cost savings may also be passed on from firms to consumers.

## Supporting the Government's objective to promote the international competitiveness of the UK

19. The proposals in this paper could help support the Government's objective to promote the international competitiveness of the UK by enhancing market integrity and contributing to greater levels of trust and confidence in UK markets. This could increase the attractiveness of the UK as a place to invest and do business, both within the UK and globally for financial services workers, which can help facilitate the medium to long-term growth and international competitiveness of the UK economy.

## Equality and diversity

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- 20.** 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.
- 21.** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 22.** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010 (in Northern Ireland, the Equality Act is not enacted but other antidiscrimination legislation applies). We will continue to consider the equality and diversity implications of the proposals during the consultation period and when making the final rules.

## Climate and the environment

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- 23.** In developing this CP, we have considered the environmental implications of our proposals and our duty under ss. 1B(5) and 3B(1)(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021. Overall, we do not consider that the proposals materially contribute to those targets.

## Legislative and Regulatory Reform Act 2006 (LRRRA)

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- 24.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are transparent, accountable, proportionate, and consistent.
- 25.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. We consider that our proposals are consistent with the principles of the code, for example, by proposing to extend the deadlines for firms to provide updates about certain categories of Directory information, we have aimed for a proportionate approach that balances the need for accurate information on the Directory against the regulatory burden on firms. By setting a 12-week consultation period, we are providing an opportunity to get feedback and communicate our proposals clearly.

## Annex 4

### Abbreviations used in this paper

Abbreviation	Description
<b>AI</b>	Artificial Intelligence
<b>APER</b>	Statements of Principle and Code of Practice for Approved Persons (Handbook)
<b>AUM</b>	Assets Under Management
<b>CASS</b>	Client Assets Sourcebook
<b>CBA</b>	Cost Benefit Analysis
<b>CEO</b>	Chief Executive Officer
<b>CfE</b>	Call for Evidence
<b>CFO</b>	Chief Financial Officer
<b>COCON</b>	Conduct Rules (Handbook)
<b>CP</b>	Consultation Paper
<b>CRC</b>	Criminal Record Checks
<b>D&amp;I</b>	Diversity and Inclusion
<b>DEPP</b>	Decision Procedure and Penalties Manual (Handbook)
<b>DP</b>	Discussion Paper
<b>ESG</b>	Environmental, social and governance
<b>FATF</b>	Financial Action Task Force
<b>FCA</b>	Financial Conduct Authority
<b>FG</b>	Final Guidance
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GDP</b>	Gross Domestic Product

Abbreviation	Description
<b>ISPV</b>	Insurance Special Purpose Vehicle
<b>LRRA</b>	Legislative and Regulatory Reform Act 2006
<b>MRM</b>	Management Responsibility Map
<b>NFM</b>	Non-Financial Misconduct
<b>OBR</b>	Office for Budget Responsibility
<b>PCBS</b>	Parliamentary Committee on Banking Standards
<b>PR</b>	Prescribed Responsibility
<b>PRA</b>	Prudential Regulation Authority
<b>PRIN</b>	Principles for Businesses (Handbook)
<b>PS</b>	Policy Statement
<b>SM&amp;CR</b>	Senior Managers & Certification Regime
<b>SMF</b>	Senior Management Function
<b>SMR</b>	Senior Managers Regime
<b>SoR</b>	Statement of Responsibilities
<b>SUP</b>	Supervision Manual (Handbook)
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls (Handbook)

## Appendix 1

### Draft Handbook text

**INDIVIDUAL ACCOUNTABILITY (SMCR REVIEW) INSTRUMENT 202X****Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 60 (Applications for approval);
  - (3) section 62A (Changes to responsibilities of senior managers);
  - (4) section 63ZA (Variation of senior manager’s approval at request of relevant authorised person);
  - (5) section 63ZD (Statement of policy relating to conditional approval and variation);
  - (6) section 63E (Certification of employees by authorised persons);
  - (7) section 63F (Issuing of certificates);
  - (8) section 64A (Rules of conduct);
  - (9) section 137A (The FCA’s general rules);
  - (10) section 137T (General supplementary powers);
  - (11) section 139A (Power of the FCA to give guidance);
  - (12) section 347 (The record of authorised persons etc.); and
  - (13) paragraph 23 (Fees) in Part 3 (Penalties and fees) of Schedule 1ZA (The Financial Conduct Authority).
- 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 [date].

**Amendments to the Handbook**

- D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraphs E and F of this instrument.
- E. Amendments to the numbering and location of provisions in Chapter 10C of the Supervision manual (SUP) are set out in the table in Annex A. Except as further amended by paragraph F of this instrument, the provisions in column B of the table in Annex A otherwise 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 sourcebook (COCON)	Annex D
Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)	Annex E
Supervision manual (SUP)	Annex F

### Notes

- G. In the Annexes to this instrument, the notes (indicated by “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- H. This instrument may be cited as the Individual Accountability (SMCR Review) Instrument 202X.

By order of the Board  
[*date*]



## Annex A

## Renumbering in Chapter 10C of the Supervision manual (SUP)

Renumbering in SUP 10C.3	
(A) Old heading and numbering	(B) New heading and numbering
The 12-week rule	The 12-week rule  This changes from a subheading within SUP 10C.3 to become the heading of a new section, SUP 10C.3A, as shown in Annex F of this instrument.
10C.3.13R	10C.3A.6R
10C.3.14G	10C.3A.1G
10C.3.15G	10C.3A.5G
10C.3.16G	10C.3A.19G
10C.3.17G	10C.3A.20G

## Annex B

## Amendments to the Glossary of definitions

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

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

*non-SMF board director* (in relation to an *SMCR firm*) a *board director* of the *firm* if that role is not a *senior management function* for that *firm*.

Amend the following definitions as shown.

*conduct rules staff* (1) any *persons* who are subject to *COCON*, as set out in *COCON* 1 (Application); and

(2) ~~a person is a~~ the term “member” of the *conduct rules staff* of a *firm* ~~the circumstances described in COCON 1.1.7AR(2) is~~ defined in COCON 1.1.7-AR(2) (To what conduct does it apply?).

*EEA PTV firm* ~~either of the following~~ (subject to ~~SYSC 23 Annex 1 1.4R~~ SYSC 23 Annex 1 1.3R and *SUP* 10A.1.34R (Gibraltar-based firm): a TP firm.

(a) ~~a TP firm; or~~

(b) ~~(for as long as the standstill direction remains in force) any firm that has its registered office (or, if it has no registered office, its head office) in an EEA State.~~

~~For these purposes, the standstill direction means the standstill direction as defined in the direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on IP completion day and is titled “FCA Transitional Direction”.~~

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

...

(b) comes within row (2) of the table in *COCON* 1.1.2R (an *employee* of an *SMCR firm* who performs the function of an *SMF manager*); ~~or~~

...

- (d) comes within row (8) of the table in *COCON* 1.1.2R (a *board director* of a *UK SMCR firm*);<sub>2</sub>
- (e) comes within row (3) of the table in *COCON* 1.1.2R (a person appointed under *SUP* 10C.3A.6R (The 12-week rule: The main rules)); or
- (f) comes within row (9) of the table in *COCON* 1.1.2R (a person appointed under *PRA* rules corresponding to the rules in (e)).

*statement of  
responsibilities*

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

- (a) a statement revised under section 62A of the *Act* (Changes in responsibilities of senior managers) or under *SUP* 10C.11 (Statements of responsibilities); and

...

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

*non-SMF board  
director subject to  
competence  
requirements*

(in relation to an *SMCR firm*) a *board director* of the *firm* who meets the following conditions:

- (a) they are not an *SMF manager* of the *firm*; and
- (b) the *firm* is required to assess their fitness and propriety under the *competent employees rule*, *SYSC* 28 (Insurance distribution: specific knowledge, ability and good repute requirements), any directly applicable EU legislation or any other requirement of the *regulatory system*.

## Annex B

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

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

## 22 Regulatory references

...

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

...

Obligation to give references

22.2.2 R (1) A *firm* (B) must provide a reference to another *firm* (A) as soon as reasonably practicable if:

(a) A is considering:

...

(iii) appointing P to, or permitting P to perform, another position in the table in SYSC 22.2.3R;

...

...

22.2.3 R Table: What positions need a reference

Position	When to obtain reference	Comments
...	...	...
(C) Appointing someone to any of the following positions (as defined in the <i>PRA Rulebook</i> ): ...	...	(1) SYSC 22.2.1R (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1).  (2) However SYSC 22.2.2R does apply to a <i>firm</i> asked to give a reference to a <i>firm</i>

		<p>appointing someone to the position in column (1).</p> <p><u>(3) The obligation to give a reference only applies if the <i>person</i> making the appointment is a <i>PRA- authorised person</i>.</u></p>
<p>(D) <del>A</del> <u>An <i>SMCR</i> firm</u> appointing <u>or permitting</u> someone to be a <i>non-SMF board director</i> <del>subject to competence requirements</del> of itself.</p>	...	...
...		

...

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

- 22.3.3 G (1) A *firm* (A) asking another *firm* (B) for a reference should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply. A might do that by, for example, attaching to the request for a reference, or referring in the request to, the regulatory references template in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).

...

...

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

Verification

...

- 22.5.2 G ...

- (2) However, a *firm* may include such information in a reference if it wishes to (see ~~SYSC 22.3.5G~~ SYSC 22.4.6G(-1)), subject to (3) and (4) and SYSC 22.5.4G (Fairness).

- (3) If a *firm* believes that an *employee* has committed misconduct but the *employee* leaves before the *firm* completes its investigations, it should consider including the details of the suspected misconduct in a reference, taking into account:
- (a) whether the suspected misconduct would be material enough to disclose if it were true;
  - (b) whether the *firm* has good enough grounds for its belief for the *firm* reasonably to consider that it would be relevant to the new *employer's* assessment of whether the *employee* is fit and proper;
  - (c) whether including it would be consistent with SYSC 22.5.4G and SYSC 22.5.5G (Fairness); and
  - (d) the extent to which including the information is otherwise permissible under privacy, employment and other provisions of relevant law.
- (4) A *firm* should not include information about suspected misconduct unless the *firm* has taken sufficient steps to verify the information (see SYSC 22.5.4G and SYSC 22.5.5G (Fairness)). However, the fact that the *employee* leaves before the investigation into the suspected misconduct is complete does not necessarily mean that the *firm* should omit the suspected misconduct. For example:
- (a) the *firm* may complete the investigation after the *employee* leaves, perhaps for one of the reasons in SYSC 22.5.18G (Duty to investigate allegations); or
  - (b) the investigation may have advanced sufficiently far by the time the *employee* leaves that the *firm* is satisfied that the misconduct has taken place even though the details (such as, for example, the extent of the harm done) have not been fully established.

...

Fairness

22.5.4 G ...

(3) ...

- (4) If a *firm* wishes to refer to misconduct or include adverse information about the subject of the reference, the *firm* should have reasonable grounds for believing that the misconduct has taken place or that the information is true. References should not be based on unproven allegations or mere suspicions. See also SYSC 22.5.2G (Verification).

...

Time in which to respond to reference requests

- 22.5.17 G The *FCA* expects that normally a *firm* should issue a reference under this chapter within ~~six~~ 4 weeks of being asked to.

Duty to investigate allegations

- 22.5.18 G ...
- (3) ...
- (d) ...
- (4) See more about incomplete investigations in SYSC 22.5.2G (Verification).

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, &). 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 (a *firm* should carry out such a check when appointing an *SMF manager*); and
- (2) SYSC 23.4 (~~Criminal record checks~~ Checks for certain directors).

## 22.6 Giving and updating references: additional rules and guidance

...

Requirement to consider whether there has been a conduct breach

- 22.6.3 G ...
- 22.6.3A G If an *employee* has breached *COCON* but the *firm* has not taken disciplinary action of the type referred to in question (F) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements), the *firm*:
- (1) should not report that breach in the answer to question F;
- (2) need not report that breach in the answer to question G (or anywhere else in the reference) if the *firm* reasonably considers it not to be relevant to the assessment by the *firm* asking for the reference of whether the individual is fit and proper; and

- (3) should include it in the answer to question G if it would be reasonable to consider that it is relevant to that assessment.

...

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

...

Asking for a reference to be updated

...

- 22.7.7 G (1) If a *firm* (A):
- (a) appoints someone (P) to a ~~*certification function*~~ or an ~~*approved person*~~ position that requires A to obtain a reference about P (a 'reference position');
  - (b) obtains a reference from an *ex-employer* (B); and
  - (c) later wishes to:
    - (i) appoint P to another ~~*certification function*~~ or ~~*approved person*~~ reference position; or
    - (ii) (in the case of a *certification function*) keep P in the same *certification function* but make a change in P's role of the type described in SYSC 27.2.15G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or
    - (iii) move P from one kind of reference position to another kind (for example, from a *certification function* to an *approved person* position or vice versa);

A should consider whether to ask B to reissue or amend its reference.

...

...

When references are to be obtained

...

22.7.11 G ...

Overseas employer



- 22.7.12 G While a *firm* should take reasonable steps to obtain information from an overseas *employer*, the *FCA* will take into account any demonstrable and relevant legal impediments when assessing whether a *firm* is complying with the requirement to obtain a reference. Evidence of these legal constraints may include, but is not limited to, relevant correspondence with the overseas *employer* or a legal opinion setting out the applicable legal restrictions in a given jurisdiction.

## 22.8 Policies and ~~appointed representatives~~ requests for references from and by persons who are not firms

...

Appointed representatives

- 22.8.3 R This chapter applies:

- (1) in relation to a *firm*'s appointed representatives as well as to the *firm*; and
- (2) to a *firm* asked to give a reference by or on behalf of an appointed representative and a *firm* obtaining a reference from an appointed representative;

and this chapter must be interpreted with the necessary adjustments.

- 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~~ There is no requirement that an appointed representative meet the following requirements do not apply in relation to an appointed representative:

...

...

- 22.8.5 G (1) ~~One effect~~ This paragraph explains the effects of SYSC 22.8.4R.
- (2) ~~is that when~~ When an appointed representative appoints an approved person under SUP 10A (FCA Approved Persons in Appointed Representatives) there is no requirement for the appointed representative or its principal to request a reference or to use the intra-group information procedures in SYSC 22.8A.1R (Intra-group transfers).
- (3) There is no requirement for the appointed representative to 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) when giving a reference under this chapter and no obligation for a *firm* requesting a reference from the appointed representative to ask for this information.

- (4) However, an *appointed representative* should give the information required by SYSC 22.2.2R(2) (Obligation to give references) and a *firm* should seek such information from an *appointed representative*.
- (5) There is no requirement under this chapter for the *appointed representative* to update under SYSC 22.2.4R references it has given.
- (6) There is no requirement for the *appointed representative* to 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.
- (7) There is no requirement for the *appointed representative* to comply with SYSC 22.9.1R (General record keeping rules).
- (8) For the sake of simplicity, this paragraph refers to what an *appointed representative* should do and need not do. Technically, such references are to what the principal of an *appointed representative* should ensure that its *appointed representative* does and what it need not ensure it does.

...

22.8.10 G ...

#### Firms applying for authorisation

22.8.11 R This chapter applies to a *firm* asked to give a reference by a *person* who:

- (1) is applying to be *authorised*; and
- (2) will be an *SMCR firm* if it is *authorised*;

in the same way as it does to a request by a *firm* and this chapter must be interpreted with the necessary adjustments.

- 22.8.12 G
- (1) This paragraph describes the main adjustments to the *rules* in this section where SYSC 23.8.11R applies.
  - (2) The first column of row (A) of the table in SYSC 22.2.3R (Table: What positions need a reference) should be read as referring to what will be an *FCA controlled function* or a *PRA controlled function* if the *person* is *authorised*.
  - (3) The first column of row (B) of the table in SYSC 22.2.3R should be read as referring to issuing a certificate if the *person* is *authorised*.
  - (4) Rows (C) and (D) of the table in SYSC 22.2.3R only apply if the *person* to be appointed as described in the first column will fall into the relevant category if the *person* is *authorised*.

- (5) Row (C) of the table in SYSC 22.2.3R only applies if the *person* applying for *authorisation* will be a *PRA-authorised person* if the *person* is *authorised*. Row (D) of that table only applies if the *person* applying for *authorisation* will be a *firm* of the type described in the ‘Comments’ column of that row if the *person* is *authorised*.
- (6) SYSC 22.2.4R and SYSC 22.2.5R (Obligation to revise references: The main rule) are adjusted so that where A was *unauthorised* when B gave the reference, B does not need to update A if A is not a *firm* and its application for *authorisation* has been withdrawn or determined. A and B refer to A and B as referred to in that *rule*.
- (7) SYSC 22.2.7R (Obligation to revise references: Finding out who the current employer is) applies even though A (as referred to in that *rule*) was given a reference at a time when it was not a *firm*.
- (8) SYSC 22.8.3R applies and so:
- (a) a principal should ensure that its *appointed representatives* give a reference if asked to by a *person* applying to be *authorised*; and
- (b) this chapter applies to references requested by or on behalf of someone who will be an *appointed representative* of the *person* concerned if that *person* is *authorised*.

## 22.8A Groups and outsourcing

### Intra-group transfers

...

#### 22.8A.3 G If:

- (1) a *firm* (A) appoints someone (P) to a ~~*certification function*~~ or an ~~*approved person*~~ position that requires P to obtain a reference (a ‘reference position’);
- (2) A obtains a reference from an *ex-employer* (B);
- (3) later P transfers to a ~~*certification function*~~ or ~~*approved person*~~ reference position with an *SMCR firm* in A’s group (C);

...

...

## 22 Annex 1 Template for regulatory references given by SMCR firms and disclosure requirements

22  
Annex  
1.1

R Part One: Form of Template

...

<b>The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference</b>
...
<b>Question G</b>
Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper, <u>taking into account in particular (but not exclusively) the factors listed in SYSC 22 Annex 2 in the FCA's Handbook?</u> This disclosure is made on the basis that we shall only disclose something that:
...

[*Editor's note:* The heading 'Question G' above is underlined in this template.]

...

22  
Annex  
1.2

R Part Two: Definitions used in Part One

...

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
...	
Board director	Non-SMF board director <del>subject to competence requirements</del> , as defined in the <i>Glossary</i> .
...	

...

**22**      **R**      **Factors to take into account when asking for and giving regulatory**  
**Annex 2**      **references**

Matters to take into account	Comments
...	
(C) <del>Section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime) or SUP 10C Annex 3 (Application to perform senior management functions)</del> [deleted]	
...	

**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 apply to all firms		
...		
A <i>firm</i> should carry out criminal records checks before applying for someone to be approved as an <i>SMF manager</i> , <u>with certain exceptions described in the rule referred to in column (2) of this row where the <i>firm</i> has already done a check or in the case of a sole trader.</u>	...	...

...		
The senior managers regime: Parts that apply to many firms		
...		
<p>A <i>firm</i> solo-regulated by the <i>FCA</i> should;</p> <p><u>(1) only appoint someone as a <i>board director</i> who does not need approval as an <i>SMF manager</i> for the position if they are fit and proper for that role; and</u></p> <p><u>(2) carry out criminal records checks before appointing a <i>board director</i> who is not an <i>SMF manager</i> making the appointment.</u></p>	SYSC 23.4 ( <del>Criminal record checks</del> <u>Checks</u> for certain directors)	...
...		

...

## 23.4 ~~Criminal record checks~~ Checks for certain directors

23.4.1 R ...

23.4.1A R A *firm* must not appoint a *person*, or permit them to act, as a *non-SMF board director* unless it is satisfied that that *person* is fit and proper to perform that role.

23.4.2 R A *firm* must (as part of its assessment of the fitness and propriety of any of its *non-SMF board directors* ~~subject to competence requirements~~ under SYSC 23.4.1AR (P)) obtain the fullest information that it is lawfully able to obtain about P under Part V of the Police Act 1997 (Certificates of Criminal Records, &c) and related subordinated legislation of the *United Kingdom* or any part of the *United Kingdom* before P's appointment as a *board director*.

23.4.3 G ...

23.4.4 R SYSC 23.4.2R does not apply if:

- (1) the *person* to be appointed is already performing and has approval for the performance of a *designated senior management function* for the *firm* or another *firm* in the same *group*;

- (2) the *person* to be appointed was performing and had approval for the performance of a *designated senior management function* for the *firm* or another *firm* in the same *group* within 1 *month* before the appointment; or
- (3) the *firm* (A) has already carried out the check in SYSC 23.4.2R in relation to the appointment of the *person* as a *non-SMF board director* of a *firm* in the same *group* and the *person* concerned is still performing that role or was doing so within 1 *month* before the appointment to the position with A.

23.4.5     R    A *firm* must, so far as it is reasonably able, ensure that the information it obtains under SYSC 23.4.2R is no older than 6 *months* as at the time the appointment takes effect.

...

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

### Annex 1

Part One: Flow diagram and other basic provisions			
...			
<del>1.4</del> <u>1.3</u>	R	(1)	A Gibraltar-based firm (as defined in <i>GEN 2.3</i> (General saving of the Handbook for Gibraltar)) is treated as an <i>EEA PTV firm</i> for the purposes of deciding into which category of <i>SMCR firm</i> it falls. In particular, it is to be treated as an <i>EEA SMCR firm</i> .
		...	
...			

...

Part Eight: Financial qualification condition for being an enhanced scope SMCR firm			
The financial qualification tests			
...			
8.2	R	Table: Financial qualification conditions	
		(1) <b>Qualification condition</b>	(2) <b>How to do the calculation and</b>
			(3) <b>Comments</b>

	corresponding reporting requirement	
<b>Part One: Point in time measurements</b>		
(1) The average amount of the <i>firm's</i> assets under management (calculated as a three-year rolling average) is <del>£50</del> <u>£65</u> billion or more	...	...
...		
<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 <del>£35</del> <u>£45</u> million per annum or more	...	...
(4) The average amount of the <i>firm's</i> annual revenue generated by regulated consumer credit lending (calculated as a three-year rolling average) is <del>£100</del> <u>£130</u> million or more	...	...
...		

...			
8.22	G		...
<del>8.22</del> 8.23	G		...
			<u>Automatic adjustment of financial thresholds: Purpose and general rule</u>
8.24	R	(1)	<u>SYSC 23 Annex 1 8.24R to SYSC 23 Annex 1 8.33G provide for the automatic adjustment of the financial figures in the table in SYSC 23 Annex 1 8.2R (Table: Financial qualification conditions) listed in this rule once every 5 years in line with inflation over that period.</u>



		(2)	<u>The financial figures to be adjusted are the ones in the following rows of column (1) of the table:</u>
		(a)	<u>row (1) (assets under management);</u>
		(b)	<u>row (3) (total intermediary regulated business revenue); and</u>
		(c)	<u>row (4) (revenue generated by regulated consumer credit lending).</u>
<u>Automatic adjustment of financial thresholds: Calculation</u>			
<u>8.25</u>	<u>R</u>		<u>Inflation is calculated from the CPI annual rate published by the Office for National Statistics.</u>
<u>8.26</u>	<u>R</u>		<u>Each 5-year period in SYSC 23 Annex 1 8.24R starts and ends as follows:</u>
		(1)	<u>the first one starts on [Editor's note: insert the date on which this instrument comes into effect];</u>
		(2)	<u>each subsequent one starts immediately following the end of the previous one;</u>
		(3)	<u>each period ends on the fifth anniversary of its start;</u>
		(4)	<u>if the date in (3) is not the end of a month, it ends at the end of that month.</u>
<u>8.27</u>	<u>R</u>	(1)	<u>Any change to the financial figures referred to in SYSC 23 Annex 1 8.24R is made on the last day of the period.</u>
		(2)	<u>There is no adjustment to reflect the fact that the first or last inflation figure may cover a period falling partly outside the 5-year period.</u>
<u>Automatic adjustment of financial thresholds: Effect on past and future calculations</u>			
<u>8.28</u>	<u>R</u>	(1)	<u>Any change to the financial figures referred to in SYSC 23 Annex 1 8.24R does not affect any averaging period of a firm that has ended before the end of the 5-year period in SYSC 23 Annex 1 8.24R.</u>
		(2)	<u>An adjustment to the financial figures referred to in SYSC 23 Annex 1 8.24R applies to the whole of the averaging period of a firm current as at the end of the 5-year period in SYSC 23 Annex 1 8.24R.</u>

		(3)	<u>'Averaging period' has the meaning in Note 2 to the table in SYSC 23 Annex 1 8.2R (Table: Financial qualification conditions).</u>
8.29	G	(1)	<u>This paragraph gives an example of how SYSC 23 Annex 1 8.28R works.</u>
		(2)	<u>In this example, the financial threshold listed in SYSC 23 Annex 1 8.24R applicable to Firm A is increased in October of year 1. The financial threshold is based on a rolling 3-year average. Firm A's averaging periods are established by reference to its <i>accounting reference date</i>, which is 31 December. The reports on which the calculation is made are submitted half-yearly and the calculation is made twice a year. The reporting date is 30 days after the end of the relevant reporting period.</u>
		(3)	<u>The change in the financial threshold has no effect for the averaging period ending on 30 June of year 1.</u>
		(4)	<u>Therefore, if Firm A is an <i>enhanced scope SMCR firm</i> in June of year 1, it remains as an <i>enhanced scope SMCR firm</i> even if it would not have met the financial threshold during that last averaging period if the new threshold figure had applied.</u>
		(5)	<u>The change in the financial threshold applies to the averaging period ending on 31 December of year 1. The revised figure applies for all 3 years of that averaging period.</u>
		(6)	<u>The same applies for subsequent averaging periods.</u>
8.30	G	(1)	<u>This paragraph gives a further example of how SYSC 23 Annex 1 8.28R works based on the example of Firm A in SYSC 23 Annex 1 8.29G.</u>
		(2)	<u>Firm A first met the applicable financial threshold listed in SYSC 23 Annex 1 8.24R for the averaging period ending in December of year 1. Firm A is not yet an <i>enhanced scope SMCR firm</i>. The 1-year period in SYSC 23 Annex 1 10.1R (General rule) is running.</u>
		(3)	<u>The threshold is increased under SYSC 23 Annex 1 8.24R in November of year 2. The <i>firm</i> falls below the qualification level for the averaging period ending in December in year 2.</u>
		(4)	<u>The result is that the <i>firm</i> no longer qualifies. The adjustment ends the running of the 1-year period. Firm A will no longer be an <i>enhanced scope SMCR firm</i> at the end of it.</u>
		(5)	<u>The reason for this is that the change happens before the end of the 1-year period. The 1-year period begins at the end of</u>

			January in year 2 – that is, 1 <i>month</i> after the reporting date in December in year 1. The 1-year period ends at the end of January in year 3 and the <i>firm</i> would have become an <i>enhanced scope SMCR firm</i> at the start of February in year 3. However, Firm A ceases to meet the qualifying condition for being an <i>enhanced scope SMCR firm</i> at the end of January in year 3.
			<u>Automatic adjustment of financial thresholds: Rounding</u>
8.31	R	(1)	There will be no adjustment if the amount of that adjustment would be below the amount in (3).
		(2)	Subject to (1), any adjustment will be rounded up to the nearest multiple of the amounts set out in (3).
		(3)	The amounts referred to in (1) and (2) are:
		(a)	(in the case of the threshold referred to in SYSC 23 Annex 1 8.24R(1)) £1 billion; and
		(b)	(in the case of the other thresholds referred to in SYSC 23 Annex 1 8.24R) £1 million.
8.32	R		There will be no downwards adjustments, either from the figures in force on [ <i>Editor's note: insert the date on which this instrument comes into effect</i> ] or from any subsequent higher figure.
			<u>Automatic adjustment of financial thresholds: Publication</u>
8.33	G		The FCA may publish its calculation of any adjustment under SYSC 23 Annex 1 8.24R.

...

Part Ten: When a firm becomes an enhanced scope SMCR firm			
General rule			
10.1	R	(1)	...
		(2)	If a <i>firm</i> :
		(a)	was not an <i>enhanced scope SMCR firm</i> ; and
		(b)	then meets one of the qualification conditions in Part 8 or Part 9 of this Annex;

			the date is <del>twelve months</del> <u>the business day following the end of the 12-month period</u> after it first meets the first qualification condition that it met.		
		(3)	Where the first qualification condition it meets is the one in SYSC 23 Annex 1 9.1R(3), the date is <del>three months</del> <u>the business day following the end of the 3-month period</u> after the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).		
		...			
...					

...

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

...

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

Allocation of FCA-prescribed senior management responsibilities

...

- 24.2.3 R (1) A ~~firm~~ PRA-authorised person may not allocate an *FCA-prescribed senior management responsibility* to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function* for that firm, subject to (2).
- (2) A ~~firm~~ PRA-authorised person may allocate *FCA-prescribed senior management responsibility* (z) in the table in SYSC 24.2.6R (functions in relation to CASS) to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function*.

...

### 24.3 Who prescribed responsibilities should be allocated to

...

~~Executive or non-executive~~ The SMF managers to whom FCA-prescribed senior management responsibilities should be allocated

...

- 24.3.3 G (4) Subject to (2) the more detailed guidance in SYSC 24 Annex 2 (Preferred allocations of FCA-prescribed senior management

responsibilities), the *FCA* expects that normally a *firm* will allocate the ~~other~~ *FCA-prescribed senior management responsibilities* other than the ones referred to in SYSC 24.3.2G to an SMF manager who performs executive functions for the firm.

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

24.3.3A G SYSC 24 Annex 2 (Preferred allocations of FCA-prescribed senior management responsibilities) sets out more detail about the FCA's expectations regarding the SMF managers to whom a firm should and should not allocate FCA-prescribed senior management responsibilities.

Exceptions for small non-complex firms

- 24.3.4 G (1) The *FCA* accepts that it may not be practical for a small non-complex *firm* to comply with the parts of SYSC 24.3.1G(1), SYSC 24.3.2G and ~~SYSC 24.3.3G(1)~~ SYSC 24.3.3G that would otherwise apply to it.
- (2) SYSC 24 Annex 2 (Preferred allocations of FCA-prescribed senior management responsibilities) also explains how that annex applies to small non-complex firms.

...

Dividing and sharing management functions between different people

- 24.3.7 G (1) ~~The FCA expects that a firm will~~ A firm should not normally split an FCA-prescribed senior management responsibility between several SMF managers more than 1 SMF manager, with each only having responsibility for part, unless this is appropriate and can be justified.
- (2) As explained in SYSC 24.3.10G, a firm should allocate FCA-prescribed senior management responsibilities between its SMF managers appropriately. This may mean that a firm would be justified in dividing responsibility for an FCA-prescribed senior management responsibility between more than 1 SMF manager.
- (3) In particular, it may be appropriate to split responsibility for an FCA-prescribed senior management responsibility between several SMF managers so that the allocation of responsibility for it is consistent with the split of business and commercial responsibilities between senior management.
- (4) The FCA therefore accepts that there are circumstances in which a firm will split responsibility for an FCA-prescribed senior management responsibility between more than 1 SMF manager.

- (5) If a firm splits responsibility for an FCA-prescribed senior management responsibility between more than 1 SMF manager, it should:
- (a) manage the split effectively; and
  - (b) ensure that all parts of the FCA-prescribed senior management responsibility are clearly allocated to one of those SMF managers without any gaps.
- (6) The FCA expects that generally it will only be appropriate for a larger firm with more complex arrangements to split responsibility for an FCA-prescribed senior management responsibility between more than 1 SMF manager.
- (7) In general, it will not be appropriate for a firm to split responsibility for an FCA-prescribed senior management responsibility between more than 2 SMF managers.

24.3.8 G The FCA expects that a firm will not normally allocate responsibility for an FCA-prescribed senior management responsibility to two or more SMF managers jointly. This is, however, subject to SYSC 24.3.9G.

- 24.3.9 G (1) ~~Although the norm should be for a firm to have a single individual performing each~~ that an FCA-prescribed senior management responsibility should not be shared, there may be circumstances in which responsibilities can be ~~divided or~~ shared (see (2)).
- (2) A firm should only ~~divide or~~ share a responsibility where this is appropriate and can be justified.

...

...

Insert the following new annex, SYSC 24 Annex 2, after SYSC 24 Annex 1 (Which FCA-prescribed senior management responsibilities apply to which kind of firm). All the text is new and is not underlined.

## **24 Annex 2 Preferred allocations of FCA-prescribed senior management responsibilities**

### **Purpose**

- 24  
Annex  
2.1 G This annex sets out detailed *guidance* on the FCA's expectations about what *designated senior management function* an *SMF manager* should and not should not hold if a *firm* wishes to allocate particular *FCA-prescribed senior management responsibilities* to them. It should be read

together with SYSC 24.3.2G and SYSC 24.3.3G (The SMF managers to whom FCA-prescribed senior management responsibility should be allocated) and SYSC 24.3.4G and SYSC 24.3.5G (Exceptions for small non-complex firms).

#### General material

- 24  
Annex  
2.2
- G (1) The ‘SMF most likely to be appropriate’ column in the tables in this annex covers the combinations of *designated senior management functions* and *FCA-prescribed senior management responsibilities* that the *FCA* considers are likely to be appropriate.
- (2) The ‘Would generally consider harder to justify’ column in the tables in this annex covers combinations of *designated senior management functions* and *FCA-prescribed senior management responsibilities* that the *FCA* considers to be generally inappropriate and which the *FCA* may question if a *firm* proposes to adopt one.
- 24  
Annex  
2.3
- G However, ultimately an *FCA-prescribed senior management responsibility* should be allocated to the most suitable *SMF manager*. This will depend on the individual circumstances of each *firm*.
- 24  
Annex  
2.4
- G Therefore:
- (1) a combination in the ‘SMF most likely to be appropriate’ column may be inappropriate in the circumstances of a particular *firm*; and
- (2) a combination in the ‘Would generally consider harder to justify’ column may be appropriate in the circumstances of a particular *firm* (or may be appropriate for a specific period) if the *firm* has good reason for it, although even then the *FCA* may wish to explore those reasons with the *firm*.
- 24  
Annex  
2.5
- G A small non-complex *firm* (see SYSC 24.3.4G (Exceptions for small non-complex firms)) is an example of SYSC 24 Annex 2.4G. The *FCA* accepts that it may not be practical for a small non-complex *firm* to comply with the tables in this annex.
- 24  
Annex  
2.6
- G This annex does not cover every possible combination of *designated senior management function* and *FCA-prescribed senior management responsibility*.
- 24  
Annex  
2.7
- G If no one performs the *chief executive function* for a *firm*, it will usually be most appropriate for those *FCA-prescribed senior management responsibilities* that are listed in the tables in this annex as being appropriate for SMF1 to go instead to the most suitable *SMF manager*:
- (1) approved to perform the *executive director function* or the *partner function*; or

- (2) (in the case of a *PRA-authorised person*) into whose *designated senior management function* the functions in (1) have been absorbed under the arrangements in *SUP 10C.9* (Minimising overlap with the PRA approved persons regime).

#### Allocations for core SMCR firms

- 24  
Annex  
2.8 G The tables in *SYSC 24 Annex 2.10G* and *SYSC 24 Annex 2.11G* cover *core SMCR firms*.
- 24  
Annex  
2.9 G The table in *SYSC 24 Annex 2.11G* covers *FCA-prescribed senior management responsibilities* that only apply to *overseas SMCR firms*.
- 24  
Annex  
2.10 G Table: Combinations of designated senior management functions and FCA-prescribed senior management responsibilities for core SMCR firms

(1) FCA-prescribed senior management responsibility	(2) SMFs most likely to be appropriate	(3) Would generally consider harder to justify
(a) (Responsibility for performance of obligations under senior managers regime)	SMFs 1, 19	SMFs 9, 16, 17
(b) (Responsibility for performance of obligations under certification regime)	SMFs 1, 19	SMFs 9, 16, 17
(b-1) (Responsibility for conduct rules)	SMFs 1, 19	SMFs 9, 17
(d) ( <i>Financial crime</i> )	See the Financial Crime Guide, particularly <i>FCG 2.2.1G</i> (Governance) and <i>FCG 2.2.3G</i> (Structure).	SMF 9
(z) ( <i>CASS</i> )	See <i>CASS 1A.3</i> (Responsibility for <i>CASS</i> operational oversight).	SMF 9



(za) ( <i>COLL</i> )	SMF 9 There are also <i>rules</i> governing the allocation of this function (see <i>COLL</i> 6.6.27R, <i>COLL</i> 8.5.22R and <i>COLL</i> 15.7.24R).	SMFs 1, 3, 16, 17, 27
<p>(1) The letter and alphanumeric references in column (1) are to the codes in the column headed ‘Reference letter’ in SYSC 24.2.6R (Table: FCA-prescribed senior management responsibilities).</p> <p>(2) The numbers in columns (2) and (3) identify an <i>FCA-designated senior management function</i> by reference to the number assigned to it in the column headed ‘SMF’ in SUP 10C.4.3R (Table of FCA-designated senior management functions for SMCR firms).</p>		

24  
Annex  
2.11

G Table: Combinations of designated senior management functions and FCA-prescribed senior management responsibilities only applicable to core SMCR firms that are overseas SMCR firms

(1) FCA-prescribed senior management responsibility	(2) SMFs most likely to be appropriate	(3) Would generally consider harder to justify
(aa) ( <i>UK</i> management processes)	SMF 19	SMF 17
(ee) (Escalating correspondence)	SMF 19	SMF 17
(ff) (compliance with <i>UK</i> regulatory system)	SMF 19	SMF 17
See the notes to the table in SYSC 24 Annex 2.10G for the meaning of the numerical and alphanumeric references in this table.		

Allocations for all other firms

24  
Annex  
2.12

G The table in SYSC 24 Annex 2.13G covers all *SMCR firms* required to allocate *FCA-prescribed senior management responsibilities* other than *core SMCR firms*.

24  
Annex  
2.13

G Table: Combinations of designated senior management functions and FCA-prescribed senior management responsibilities for all other SMCR firms

(1) FCA-prescribed senior management responsibility	(2) SMFs most likely to be appropriate	(3) Would generally consider harder to justify
(a) (Responsibility for performance of obligations under senior managers regime)	SMFs 1, 19, 25, 26	SMFs 5, 9-15, 16, 17, 18, 20, 20a, 22, 23
(b) (Responsibility for performance of obligations under certification regime)	SMFs 1, 19, 25, 26	SMFs 5, 9-15, 16, 17, 18, 20, 20a, 22, 23
(b-1) (Responsibility for conduct rules)	SMFs 1, 19, 25, 26	SMFs 5, 9-15, 17, 18, 20, 20a, 22, 23
(c) ( <i>Management responsibilities map</i> )	SMFs 1, 19	SMFs 5, 9-15, 17, 18, 20, 20a, 22, 23
(d) ( <i>Financial crime</i> )	See the Financial Crime Guide, particularly <i>FCG</i> 2.2.1G (Governance) and <i>FCG</i> 2.2.3G (Structure).	SMFs 2, 5, 6, 9-15, 18, 20, 20a, 22, 23
(f) (Training of governing body)	SMFs 9, 19	SMFs 1-6, 15-18, 20-24
(g) (Training of senior management)	SMFs 1, 19	SMFs 2, 4, 5, 9-15, 18, 20, 20a, 22, 23, 24
(j) (Independence and oversight of internal audit)	SMF 11	SMFs 1-6, 16, 17, 18, 22, 24,
(j-2) (Outsourced internal audit where certain <i>PRA</i> rules apply)	SMF 11	SMFs 1-6, 12-18, 20, 20a, 22, 23, 24
(j-3) (Outsourced internal audit)	SMF 11	SMFs 1-5, 12, 13, 16, 17, 18, 22, 24

(k) (Independence and oversight of compliance)	SMF 10	SMFs 1-6, 16, 17, 18, 22, 24
(l) (Independence and oversight of risk function)	SMF 10	SMFs 1-6, 16, 17, 18, 22, 24
(m) (Remuneration policy and practices)	SMF 12	SMFs 1-6, 16, 17, 18, 20, 20a, 22, 23, 24
(n) (Whistleblowing)	See SYSC 18.4.1G(4)	SMFs 1-6, 16, 17, 18, 20, 20a, 22, 23, 24
(s) (Stress tests)	SMFs 2, 4	SMFs 5, 9-14, 16, 17, 18, 22, 24
(t) (Development and maintenance of business model)	SMFs 1, 25, 26	SMFs 5, 9-12, 14, 16, 17, 18, 20, 20a, 22, 23, 24
(z) (CASS)	See CASS 1A.3 (Responsibility for CASS operational oversight).	SMFs 5, 9-15, 20, 20a, 23
(za) (COLL)	SMF 9 There are also <i>rules</i> governing the allocation of this function (see <i>COLL</i> 6.6.27R, <i>COLL</i> 8.5.22R and <i>COLL</i> 15.7.24R).	SMFs 1-5, 7, 16, 17, 18, 19, 22, 24
(aa) (UK management processes)	SMF 4	SMFs 5, 17, 22, 24
(ee) (Escalating correspondence)	SMF 19	SMFs 2, 4, 5, 9-12, 14, 17, 20, 20a, 22, 23, 24
(ff) (compliance with <i>UK regulatory system</i> )	SMF 19	SMFs 2, 4, 5, 9-12, 14, 17, 20, 20a, 22, 23, 24
(1) The letter and alphanumeric references in column (1) are to the codes in the column headed 'Reference letter' in SYSC 24.2.6R (Table: FCA-prescribed senior management responsibilities).		

(2) The numbers in columns (2) and (3) identify the *FCA-designated senior management function* by reference to the number assigned to it in the column headed ‘SMF’ in SUP 10C.4.3R (Table of FCA-designated senior management functions for SMCR firms). In the case of a *PRA-authorized person*, the numbers refer, where applicable, to the corresponding *PRA-designated senior management function* or, where there is no equivalent *FCA-designated senior management function*, to the number and letter used by the *PRA*.

(3) SYSC 24.2.3R (Allocation of FCA-prescribed senior management responsibilities) means that (with the exception set out in that *rule*) only an *enhanced scope SMCR firm* may allocate an *FCA-prescribed senior management responsibility* to an *SMF manager* who is only approved to perform the *other overall responsibility function* or the *other local responsibility function* for that *firm*. References to SMF 18 and SMF 22 in this table should be interpreted accordingly.

Amend the following as shown.

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

...

### 26.2 Purpose

...

- 26.2.2 G The purpose of this chapter is not primarily to ensure that formal responsibility for everything a *firm* does is allocated amongst its senior management. Even without the requirements of this chapter, responsibilities that have not been allocated explicitly would fall to the *chief executive* by default. However, one of the purposes of this chapter is to avoid responsibilities being allocated by implication or by default. Instead, a *firm* should allocate responsibilities under this chapter expressly and with thought and should record them in the *statements of responsibilities of the SMF managers concerned* and (if it is required to produce one) its *management responsibilities map*.

...

### 26.4 Exclusions

...

Exclusion where the 12-week rule applies

- 26.4.6 R (1) This *rule* applies where:
- (a) a *firm* appoints someone to perform a function in order to provide cover as described in ~~SUP 10C.3.13R(1)~~ SUP

10C.3A.6R(1) (The 12-week rule) or (in the case of a *PRA-  
authorised person*) the *PRA* equivalent; and

- (b) the *firm* has allocated any responsibilities (the “Responsibilities”) under SYSC 26.3 (Main rules) to the *SMF manager* (the absent manager) who is absent as described in ~~*SUP 10C.3.13R(2)*~~ *SUP 10C.3A.6R(2)* or (in the case of a *PRA-  
authorised person*) the *PRA* equivalent.

- (2) While the disapplication of the *designated senior management function* provided for in ~~*SUP 10C.3.13R*~~ *SUP 10C.3A.6R* or (in the case of a *PRA-  
authorised person*) the *PRA* equivalent is still in force the *firm* may allocate the Responsibilities to an *employee* who is not an *SMF manager*.

- (3) For the purposes of this *rule*, the *PRA* equivalent of:

- (a) ~~*SUP 10C.3.13R*~~ *SUP 10C.3A.6R* is the following parts of the *PRA Rulebook*:

...

- (b) ~~*SUP 10C.3.13R(1) and (2)*~~ *SUP 10C.3A.6R(1) and (2)* is the following parts of the *PRA Rulebook*:

...

...

- 26.4.8 G SYSC 26.4.6R and ~~*SUP 10C.3.13R*~~ *SUP 10C.3A.6R* apply to a person performing the *other overall responsibility function* or the *other local responsibility function* as well as to a person performing one of the other *designated senior management functions*.

...

## 27 Senior managers and certification regime: Certification regime

...

### 27.2 Requirements of the certification regime

...

Issuing and renewing certificates

...

- 27.2.15 G ...

- (2) If that new function has different requirements relating to:

...

(b) the level or types of competence, knowledge and experience;

...

the *FCA* would expect the *firm* to assess whether the *employee* is fit and proper to perform that new function before they start it.

...

(5) ~~Paragraphs (1) to (4) also apply if~~ If a *certification employee*'s role changes part way through the 12-month period without the new role involving a new *FCA certification function*, the *firm* may also need to re-assess the *certification employee* before the current certificate expires and either re-issue or withdraw it. This will depend on how significant the change is. The factors in (2) and (4) are relevant to whether re-assessment is necessary.

27.2.15A G (1) If a *firm* carries out a re-assessment under SYSC 27.2.15G, the *firm* may not have to make a completely new assessment as the existing assessment may already adequately cover aspects of the *certification employee*'s new or changed function.

(2) For example, if an adviser changes from advising on mortgages to investments, the *firm*'s existing assessment of the *certification employee*'s integrity, reputation and financial soundness may not need to be re-assessed. The *firm* will only need to concentrate on the *certification employee*'s knowledge and competence in the new product area.

27.2.16 G ...

(5) ...

27.2.17 G A certificate should be in writing. However, there is no need for a physical document. It can, for example, be issued in the form of an e-mail.

27.2.18 G A certificate should include the dates of validity and be provided to the *certification employee*.

27.2.19 G (1) A *firm* may embed the certification process in other relevant processes or run the certification process in parallel to them. For example, if it runs an annual staff appraisal process, it may include certification as part of that process. If its annual appraisal process involves the issue of a written appraisal, it may include the certificate required by the certification regime in that written appraisal.

- (2) If a *firm* runs its certification process alongside or as part of its general appraisal process, it should ensure that it applies the standards and requirements set by the *Act* and this chapter to the certification process insofar as they differ from those of its general appraisal process.

- 27.2.20 G As major changes to a *certification employee's* function are dealt with when they occur under SYSC 27.2.15G, the *FCA* would expect annual re-certification on the expiry of an existing certificate to be done in a proportionate and streamlined manner. The *FCA* would expect the assessment to be less detailed than it would be for a new *certification employee*.

...

## 27.4 General material about the scope of the certification regime

Effect of PRA requirements

...

- 27.4.3 G A function does not cease to be an *FCA certification function* if that function is also a *PRA certification function* except in the cases described in SYSC 27.8.13R(3) (Managers of certification employees) and SYSC 27.8.14R(2) (Material risk takers).

...

## 27.6 Other exclusions

Single Market Directives

- 27.6.1 G ~~Under section 63E(7) of the *Act* (to the extent that it continues in force under the standstill direction), this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under certain European legislation to an authority in a country or territory outside the *United Kingdom*. The standstill direction means the standstill direction as defined in the direction made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled “FCA Transitional Direction”. [deleted]~~

...

Insolvency

- 27.6.2 R This chapter does not apply to a function performed by a *person* acting as:

...

- (3) an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; ~~or~~
- (4) a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989;
- (5) a person acting as a resolution administrator appointed by the Bank of England in accordance with section 62B of the Banking Act 2009;
- (6) a person appointed by the Bank of England as a director or a senior manager to a bank, building society, stabilisation vehicle or a banking group company for any purpose in connection with the exercise of a stabilisation option or a stabilisation power; or
- (7) a person appointed by the Treasury as a director or a senior manager to a bank, building society or a banking group company for any purpose in connection with the exercise of the temporary public ownership stabilisation option, throughout the period of 2 years beginning with the date of that appointment.

27.6.2A     R     The following terms as used in SYSC 27.6.2R and in this rule have the following meanings:

- (1) ‘banking group company’ has the meaning in section 81D of the Banking Act 2009;
- (2) ‘senior manager’ means a person who exercises executive functions and is responsible, and directly accountable to the directors, for the day-to-day management of a bank, building society, stabilisation vehicle or a banking group company;
- (3) ‘stabilisation option’ means any of the stabilisation options listed in section 1(3) of the Banking Act 2009;
- (4) ‘stabilisation power’ means any of the stabilisation powers listed in section 1(4) of the Banking Act 2009;
- (5) ‘stabilisation vehicle’ means a bridge bank as defined in section 12(1) of the Banking Act 2009 or an asset management vehicle as defined in section 12ZA(2) of the Banking Act 2009; and
- (6) ‘temporary public ownership stabilisation option’ means the transfer to temporary public ownership in accordance with section 13 of the Banking Act 2009.

...



## 27.7 Specification of functions

...

Overlap with designated senior management functions

27.7.5 G ...

27.7.6 G SYSC 27.7.1R(1) also means that an *SMF manager* may need to be certified for a role that is distinct and separate from their *designated senior management function*.

27.7.7 G This will sometimes mean that an *SMF manager* may need to be certified for the client-dealing *FCA certification function* if they meet clients.

27.7.8 G However, it does not mean that, in all instances in which an *SMF manager* engages with clients, the *SMF manager* will automatically need to be certified as well. In many instances, client engagement would be a normal and expected part of an *SMF manager's* role and would not require certification.

27.7.9 G For example, a *money laundering reporting officer* who meets with clients in relation to their *money laundering reporting officer* responsibilities would likely to be doing so within the scope of the *money laundering reporting function*. In such cases, the *money laundering reporting officer* would not need to be certified.

27.7.10 G This is equally true for other *designated senior management function* roles – for example, where an executive *director* engages with a client for relationship management reasons. This may also be the case if the *director* is accompanied by a qualified investment adviser who is a *certification employee* who can deal with detailed requests for investment advice from the client.

27.7.11 G However, the demands of a customer-facing role can, in some cases, be quite different from those of a senior management role. For example, advising on investments is often technical and requires relevant qualifications (set out in the Training and Competence sourcebook (TC)). Such an activity is distinctly different from the role many *SMF managers* perform and will, therefore, in many cases, fall outside the scope of the *SMF manager* role. As such, it would require certification.

## 27.8 Definitions of the FCA certification functions

...

Significant management function

27.8.4 R ...

- (2) ...
- (3) A function does not fall within (1) in relation to a particular *person* and *firm* if the *person* performing it:
- (a) is also performing; and
- (b) has a current valid certificate under section 63F of the *Act* (Issuing of certificates) that covers,
- the material risk takers *FCA certification function* for the same *firm*.

...

#### Managers of certification employees

27.8.13 R ...

- (2) ...
- (3) A function does not fall within (1) in relation to a particular *person* and *firm* if the *person* performing it:
- (a) is also performing; and
- (b) has a current valid certificate under section 63F of the *Act* (Issuing of certificates) that covers,
- another *certification function* for the same *firm*.

#### Material risk takers

- 27.8.14 R (1) Each function performed by a *person* in column (2) of the table in SYSC 27.8.15R is an *FCA certification function* with respect to a *firm* in the corresponding entry in column (1).
- (2) A function does not fall within SYSC 27.8.14R(1) in relation to a particular *person* and *firm* if the *person* performing it:
- (a) is also performing; and
- (b) has a current valid certificate under section 63F of the *Act* (Issuing of certificates) that covers;
- a *PRA certification function* for the same *firm*.

...

Insert the following transitional provisions, SYSC TP 13, after SYSC TP 12 (Updates to the dual-regulated firms Remuneration Code transitional provision). All the text is new and is not underlined.

**TP 13      Miscellaneous transitional provisions relating to the Senior Managers and Certification Regime**

**TP 13.1      Part 1**

Scope

TP 13.1.1      R      *SYSC* TP 13.1 relates to amendments to *SYSC* made by the Individual Accountability (SMCR Review) Instrument [*Editor's note*: insert the year in which this instrument publishes].

TP 13.1.2      R      In *SYSC* TP 13.1 the 'commencement date' means [*Editor's note*: insert the date on which this instrument comes into effect].

Regulatory references

TP 13.1.3      G      The amendment to *SYSC* 22.5.17G (Time in which to respond to reference requests) applies to references requested after the commencement date.

TP 13.1.4      G      *SYSC* 22.8.11R (Firms applying for authorisation) applies to references requested after the commencement date.

TP 13.1.5      R      The amendment to the form of regulatory references in *SYSC* 22 Annex 1 (Template for regulatory references given by SMCR firms and disclosure requirements) applies to references requested after the commencement date.

Checks for certain directors

TP 13.1.6      R      The amendments to *SYSC* 23.4 (Checks for certain directors) apply to appointments coming into effect after the commencement date.

Changes to financial thresholds for the enhanced regime

- TP 13.1.7      R      (1) This paragraph deals with the changes to the financial figures in the table in *SYSC* 23 Annex 1 8.2R (Table: Financial qualification conditions).
- (2) The *rules* in *SYSC* 23 Annex 1 8.28R to *SYSC* 23 Annex 1 8.30G (Automatic adjustment of financial thresholds: Effect on past and future calculations) about the effect of a change in the financial figures in the table in *SYSC* 23 Annex 1 8.2R on current and past averaging periods also apply to the changes in (1) as if the commencement date was the end of a 5-year period as referred to in *SYSC* 23 Annex 1 8.24R on which an increase to the thresholds had taken place.

Prescribed responsibilities

- TP 13.1.8 G SYSC 24 Annex 2 (Preferred allocations of FCA-prescribed senior management responsibilities) applies to allocations made after the commencement date but as it largely reflects existing policy, it may be reflected in discussions between a *firm* and the *FCA* about existing allocations.

#### Certification

- TP 13.1.9 G The changes to SYSC 27.8.4R (Significant management function), SYSC 27.8.13R (Managers of certification employees) and SYSC 27.8.14R (Material risk takers) also apply to *certification employees* already certified as at the commencement date to perform the significant management, managers of certification employees or material risk takers *FCA certification functions* (as the case may be).
- TP 13.1.10 G A *firm* should notify the *FCA* of a person ceasing to carry on an *FCA certification function* under the amendments referred to in SYSC TP 13.1.9G under SUP 16.26 (Reporting of information about Directory persons).

## Annex D

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

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

# 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
...	
(3) An <i>employee</i> of an <i>SMCR firm</i> who would be performing an <i>FCA-designated senior management function</i> but for <del><i>SUP 10C.3.13R</i></del> <u><i>SUP 10C.3A.6R</i></u> (The 12-week rule).	
...	
(8) ...	...
<u>(9) An <i>employee</i> of an <i>SMCR firm</i> who would be performing a <i>PRA-designated senior management function</i> but for the rules of the <i>PRA Rulebook</i> that are listed in the ‘Comments’ column of this row.</u>	<p><u>The <i>PRA</i> rules referred to in the ‘Persons to whom COCON applies’ column of this row are:</u></p> <p><u>(a) Rule 2.3 of the Senior Management Functions Part (General);</u></p> <p><u>(b) Rule 2.4 of the Insurance – Senior Management Functions Part (General);</u></p> <p><u>(c) Rule 2.4 of the Large Non-Solvency II Firms – Senior Management Functions Part (General); and</u></p> <p><u>(d) Rule 2.3 of the Non-Solvency II Firms – Senior Management Functions Part (General).</u></p>
...	

...

1.1.4 R ...

- (2) SC1 to SC3 in *COCON* 2.2 do not apply to a *senior conduct rules staff member* within paragraph (d) of the definition of *senior conduct rules staff member* (P) unless:

(a) P also falls into ~~paragraph (a) or (b)~~ one of the other paragraphs of that definition; or

(b) P would fall within row (3) or (9) of the table in *COCON* 1.1.2R (Table: To whom does COCON apply?) if P were an employee.

...

1.1.7 R ...

Definition of COCON firm activities

1.1.7-A R ...

...

## 4 Specific guidance on conduct rules

...

### 4.2 Specific guidance on senior manager conduct rules

...

**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.**

...

4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* SC2.

...

(8) ...

(e) ...

(9) Failing to take reasonable steps to ensure that the *firm* complies with the obligations imposed on *firms* by *Principle 11* and *SUP 15* (Notifications to the FCA) to notify and/or disclose to the *FCA* in relation to the business of the *firm* for which they are responsible.

(10) Failing to take reasonable steps to ensure that all employees, officers, agents and contractors who:

- (a) work within or are retained by the businesses of the *firm* for which the *senior conduct rules staff member* is responsible; and
- (b) become aware of a matter subject to the obligations referred to in (9),

report the matter without delay so that it is disclosed promptly to the *FCA*.

The duty to report to the *FCA* referred to in this paragraph and paragraph (9) applies 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*.

...

**SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice**

...

4.2.31 G ...

(2) ...

4.2.32 G (1) Rule SC4 does not require the disclosure of legally privileged communications.

(2) However, the duty to report to the *FCA* applies 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*.

(3) See also *COCON* 4.2.16G(9) and *COCON* 4.2.16G(10) about the duty to ensure that the *firm* itself reports information to the *FCA*.

4.2.33 G Rule SC4 is not limited to information about the *SMF manager's firm*. It also covers information about the *SMF manager* themselves. For example, the *SMF manager* should disclose the following to the *FCA*:

(1) the *SMF manager* is prosecuted for, or convicted of:

- (a) any offence involving fraud, dishonesty or one of the other matters listed in *FIT* 2.1.3G(1) (Honesty, integrity and reputation); or

- (b) any other offence (unless conviction is or would not be a significant negative factor in assessing whether the *SMF manager* is fit and proper);
- (2) any other events or circumstances described in *FIT 2.1.3G(1) to (12)* (Honesty, integrity and reputation) have occurred unless:
  - (a) the *FCA* can reasonably be expected to know about it because the relevant proceedings have been brought by the *FCA*; or
  - (b) the matter is not, or the possible outcome would not be, a significant negative factor in assessing whether the *SMF manager* is fit and proper;
- (3) the *SMF manager* has failed to meet the standard in *FIT 2.1.3G(13)*;  
or
- (4) the *SMF manager* is insolvent or subject to insolvency proceedings or proceedings of the kind mentioned in *FIT 2.3.1G* (Financial soundness).



## Annex E

### Amendments to Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

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

#### 1 General

##### 1.1 Application and purpose

...

1.1.2 G The purpose of *FIT* is to set out and describe the criteria that:

(1) an *SMCR firm* should consider when:

...

(e) (in the case an *FCA-authorised person* that is not a *limited scope SMCR firm*) assessing the fitness of a *non-SMF board director* ~~subject to competence requirements~~ under the *competent employees rule*, any *onshored regulation*, *SYSC 23.4.1AR (Checks for certain directors)* or any other requirement of the *regulatory system*.

...

##### 1.2 Introduction

...

1.2.5 G ~~For as long as the standstill direction referred to in *SYSC 27.6.1G*, *SUP 10A.1.7R* and *SUP 10C.1.4R* is in force, the guidance in *FIT 1.2.4AG* and *FIT 1.2.4AG* in the version of the *FCA Handbook* that was in force immediately before *IP completion day* is still relevant. [deleted]~~

...

#### 2 Main assessment criteria

##### 2.1 Honesty, integrity and reputation

...

2.1.3 G The matters referred to in *FIT 2.1.1G* to which the *FCA* will have regard, and to which a *firm* should also have regard, include, but are not limited to:

...

(2) whether the *person* has been the subject of any adverse finding or any settlement in civil proceedings, official investigation or public

enquiry, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a *body corporate*;

...

...

## Annex F

## Amendments to the Supervision manual (SUP)

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

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

### 10C.1 Application

...

EEA firms: general application

- 10C.1.4 R ~~This chapter does not apply to an *SMCR firm* if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* as contemplated by section 59(8) of the *Act*. This *rule* has effect to the extent that, and for as long as, section 59(8) of the *Act* remains in effect under the standstill direction (as it relates to that section) as defined in the direction made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled “Main FCA Transitional Directions”:~~ [deleted]

...

Insolvency practitioners

- 10C.1.9 R This chapter does not apply to a function performed by a *person* acting as:

...

- (3) an insolvency practitioner within the meaning of article 3 of the Insolvency (Northern Ireland) Order 1989; ~~or~~
- (4) a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989;<sup>2</sup>
- (5) a *person* acting as a resolution administrator appointed by the Bank of England in accordance with section 62B of the Banking Act 2009;
- (6) a *person* appointed by the Bank of England as a *director* or senior manager to a *bank*, *building society*, stabilisation vehicle or a banking group company for any purpose in connection with the exercise of a stabilisation option or a stabilisation power; or

- (7) a *person* appointed by the Treasury as a *director* or a senior manager to a *bank*, *building society* or to a banking group company for any purpose in connection with the exercise of the temporary public ownership stabilisation option, throughout the period of 2 years beginning with the date of that appointment.

10C.1.9A R The following terms as used in SUP 10C.1.9R and in this *rule* have the following meanings:

- (1) 'banking group company' has the meaning in section 81D of the Banking Act 2009;
- (2) 'senior manager' means a *person* who exercises executive functions and is responsible, and directly accountable to the *directors*, for the day-to-day management of a *bank*, *building society*, stabilisation vehicle or a banking group company;
- (3) 'stabilisation option' means any of the stabilisation options listed in section 1(3) of the Banking Act 2009;
- (4) 'stabilisation power' means any of the stabilisation powers listed in section 1(4) of the Banking Act 2009;
- (5) 'stabilisation vehicle' means a bridge bank as defined in section 12(1) of the Banking Act 2009 or an asset management vehicle as defined in section 12ZA(2) of the Banking Act 2009; and
- (6) 'temporary public ownership stabilisation option' means the transfer to temporary public ownership in accordance with section 13 of the Banking Act 2009.

...

### 10C.3 General material about the definition of controlled functions

...

10C.3.12 G ...

~~The 12-week rule~~

### 10C.3A The 12-week rule

Purpose

10C.3.14 G ~~SUP 10C.3.13R~~ This section enables cover to be given for (as an example) holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing an *FCA-designated senior management function* for more than 12 weeks, the *firm* should apply for

10C.3A.1

approval temporary absences and reasonably unforeseen permanent departures.

- 10C.3A.2    G    If an *SMF manager* permanently and unexpectedly leaves a *firm*, the purpose of this section is to allow the *firm* to replace them temporarily, without needing to get approval for the temporary replacement, while the *firm* applies to the *FCA* for approval of someone to act as a permanent replacement. The temporary replacement can stay in place:
- (1)    for up to 12 weeks; or
  - (2)    up to the time when the *FCA* determines the application for the approval of the permanent replacement, as long as that application is made within the first 12 weeks of absence.
- 10C.3A.3    G    If an *SMF manager* permanently and unexpectedly leaves a *firm*, the *firm* may want to replace them for an interim period with another *person* and seek approval from the *FCA* for that interim appointee while the *firm* looks for a long-term replacement. This section allows the *firm* to appoint a temporary replacement in the ways described in *SUP* 10C.3A.2G without the need for *FCA* approval while it is seeking approval for the interim replacement.
- 10C.3A.4    G    If an *SMF manager* is temporarily absent, the purpose of this section is to allow the *firm* to replace them temporarily without needing to get approval for the replacement. The replacement can be in place for up to 12 weeks. In many cases that is all that the *firm* will need. However, that period can be extended to cover unexpected longer absences in the same way as for permanent departures.
- ~~10C.3.15~~  
10C.3A.5    G    See *SUP* 10C.12.7G to *SUP* 10C.12.14G (time-limited approvals) for procedures for temporary appointments longer than ~~12 weeks~~ the period permitted by this section.

The 12-week rule: The main rules

- ~~10C.3.13~~  
10C.3A.6    R    If:
- (1)    a *firm* appoints an individual (I) who is a member of the conduct rules staff of the *firm* to perform a function which, but for this rule, would be an *FCA-designated senior management function*;
  - (2)    the appointment is to provide cover for an *SMF manager* who is an individual and whose absence is:
    - (a)    temporary; or
    - (b)    reasonably unforeseen; and

- (3) the appointment is for less than 12 weeks in a consecutive 12-month period (subject to SUP 10C.3A.8R);

the description of the relevant *FCA-designated senior management function* does not relate to those activities of that individual.

10C.3A.7 R In this section:

- (1) the ‘absent manager’ means the *SMF manager* who has become absent as described in SUP 10C.3A.6R(2);
- (2) the ‘temporary replacement’ means ‘I’ as defined in SUP 10C.3A.6R(1); and
- (3) an *SMF manager* being absent includes the *SMF manager* ceasing to perform their *FCA-designated senior management function*.

10C.3A.8 R (1) This rule deals with an appointment by a *firm* under SUP 10C.3A.6R where:

- (a) the absence is reasonably unforeseen; or
- (b) an absence of over 12 weeks is reasonably unforeseen.
- (2) If, before the period under SUP 10C.3A.6R(3) would have expired but for this rule, the *firm* makes a valid and complete application for the approval for the performance by a *person* of the *FCA-designated senior management function* that was performed by the absent manager:
- (a) the period for which the function performed by the temporary replacement is not an *FCA-designated senior management function* is extended until that application is finally determined; and
- (b) the period for which the temporary replacement may perform the function without approval is extended accordingly.
- (3) An application is finally determined for the purpose of (2) when:
- (a) the application is withdrawn;
- (b) the *FCA* grants the application;
- (c) where the *FCA* has refused or not granted the application and the matter is not referred to the *Tribunal*, the time for referring the matter to the *Tribunal* has expired; or
- (d) where the *FCA* has refused or not granted the application and the matter is referred to the *Tribunal*, the reference, and

any appeal against the *Tribunal's* determination, has been finally disposed of.

(4) In this *rule* the 'absent manager' and the 'temporary replacement' have the meanings in SUP 10C.3A.7R.

10C.3A.9 G The reference in SUP 10C.3A.8R(3) to 'not granted' includes a situation where the *FCA* has granted an application subject to conditions or for a limited period (or both).

10C.3A.10 G In the case of an appointment under SUP 10C.3A.6R to provide cover for a temporarily absent manager, the disapplication of the *FCA-designated senior management function* ends no later than the return of the absent manager.

Examples of when the rule can be used

10C.3A.11 G The table in SUP 10C.3A.12G gives examples of how SUP 10C.3A.6R works.

10C.3A.12 G Table: Examples of the operation of the 12-week rule

<u><b>Firm can use rule</b></u>	<u><b>Firm may not use the rule or restricted use</b></u>
<p><u>(1) S gives long notice in accordance with S's contract of employment. F did not foresee this. Immediately after S gives the notice, S stops performing their <i>designated senior management function</i>. Instead, S stays on as a consultant to help with the handover.</u></p> <p><u>S leaves F altogether when the notice expires.</u></p> <p><u>F knows that S will leave F a long time in advance before S leaves. However, for the purposes of the <i>rule</i>, S's absence begins when S stops performing the <i>designated senior management function</i>.</u></p>	<p><u>(1) S and F agree a retirement plan for S a year before S leaves, including the retirement date. S, in accordance with the retirement plan, gives short notice of retirement and leaves when the notice expires.</u></p>
<p><u>(2) S takes parental leave with only short notice.</u></p> <p><u>In a general sense a <i>firm</i> will know that many members of staff are at some time likely to</u></p>	<p><u>(2) S has a contract of employment for a fixed term. There is no understanding that S will stay on after that. S leaves immediately after the end of that period.</u></p>

<p><u>ask for parental leave. That does not mean though that a <i>firm</i> foresees a request for such leave before it is made.</u></p> <p><u>However, a <i>firm</i> should try to avoid the need to use the <i>rule</i> or minimise use of the <i>rule</i> (see <i>SUP</i> 10C.3A.15G). In the case of long-term leave, a <i>firm</i> should have systems in place to deal with parental leave that will enable it to identify a replacement to fill in for S during S's absence at once and apply for their approval in sufficient time for the replacement to have been approved by the <i>FCA</i> by the time S goes on leave.</u></p>	<p><u>Right from the start of S's employment it was reasonably foreseeable that S would leave at the expiry of their contract.</u></p>
<p><u>(3) S unexpectedly becomes sick and immediately after resigns or takes sick leave.</u></p> <p><u>If S becomes ill a long time before S finally resigns, F may still be able to use the <i>rule</i>. For example, F and S may believe that S will be able to carry on working.</u></p> <p><u>F may use the <i>rule</i> even if it does not initially know whether S will be able to return or how long S will be away.</u></p>	<p><u>(3) S gives long notice that S is going to take extended leave of 1 year. After S goes on leave, S resigns by giving the notice required by S's contract of employment. F does not foresee the resignation.</u></p> <p><u>F may not treat the absence as unexpected after S resigns as F foresaw an absence exceeding 12 weeks. <i>SUP</i> 10C.3A.8R applies if F did not foresee any absence or only foresaw an absence of under 12 weeks.</u></p> <p><u>In addition, F should not use the <i>rule</i> in these circumstances for the fixed 12-week period in <i>SUP</i> 10C.3A.6R(3) as F should have put someone in place to cover S's expected long-term temporary absence immediately after S goes on leave.</u></p>
<p><u>(4) S gives long notice that S is going to take a short career break. Shortly after S goes on leave, S resigns by giving the notice required by S's contract of employment. F does not foresee the resignation.</u></p>	<p><u>(4) S gives a long notice of resignation. However, S becomes ill and has to resign shortly before the expiry of their notice.</u></p> <p><u>F cannot use the <i>rule</i>.</u></p> <p><u>F knew that S would leave a long time before S actually leaves. It does not</u></p>



<p><u>F may treat the absence as unexpected once S resigns. F foresaw a short absence but not a permanent absence.</u></p>	<p><u>matter that F did not foresee that the reason would be illness.</u></p>
<p><u>(5) S leaves F.</u></p> <p><u>F appoints someone to fill in for S until a permanent replacement is approved.</u></p> <p><u>F makes an application to the FCA 5 weeks after R is appointed. However, F withdraws the application for approval of the <i>candidate</i> 2 weeks later. Two weeks after that F makes an application for the approval of someone else. The FCA grants its approval 8 weeks later. That means that R performs the function for 17 weeks.</u></p> <p><u>F would not be able to use the extended period in SUP 10C.3A.8R if the second application was made more than 12 weeks after R is appointed.</u></p>	<p><u>(5) S takes extended leave. F expects this. F appoints R1 to fill in for S. After 10 weeks F wishes to replace R1 with R2.</u></p> <p><u>F can use the <i>rule</i> for R2 as well as R1. However, F can only appoint R2 for 2 weeks under the <i>rule</i>.</u></p> <p><u>If F has sufficient warning, it should find a replacement for S before S leaves and should not use the <i>rule</i>.</u></p>
<p><u>In this table:</u></p> <p><u>‘S’ refers to the absent <i>SMF manager</i> referred to in SUP 10C.3A.6R</u></p> <p><u>‘F’ refers to the <i>firm</i> in question</u></p> <p><u>‘R’ (and R1 and R2) refers to the individual providing cover referred to in SUP 10C.3A.6R</u></p>	

### Fit and proper

- 10C.3A.13 R A firm must ensure that an individual appointed as described in SUP 10C.3A.6R(1) is fit and proper to perform that role.
- 10C.3A.14 G
- (1) The material in FIT is relevant to the assessment in SUP 10C.3A.13R.
  - (2) The assessment may take into account that the replacement will only be in post for a limited period.
  - (3) A firm should ensure that the replacement has the skills, personal characteristics, knowledge and expertise necessary for the discharge of the responsibilities allocated to them under SUP 10C.3A.6R, including

any FCA-prescribed senior management responsibilities or any responsibilities under SYSC 26 (Senior managers and certification regime: Overall and local responsibility) re-allocated from the absent manager.

#### Reasonable use of rule

10C.3A.15 G A firm should:

- (1) use SUP 10C.3A.6R reasonably;
- (2) not use SUP 10C.3A.6R unless it needs to, even if the firm is otherwise entitled to use that rule;
- (3) use SUP 10C.3A.6R as infrequently as reasonably possible; and
- (4) limit the time a substitute is in place under SUP 10C.3A.6R to as short a time as reasonably possible.

10C.3A.16 G The steps that a firm should take to achieve the things in SUP 10C.3A.15G include:

- (1) having in place and operating effective and up-to-date succession plans for each of its SMF managers;
- (2) using notice periods effectively to identify candidates to fill the place of the departing SMF manager and to apply for approval for the replacement quickly;
- (3) submitting an application for the approval of the individual who is to fill the place of the departing SMF manager as soon as reasonably possible; and
- (4) ensuring that the application in (3) is of good quality and, in particular, ensuring that the FCA does not have to ask for explanations of the material submitted under the application or to request further information.

10C.3A.17 G A firm could also take the following steps to achieve the things in SUP 10C.3A.15G:

- (1) including sufficiently long notice periods in the terms of engagement of its SMF managers; and
- (2) ensuring any fixed term of engagement of an SMF manager is sufficiently long.

#### Notification

10C.3A.18 G (1) A firm may be required to notify the FCA of the absence of an SMF manager using a Form C or D under SUP 10C.14 (Changes to an FCA-

approved person's details) but it is not otherwise required routinely to report the use of *SUP* 10C.3A.6R (The 12-week rule: The main rules).

- (2) A *firm* should, however, report the use of that *rule* if there is something about the appointment that the *FCA* would reasonably expect to know – for instance, under *Principle* 11 (Relations with regulators).
- (3) An example of (2) may be if the *firm* concludes that the person filling in for the absent *SMF manager* is suitable for the role but that the *FCA* might have reasonable doubts about whether that person is suitable.

#### Re-allocation of overall and local responsibilities

- ~~10C.3.16~~ 10C.3A.19 G (1) A *firm* to which SYSC 26 (Senior managers and certification regime: Overall and local responsibility) applies may have allocated responsibilities under that chapter to an *SMF manager* who is absent under ~~*SUP* 10C.3.13R~~ *SUP* 10C.3A.6R (The 12-week rule: The main rules).
- (2) SYSC 26.4.6R (Exclusion where the 12-week rule applies) deals with how those responsibilities may be reallocated during the *SMF manager's* absence.
- (3) SYSC 26.4.8G explains that SYSC 26.4.6R and ~~*SUP* 10C.3.13R~~ *SUP* 10C.3A.6R apply to a person performing the *other overall responsibility function* or the *other local responsibility function* as well as to other *designated senior management functions*.

#### Re-allocation of prescribed responsibilities

- ~~10C.3.17~~ 10C.3A.20 G (1) If:
- (a) a *firm* allocates any *FCA-prescribed senior management responsibilities* to an *SMF manager*; and
- (b) the *SMF manager* later becomes absent;
- the *firm* should reallocate them to another *SMF manager*.
- (2) The *firm* may not allocate the absent manager's *FCA-prescribed senior management responsibilities* to the *person* providing cover for that manager unless the *person* providing cover is also an *SMF manager* of the *firm*.

...

### **10C.5B FCA governing functions: Group entities**

#### Group entity senior manager function (SMF7)

10C.5B.1 R ...

10C.5B.1    G    There is a *PRA-prescribed senior management responsibility* with the same name and reference number (SMF7) as the *group entity senior manager function*. Although in many respects it is drafted similarly to the *group entity senior manager function*, it is also in some respects wider.  
A

...

When the group entity senior manager function applies

...

10C.5B.5    G    ...

(4)    ~~If however the *firm's governing body* has sufficient discretion in how it applies and responds to proposals coming from group committees or individuals based in parent entities, approval would generally not be required. In this case the individual will be carrying on a group-level function rather than performing a function on behalf of the *firm*.~~  
[deleted]

(5)    ~~So, where:~~

        (a)    ~~a *firm* has in place the required *SMF managers* based in the *firm*; and~~

        (b)    ~~those *SMF managers* are effective and have sufficient control over the *firm*;~~

~~the *FCA* would not routinely expect the *firm* to have persons performing the *group entity senior manager function* in place. [deleted]~~

10C.5B.5    G    (1)    The chief financial officer of a *group* can be used as an example of how *SUP 10C.5B.5G* applies.  
A

(2)    If the *group's* chief financial officer limits their role to strategic ones such as setting the broad financial policies that members of the *group* should follow and monitoring the application of those policies, it is unlikely that they will be performing the *group entity senior manager function*.

(3)    The *group's* chief financial officer does not carry out the *group entity senior manager function* just because they are responsible for the allocation of *group* capital to the *firm*. That is a function of the investing member of the *group*, not of the *firm*.

(4)    If the *group's* chief financial officer is responsible for implementing the *group's* strategy in the *firm* or is responsible for the day-to-day management of the *firm's* financial resources or of the *firm's* finance function, the chief financial officer is likely to be performing the *group entity senior manager function*.

- (5) If the *firm* has its own chief financial officer, that may make it less likely that the *group's* chief financial officer is performing the *group entity senior manager function*.
- (6) If:
- (a) the *group's* chief financial officer does not implement decisions at the *firm* level (see (4)) and instead makes proposals to the *firm's* chief financial officer about the operation of the *firm's* finance function; and
  - (b) the *firm's* chief financial officer has sufficient discretion in how they apply and respond to such proposals,
- the *group's* chief financial officer will generally not be performing the *group entity senior manager function*; instead, the *group* chief financial officer will be carrying on a group-level function rather than performing a function on behalf of the *firm*.
- (7) One way of looking at it is to ask whether the influence and authority of the *group* chief financial officer cuts back the ability of the *firm's* chief financial officer to manage the *firm's* financial affairs to such an extent that it would be unreasonable to see the *firm's* chief financial officer as controlling the *firm's* financial resources alone (subject to the *firm's* governing body and any *director* of the *firm* to whom they report).
- (8) Another way of looking at it is to consider:
- (a) whether it would be reasonable to see the *group's* chief financial officer as giving instructions to the *firm's* chief financial officer or as making proposals that it would be expected that the *firm's* chief financial officer would generally follow (in which case the *group's* chief financial officer is likely to be performing the function); or
  - (b) (within the framework of policies and proposals set as described in (2)) whether the *firm's* chief financial officer considers proposals from the *group's* chief financial officer on their merits and in the light of the interests of the *firm* and its customers (in which case the *group's* chief financial officer is not likely to be performing the function).

10C.5B.5  
B

- G (1) SUP 10C.5B.5G and SUP 10C.5B.5AG also apply where the influence is applied by a management committee of the *group* or its holding company.
- (2) Therefore, if the *firm's* governing body has sufficient discretion in how it applies and responds to proposals coming from group committees, approval would generally not be required for individuals on such a committee. In this case the committee and its members will be carrying

on a group-level function rather than performing a function on behalf of the *firm*.

10C.5B.5    G    So, where:  
C

- (1)    a *firm* has in place the relevant *SMF managers* based in the *firm*; and
- (2)    those *SMF managers* are effective and have sufficient control over the *firm*,

the *FCA* would not routinely expect the *firm* to have *persons* performing the *group entity senior manager function* in place.

...

10C.5B.8    G    ...

- (2)    ...

10C.5B.9    G    (1)    *SUP* 10C.5B.1R(1) says that the *group entity senior manager function* only applies in relation to the *firm's regulated activities*.

- (2)    This does not mean that it is limited to having direct influence on the conduct of *regulated activities*. It simply reflects the link that section 59 of the *Act* (Approval for particular arrangements) requires between a *senior management function* and *regulated activities*. It emphasises the point made by *SUP* 10C.3.6R (Definition of *FCA controlled function: arrangements*).

- (3)    Therefore, the *group entity senior manager function* can cover support functions.

10C.5B.10    G    Thus, for example, the influence of a *person* performing the *group entity senior manager function* may relate to the *firm's*:

- (1)    financial resources (so that the *firm's group's* chief financial officer may be within the scope of the function);
- (2)    technology (so that the *firm's group's* chief information and technology officer may be within the scope of the function); or
- (3)    human resources (so that the *firm's group's* head of human resources may be within the scope of the function).

10C.5B.11    G    However, as explained in *SUP* 10C.5B.5G to *SUP* 10C.5B.5CG, *group officers* holding the responsibilities in *SUP* 10C.5B.10G will very often be outside the scope of the function.

...

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

...

10C.7.7 G ...

Seniority

10C.7.8 G A firm should consider anyone performing the *other overall responsibility function* as being in the top layer of its executive management. A person performing this role should be of equal status to the firm's executive directors and other SMF managers (subject to the chief executive).

- 10C.7.9 G (1) A person performing the role should be the most senior person in the firm who has responsibility for the area being managed as part of the *other overall responsibility function*.
- (2) This follows from SYSC 26.6 (Meaning of local and overall responsibility: General), SYSC 26.7 (Meaning of local and overall responsibility: Reporting to the governing body) and SYSC 26.8 (Meaning of local and overall responsibility: Not reporting to the governing body). A firm should consider those provisions when deciding whether the person it is considering for appointment to carry out the *other overall responsibility function* is eligible for appointment.
- (3) (1) also applies to SUP 10C.7.1R(1)(b) and (c).

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

...

Head of the legal function

...

10C.8.10 G ...

Seniority

10C.8.11 G The guidance in SUP 10C.7.8G and SUP 10C.7.9G (Seniority) also applies to the *other local responsibility function* in relation to the branch.

...

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

...

Other material to be included in an application

...

10C.10.13 D ...

A

- 10C.10.13    G    (1)    This paragraph deals with a *firm* required to submit a *management responsibilities map* with an application to the *FCA*.
- B
- (2)    A *firm* may make a number of closely linked changes to its senior management arrangements of which the application is part. The *firm* need not submit a different version of the *management responsibilities map* showing the position after each change. Instead, the *firm* may produce a single version showing the position after all the relevant changes have been carried out.
- (3)    A series of changes may be linked because some are conditional on the others going ahead. However, changes can be linked in other circumstances too.
- (4)    The following are examples of closely linked changes as part of a re-organisation project:
- (a)    the *firm* intends to appoint a number of new *SMF managers*;
- (b)    the *firm* intends to appoint a number of existing *SMF managers* to perform new *designated senior management functions*; or
- (c)    the *firm* re-allocates responsibilities among its *SMF managers*.
- (5)    If there is a significant time gap between linked changes, the *FCA* would expect the *firm* to produce a single version of the *management responsibilities map* for each phase of the changes.

...

Criminal records checks and verifying fitness and properness

10C.10.16    R    ...

- (3)    This *rule* does not apply:
- (a)    to a *firm* that is a *sole trader* if the *candidate* is the *sole trader* themselves;
- (b)    if the *candidate* is already performing and has approval for the performance of a *designated senior management function* for the *firm* or another *firm* in the same *group*;
- (c)    if the *candidate* was performing and had approval for the performance of a *designated senior management function* for the *firm* or another *firm* in the same *group* within 1 month before the submission of the application for approval in (1); or
- (d)    the *firm* has already completed a criminal records check under SYSC 23.4.2R (Checks for certain directors) in relation to the appointment of the *candidate* as a *non-SMF board director* of the *firm* or of a *firm* in the same *group* and the *candidate* is still



performing that role or was doing so within 1 *month* before the application.

- (4) A *firm* must, so far as it is reasonably able, ensure that the information it obtains under this *rule* is no older than 6 *months*, measured from the time the *firm* submits its application to the *FCA*.

10C.10.17 G ...

- (4) ...

- (5) The effect of SUP 10C.10.16R(4) is that the certificate in (3) should be dated no more than 6 *months* before the time the *firm* submits the application for approval to the *FCA*.

...

10C.10.21 G ...

10C.10.21 A G As explained in SUP 10C.10.14G, a *firm* should be satisfied that a *person* whom it wishes to appoint to perform an *FCA-designated senior management function* is fit and proper. Therefore, even if the *firm* is not required by SUP 10C.10.16R to perform a *UK* criminal records check, it should consider whether it needs to carry one out in order to be able to carry out an effective fitness assessment.

...

## 10C.11 Statements of responsibilities

What a statement of responsibilities is

10C.11.1 G ...

- (3) A *statement of responsibilities* includes a statement amended under section 62A of the *Act* (see SUP 10C.11.5G) or this section.

...

Revised statements of responsibilities: Meaning of significant change

- 10C.11.6 G (1) This paragraph sets out non-exhaustive examples of potential changes which, in the *FCA*'s view, may be significant and thus require the submission of a revised *statement of responsibilities*.
- (2) ~~A variation of the *FCA*-approved *SMF* manager's approval, either at the *firm*'s request or at the *FCA*'s or (in the case of a *PRA* authorised person), *PRA*'s initiative, resulting in the imposition, variation or removal of a condition or time limit, may involve a significant change.~~  
[deleted]

- (3) ~~Fulfilling or failing to fulfil a condition on approval may involve a significant change. [deleted]~~
- (4) The addition, re-allocation or removal of ~~any~~ either of the following (or part of one):
- (a) an *FCA-prescribed senior management responsibility*; or
  - (b) (in the case of a *PRA-authorised person*), a *PRA-prescribed senior management responsibility*; ~~or~~
  - (c) ~~responsibility for a function under SYSC 26 (Senior managers and certification regime: Overall and local responsibility);~~  
[deleted]

may involve a significant change.

...

- (6A) ~~Beginning or ceasing to share responsibility for a function under SYSC 26 (Senior managers and certification regime: Overall and local responsibility) may involve a significant change. [deleted]~~
- (6B) ~~Where~~ If an *FCA-approved SMF manager* goes on a temporary absence of longer than 12 weeks and on, that involves a significant change, as does their return from that absence (see *SUP 10C.14.5CG*) but, (subject to (4)), a shorter absence does not involve a significant change.
- (6C) The adding or removal of responsibility for a function under SYSC 26 (Senior managers and certification regime: Overall and local responsibility) may involve a significant change. This is not applicable to a *core SMCR firm* or a *limited scope SMCR firm*.
- (6D) Beginning or ceasing to share responsibility for a function under SYSC 26 may involve a significant change. This is not applicable to a *core SMCR firm* or a *limited scope SMCR firm*.
- (7) A change is likely to be significant if it reflects a significant change to the job that the *person* is doing for the *firm*. Some factors relevant here include:
- (a) the importance to the *firm* of the functions being given up or taken on;
  - (b) whether the *FCA-approved SMF manager's* seniority in the *firm's* management changes;
  - (c) ~~whether there are changes to the identity, number or seniority of those whom the *FCA-approved SMF manager* manages is~~

taking on responsibility for another part of the *firm*'s business or operations; and

(d) whether there are significant changes to the skills, experience or knowledge needed kind of tasks carried out by the FCA-approved SMF manager for the purposes of the job.

(8) A variation of the FCA-approved SMF manager's approval, either at the *firm*'s request or at the FCA's or (in the case of a PRA-authorised person), PRA's initiative, resulting in the imposition, variation or removal of a condition or time limit, may involve a significant change.

(9) Fulfilling or failing to fulfil a condition on approval may involve a significant change.

10C.11.6A R A *firm* must immediately prepare a revised statement of responsibilities to reflect a significant change in an SMF manager's responsibilities of the kind described in section 62A of the Act (Changes in responsibilities of senior managers) that has occurred since the last version prepared by the *firm*, even if the *firm* does not yet (or ever) need to send it to the FCA. The *firm* must prepare it in accordance with the requirements of this section (including SUP 10C.11.13D).

10C.11.6B G SUP 10C.11.6CG (Revised statements of responsibilities: Timing of submission to FCA) says that a *firm* does not need to send a revised statement of responsibilities to the FCA immediately if there is a significant change in the responsibilities of an SMF manager. It says that in some cases the changes need not be notified to the FCA at all. However, the *firm* should keep its copy of a statement of responsibilities up to date at all times. SUP 10C.11.6CG is about sending a statement of responsibilities to the FCA, not about keeping the *firm*'s own copy up to date.

#### Revised statements of responsibilities: Timing of submission to FCA

10C.11.6C G (1) The Act does not expressly state when a *firm* should provide the FCA with a revised statement of responsibilities. Therefore a *firm* should do so within a reasonable time after the significant change.

(2) This paragraph sets out the FCA's policy about the time within which it expects a *firm* to provide it with a revised statement of responsibilities.

(3) A *firm* may, once in every 6-month period, submit all the revised statements of responsibilities that it should send to the FCA under section 62A of the Act (Changes in responsibilities of senior managers) and this section that it has not yet sent.

(4) If a change has occurred shortly before the end of the current 6-month period, the *firm* may send the relevant revised statement of responsibilities at the end of the next 6-month period.

- (5) A firm may submit a *statement of responsibilities* earlier than the time specified by (3) and (4).
- (6) If there have been several significant changes to the responsibilities of an *FCA-approved SMF manager* during a submission period, an *FCA-  
authorised person* need only submit the latest version of the *FCA-  
approved SMF manager's statement of responsibilities*.
- (7) If there has been a significant change to the responsibilities of an *FCA-  
approved SMF manager* but the change is reversed within the  
applicable submission period, an *FCA-  
authorised person* need never  
submit the version of the *FCA-approved SMF manager's statement of  
responsibilities* dealing with that change or the one recording its  
reversal.
- (8) (6) and (7) do not apply to a *PRA-  
authorised person* should submit all the relevant versions (and not just  
the latest version).
- (9) A firm may need to notify the *FCA* of a significant change in the  
responsibilities of an *FCA-approved SMF manager* under another  
requirement more quickly than under (3), such as *Principle 11* or *SUP  
10C.14.18R* (Notifications about fitness, disciplinary action and  
breaches of COCON). However, any such notification should be made  
under the procedure applicable to that requirement, not by submitting a  
revised *statement of responsibilities*.
- (10) If a firm temporarily re-allocates an *FCA-prescribed senior  
management responsibility* of an absent *SMF manager* to another *SMF  
manager*, there is another element to the *FCA's* policy in (2), in  
addition to (3). A firm need not send the *FCA* a revised *statement of  
responsibilities* under (3) if it would otherwise have to if:
  - (a) the absence has not yet exceeded 12 weeks; and
  - (b) without that re-allocation there would be no significant change.
- (11) Paragraph (10) applies in respect of the *statement of responsibilities* of  
both the absent *SMF manager* and of the *SMF manager* taking on the  
*FCA-prescribed senior management responsibilities* of the absent *SMF  
manager*.
- (12) If the absent *SMF manager* returns by week 12, (7) and (10) together  
mean that the firm need not submit updated *statements of  
responsibilities* about the transfer and re-transfer of the *FCA-  
prescribed senior management responsibilities*, although it should still  
keep its internal copies up to date.
- (13) Paragraph (12) does not apply to a *PRA-  
authorised person*.
- (14) However, (10) and (11) do apply to a *PRA-  
authorised person*.

...

One document for each SMF manager for each firm

...

10C.11.14 G ...

(3) The document should be updated:

- (a) under section 62A of the *Act* (see *SUP* 10C.11.5G); ~~and~~
- (b) whenever the *firm* has to submit *statements of responsibilities* under this section; and
- (c) under SYSC 10C.11.6AR (Revised statements of responsibilities: Meaning of significant change).

...

Need for a complete set of current statements of responsibilities

...

10C.11.21 G (1) A complete set of current *statement of responsibilities* means ~~all statements of responsibilities that the firm has provided to the FCA or (in the case of a PRA authorised person), PRA as revised under~~ for all its current SMF managers, each of which has been updated to reflect all significant changes to the SMF manager's responsibilities as referred to in section 62A of the Act and this chapter, even if that latest version is not yet due to be sent to the FCA or the PRA or if (as explained in SUP 10C.11.6CG) it does not have to be sent.

...

...

## 10C.12 Conditional and time-limited approvals

...

Time-limited approval

...

10C.12.8 G The *FCA* would not generally impose a time limitation in these circumstances for a period of less than 12 weeks. The *FCA* would expect the *firm* to use the 12-week rule in ~~*SUP* 10C.3.13R~~ *SUP* 10C.3A.6R.

10C.12.9 G An example of when the *FCA* may approve an individual on a time-limited basis is where, following a sudden or unexpected departure:

- (1) ...
- (2) it is likely to take longer than 12 weeks (or longer than the extended period in SUP 10C.3A.8R) to recruit a permanent replacement; and

...

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

...

Ceasing to perform an FCA-designated senior management function

...

10C.14.5I G ...

- (3) Unless ~~SUP 10C.3.13R (The 12-week rule)~~ SUP 10C.3A.6R (The 12-week rule: The main rules) applies, the *firm* will be required to make a fresh application for the performance of the *FCA-designated senior management function* by the *person* who has been appointed for the interim period (see SUP 10C.10 (Application for approval and withdrawing an application for approval)). It may be appropriate for the appointment to be time limited (see SUP 10C.12.7G to SUP 10C.12.14G (time-limited approvals) for details)).

...

...

## 15 Notifications to the FCA

...

### 15.11 Notification of COCON breaches and disciplinary action

Reasons for making a notification to the FCA

...

15.11.6A G ...

- 15.11.6B G (1) A further effect of section 64C of the Act and SUP 15.11.6R is that the reporting obligation in section 64C of the Act and in this section only applies if all the following conditions are met:
- (a) a member of the *firm's* conduct rules staff breaches COCON;
  - (b) the *firm* takes disciplinary action against that member; and

- (c) the action, failure to act or circumstance that is the basis of the disciplinary action in (b) also amounts to the breach of COCON in (a).
- (2) The result of (1)(a) and (c) is that if a *firm* takes disciplinary action against a member of the *firm's conduct rules staff*, that does not automatically result in an obligation to report to the *FCA* under this section or section 64C of the *Act*. For example, the misconduct by the member of the *firm's conduct rules staff* may be outside the scope of *COCON*.
- (3) The result of (1)(b) is that a *firm* does not have to report every breach of *COCON* to the *FCA*. It only has to report under section 64C of the *Act* if the *firm* takes disciplinary action. Therefore, many *COCON* breaches will not be reportable under section 64C of the *Act* or this section of chapter 15.
- 15.11.6C      G      (1) A *firm* may have to report a breach of *COCON* under *Principle 11* or *SUP 15.3.11R* (Breaches of rules and other requirements in or under the *Act* or the *CCA*) even though it does not have to report the breach under section 64C of the *Act* or this section of chapter 15.
- (2) However, many breaches of *COCON* will not be serious enough to be reported under those *rules* either. So there will be *COCON* breaches that a *firm* does not have to report to the *FCA* at all.
- 15.11.6D      G      On the other hand, a breach of *COCON* may have to be reported to the *FCA* under section 64C of the *Act* even if it is not serious enough to be reportable under *Principle 11* or *SUP 15.3.11R*. Therefore, if a *firm* takes disciplinary action of the kind in *SUP 15.11.5G* for conduct that amounts to a breach of *COCON*, the *firm* should report it to the *FCA* under section 64C of the *Act* even if the breach is not significant for the purposes of *SUP 15.3.11R* or if it is not serious enough to be reported under *Principle 11*.
- 15.11.6E      G      Disciplinary action potentially comes within section 64C of the *Act* even if the disciplinary proceedings do not expressly refer to a breach of *COCON*. What matters is whether the alleged facts on which the disciplinary action is based also amount to a breach of *COCON*.
- 15.11.6F      G      (1) One of the types of disciplinary action in section 64C of the *Act* (and therefore coming within the scope of the reporting obligation in this section) is the suspension of the *employee* concerned.
- (2) Often, however, in practice suspension is not disciplinary action in an employment sense. Instead, suspension is used while the *firm* investigates possible misconduct.
- (3) If an *employee* is suspended for the reason in (2) there will be no reporting obligation under section 64C of the *Act*. That is because the reason for the action will not be a breach of *COCON* but instead the need to investigate misconduct. This is the case even if the

misconduct for which the employee is being investigated would be a breach of COCON.

(4) If, after the investigation is completed, the *firm* finds that the employee has committed misconduct of a kind that breaches COCON:

(a) there is no need to report this to the *FCA* under section 64C of the *Act* if the *firm* does not take disciplinary action of a type in SUP 15.11.5G; and

(b) the *firm* should report it if the *firm* takes disciplinary action of that kind.

15.11.6G

G

(1) Another of the types of disciplinary action in section 64C of the *Act* is the reduction or recovery of any of the remuneration of the employee concerned.

(2) However, the *firm* should not report such reduction or recovery under section 64C of the *Act* if that action was taken for a reason that is not misconduct of a kind that breaches COCON. For example, there may be no COCON breach because:

(a) the action was taken because the individual has breached a requirement of the *firm* that does not amount to a breach of COCON because, for example, it is outside the scope of COCON 1.1.7AR (To what conduct does it apply?);

(b) the action was taken because the individual has substantially underperformed in achieving commercial objectives;

(c) it has come to light that business results on which a bonus was based were not as favourable as the basis on which the bonus was originally awarded; or

(d) the action was taken against the individual's team without any personal culpability on the part of the individual.

...

## 16 Reporting requirements

...

### 16.26 Reporting of information about Directory persons

...

Frequency and timing of reports: certification employees

16.26.13 R In respect of a *certification employee*, an *SMCR firm* must submit a report within 20 business days of or (in the case of (2)) seven business days of:



...

16.26.14G G ...

Seven or 20 business days is intended to be the maximum length of time for making a notification. By reporting more quickly, firms can improve the accuracy of the information included in the Directory.

Frequency and timing of reports: non-SMF director Directory person

16.26.15 R In respect of a *non-SMF director Directory person*, an *SMCR firm* must submit a report within 20 business days of or (in the case of (2)) seven business days of:

...

Frequency and timing of reports: sole trader Directory person or appointed representative Directory person

16.26.16 R In respect of an *appointed representative Directory person* or a *sole trader Directory person*, an *SMCR firm* must submit a report within 20 business days of or (in the case of (2)) seven business days of:

...

...

**TP 5** **Transitional Miscellaneous transitional provisions for the SMCR and the approved persons regime: changes to SUP 10A, SUP 10C, SUP 15.11 and SUP 16.26**

...	
<b>5.2</b>	<b>Benchmark submitters or benchmark administrators: new firm</b>
...	
5.2.4	R ...
<b><u>5.3</u></b>	<b><u>Miscellaneous changes in [Editor's note: insert the year in which this instrument comes into effect]</u></b>
<u>5.3.1</u>	R <u>SUP TP 5.3 relates to amendments to SUP 10C made by the Individual Accountability (SMCR Review) Instrument [Editor's note: insert the year on which this instrument is made].</u>
<u>5.3.2</u>	R <u>In SUP TP 5.3 the 'commencement date' means [Editor's note: insert the date on which this instrument comes into effect].</u>
	<u>12-week rule</u>

<u>5.3.3</u>	<u>R</u>	The amendments to <i>SUP</i> 10C.3A.6R (as renumbered by the <u>Individual Accountability (SMCR Review) Instrument</u> ) [ <i>Editor's note</i> : insert the year on which this instrument is made] and the insertion of <i>SUP</i> 10C.3A.7R, <i>SUP</i> 10C.3A.8R and <i>SUP</i> 10C.3A.13R by that instrument, apply in relation to any absence that begins after the commencement date.
		<u>Criminal record checks</u>
<u>5.3.4</u>	<u>R</u>	The amendments to <i>SUP</i> 10C.10.16R apply to any application for approval made after the commencement date.
		<u>Reporting of information about Directory persons</u>
<u>5.3.5</u>	<u>R</u>	The amendments to <i>SUP</i> 16.26.13R, <i>SUP</i> 16.26.15R and <i>SUP</i> 16.26.16R apply to any reportable matter of the kind referred to in those <i>rules</i> that occurs after the commencement date.

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