

Consequential Changes to the Senior Managers Regime

March 2016



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In this Policy Statement we report on the main issues arising from Consultation Paper 16/1 Consequential Changes to the Senior Managers Regime and publish the final rules.

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Or contact our order line for paper copies: 0845 608 2372.

Abbreviations in this document

| | |
|-----------------------------|--|
| BANK OF ENGLAND BILL | Bank of England and Financial Services Bill |
| COCON | Code of Conduct |
| FCA | Financial Conduct Authority |
| FS(BR)A | Financial Services (Banking Reform) Act 2013 |
| FSMA | Financial Services and Markets Act 2000 |
| PCBS | Parliamentary Commission on Banking Standards |
| PRA | Prudential Regulation Authority |
| QCP | Quarterly Consultation Paper |
| SM&CR | Senior Managers and Certification Regime |
| SYSC | Senior management arrangements, systems and controls |

1. Overview

Introduction

- 1.1** In January 2016 the Financial Conduct Authority (FCA) consulted on proposed consequential amendments to the Senior Managers and Certification Regime (SM&CR). These changes reflect HM Treasury's removal of the requirement for firms to report known and suspected breaches of our conduct rules to the FCA, as set out under section 64B(5) of the Financial Services and Markets Act 2000 (FSMA).
- 1.2** The proposed amendments were set out in an FCA publication entitled *Consequential Changes to the Senior Managers Regime* (CP16/1; January 2016). The Prudential Regulation Authority (PRA) consulted on the same changes as well as an additional PRA-only form in their parallel consultation paper¹.
- 1.3** This Policy Statement (PS) summarises the feedback received during the consultation and confirms the final policy and forms. The PRA will confirm its final rules and amended forms in a separate Policy Statement (PS).
- 1.4** This PS also finalises some minor technical amendments to SYSC 1 Annex 1, which deal with how SYSC applies to foreign branches. These amendments are required to ensure that SYSC 1 Annex 1 reflects our final rules for foreign branches.

Who does this consultation affect?

- 1.5** This PS will be of primary interest to UK banks, building societies, credit unions and PRA-designated investment firms (collectively referred to in this paper as 'relevant firms'). It will also be of interest to incoming branches of overseas relevant firms. As the obligations under the SM&CR apply to all staff that are subject to the conduct rules, the proposed rule changes will affect a large number of individuals within these firms.

Is this of interest to consumers?

- 1.6** This paper will primarily be of interest to firms. Consumers may be interested in how the conduct of the staff that they interact with is handled by the firm and reported to the regulator.

¹ Strengthening individual accountability in banking: amendments to notification rules and forms – CP1/16.

Context

- 1.7** The Financial Services (Banking Reform) Act 2013 (FS(BR)A) created the legislative framework that underpins our SM&CR. This followed the publication of recommendations by the Parliamentary Commission on Banking Standards (PCBS). PCBS was appointed to consider and report on the professional standards and culture of the UK banking sector in the wake of problems such as benchmark setting, corporate governance, transparency and conflicts of interest.
- 1.8** On 15 October 2015, HM Treasury announced that, as part of the Bank of England and Financial Services Bill (Bank of England Bill) and through additional secondary legislation, they intended to make changes to the existing SM&CR legislation as it applies to the banking sector. Specifically, this includes stopping the introduction of Section 64B(5) of FSMA.
- 1.9** Section 64B(5) of FSMA would require relevant firms to notify the regulators if they knew or suspected that an individual subject to the regulators' conduct rules had failed to comply with those Rules. Section 64C of FSMA sets out the requirement for firms to notify the regulator of disciplinary action taken against an individual.
- 1.10** The SM&CR will enter into force for relevant firms on 7 March 2016. However, following HM Treasury's publication of the Financial Services (Banking Reform) Act 2013 (Commencement No. 9) (Amendment) Order 2015 on 17 December 2015, section 64B(5) of FSMA will no longer come into force on that date. The obligation for firms to report disciplinary action they have taken against staff as a result of a breach of conduct rules, as laid out in section 64C of FSMA, remains unchanged.
- 1.11** Whilst HM Treasury's suspension of the relevant rules will come into force by 7 March 2016, the rules will be formally repealed during the course of 2016 by the Bank of England Bill, which remains subject to Parliamentary approval.
- 1.12** This PS finalises the practical changes that need to be made to the FCA's Handbook and related forms as a result of the suspension of section 64B(5) of FSMA. We will also be consulting, via Quarterly Consultation Paper (QCP) in March 2016, on the proposal to mandate electronic reporting of Form H for all firms apart from Credit Unions.
- 1.13** The final instrument does not significantly differ from the consultation version. Furthermore, the changes that have been made do not affect the equality and diversity, cost benefit analysis or compatibility statement, which includes the previously assessed impact upon mutual societies.
- 1.14** This PS also finalises consequential changes to SYSC 1 Annex 1, which deal with how SYSC applies to foreign branches. We have also taken the opportunity to make some other minor changes to clarify the provisions in SYSC 1 Annex 1 dealing with the Senior Managers Regime for UK firms.
- Summary of feedback and our response**
- 1.15** We received 8 responses. All respondents agreed with our proposed changes to the rules and forms. However, some requested further clarification of specific definitions or further guidance on SM&CR reporting issues. These included the definition of the glossary term "other conduct rules staff" and further guidance on whether and how firms should notify the regulator about temporary suspensions of staff (i.e. whilst investigations are undertaken), at what point in the process firms need to make disciplinary notifications to the regulator and the purpose of the FCA collecting information on conduct rule breaches by junior staff.

- 1.16** We will keep the reporting requirements under review and will, if necessary, consider any further changes following Royal Assent to the Bank of England Bill.

Next steps

What do you need to do next?

- 1.17** Firms should continue to use the pre-SM&CR versions of Forms C and D until 7 March 2016, after which they should only use the versions of the forms attached to this PS. We have also updated the versions of the forms where they appear in the regulators' respective websites and rulebooks. We will shortly also be consulting, via QCP, on the move to electronic reporting for Form H. This is because we intend to move reporting for all firms, except credit unions, to our online systems before the first annual notifications are due in October 2016.

2. Feedback from Respondents

- 2.1** This chapter provides more detail on the feedback received during the consultation and the regulator's response.

Summary

- 2.2** All of the respondents agreed with the proposed changes to the rules and the forms as set out in CP16/1, saying that they enabled firms to complete appropriate HR investigations and take considered action, as well as bringing greater consistency across firms about reporting disciplinary action.

Ancillary Comments

- 2.3** A number of respondents asked for further clarification and guidance on points linked to the SM&CR. However, these were not directly related to the questions and changes proposed in CP16/1. This PS therefore seeks to answer the most pertinent points that are linked to the relevant reporting notifications.
- 2.4** One respondent asked for clarification on the current glossary term "other conduct rules staff" as set out in SUP 15.11.13R, which they felt was narrower than the intended reach. Another respondent asked for clarification about whether junior staff are included in the definition of 'relevant person' under Section 64C of FSMA.

Our response:

In our publication ***Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities*** (CP15/22 – July 2015) we set out the scope of the reporting rule in SUP 15.11.13R. We explained that as COCON does not apply to "other conduct rules staff" until 7 March 2017 the reporting requirement for these staff will not apply until that date. The application of COCON is set out in COCON 1.1.2R, and can be viewed at any particular date by setting the online FCA Handbook to that date.

We can confirm that junior staff will be included in the regime from 7 March 2017, one year after commencement. This is laid out in COCON 1.1.2R and explained further in CP15/22 (as referenced above) section 5.28.

- 2.5** One respondent commented that the reporting of junior conduct rule breaches is not proportionate and will impose a significant additional cost and administrative burden on firms. The respondent sought clarity on the purpose of the FCA collecting this information, particularly given that this group is not subject to Regulatory References.

Our response:

We understand that this query is about “other conduct rules staff”, i.e. employees who are neither senior managers nor certified staff but who are subject to conduct rules. The FCA is required to collect this information by FSMA s64C and we implement this requirement through our reporting processes. We previously changed the frequency of reporting required to annual reporting, as set out in our response in CP15/22, to minimise the burden on firms.

- 2.6** One respondent queried the impact of “disciplinary action” as defined under s64C FSMA on non-employed staff, such as consultants and contractors, and asked if they will be covered by the Code of Conduct (COCON) when it comes into force for all staff in 2017, or if they are only caught under reporting significant breaches under SUP15.3.11.

Our response:

A person is covered by COCON if they are an employee as defined by FSMA, unless they are a junior staff member excluded under COCON 1.1.2R (2). The definition of employee includes a person who is not an employee in the conventional sense and includes a contractor who meets the FSMA definition. The full definition of employee can be found in the Glossary.

- 2.7** Three respondents asked questions about the implementation and supervision of the SM&CR moving forward. These included requests for further guidance on how the temporary suspension of staff, for example while investigations are undertaken, should be interpreted and considered. Specifically, they asked whether we would expect notification of a temporary suspension followed by later confirmation that the employee had been reinstated with no disciplinary action taken. One respondent also requested guidance on when firms are required to notify the regulator of the disciplinary outcome decision.

Our response:

The definition of disciplinary action is set out in section 64C of FSMA. It includes suspension. However, a firm is only required to notify the regulator of disciplinary action taken after a breach of a conduct rule has been confirmed. There is no requirement to notify the regulator of disciplinary action if the firm does not yet know if there has been a conduct rule breach. For example, temporary suspensions pending investigation of whether or not there has been a conduct rule breach would not need to be notified. However, if a firm subsequently finds that an individual had breached a conduct rule and suspends them while they decide what further action to take, they would need to notify the regulator about the suspension. This is as laid out in SUP15.11.6 of our Handbook.

- 2.8** Respondents also asked whether notifications under section 64C should only be submitted once the firms' own disciplinary process had been completed, including the conclusion of any internal appeals.

Our response:

We have added guidance to say that notifications should be made at the point when relevant internal disciplinary action is first taken. A firm should not wait for individuals to exhaust all available internal appeals processes before making a notification under section 64C. To further support firm notifications and provide clarity around the notification requirements, we have added a note to Form H which clarifies that a firm should provide information regarding an appeal against their disciplinary decision in column L of Form H and that the firm should update the FCA on the outcome of any appeal.

- 2.9** All respondents agreed with our proposed amendments to Forms C, D and H. We received one additional comment on Form H about the best available data to identify named individuals. We have therefore provided further clarification on which columns firms should complete within guidance notes on Form H itself. We have also made some changes to the versions of Forms C and D in CP16/1 for clarification.

3.

Consequential Changes to SYSC 1 Annex 1

- 3.1** This PS also finalises consequential changes to SYSC 1 Annex 1, dealing with how SYSC applies to foreign branches.
- 3.2** We had stated within PS15/30 *Strengthening accountability in banking: UK branches of foreign banks (final rules)* (PS15/30 – December 2015) that some outstanding technical, consequential changes to the Handbook remained (including amendments to SYSC 1 Annex 1), which we would deal with at the next suitable opportunity.
- 3.3** We are therefore updating SYSC 1 Annex 1 in this PS to take account of final rules as published in PS15/30. We have also taken the opportunity to make some other minor changes to clarify the provisions in SYSC 1 Annex 1 which deal with the Senior Managers Regime for UK firms. This is laid out in a separate instrument in Appendix 2.

Annex 1: List of non-confidential respondents

Association of British Credit Unions Ltd

Barclays Bank PLC

Building Societies Association

Coventry Building Society

Financial Services Consumer Panel

Lloyds Banking Group

UK Credit Unions Limited

YBS Group

Appendix 1: Made rules (legal instrument) SM&CR

**INDIVIDUAL ACCOUNTABILITY (CONDUCT RULES) (BREACHES REPORTING)
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 60 (Applications for approval);
 - (2) section 64C (Requirements for relevant authorised persons to notify regulator of disciplinary action);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 139A (Power of the FCA to give guidance); and
 - (6) The Financial Services (Banking Reform) Act 2013 (Commencement No. 9) (Amendment) Order 2015.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

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

| (1) | (2) |
|--|---------|
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex A |
| Code of Conduct sourcebook (COCON) | Annex B |
| Supervision manual (SUP) | Annex C |

Citation

- E. This instrument may be cited as the Individual Accountability (Conduct Rules) (Breaches Reporting) Instrument 2016.

By order of the Board
25 February 2016

Annex A

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

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

5.2 Certification regime

...

Issuing and renewing certificates

...

- 5.2.14 G If, after having considered whether a *person* is fit and proper to perform an *FCA-specified significant-harm function*, a *firm* decides not to issue a certificate to that *person*, it should consider if the circumstances warrant making a notification to the *FCA* for a breach of the *rules* in *COCON* pursuant to ~~section 64B(5) of the Act~~ SUP 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).

...

TP 5 Financial Services (Banking Reform) Act 2013: Certification

...

The transitional period

...

- 5.3.4 G Table: How the certification regime applies in the transitional period

| Provision in the Act or the Handbook | What that provision is about | How it applies in the transitional period |
|--|---|---|
| ... | | |
| Section 64B of the <i>Act</i> | ... | |
| Section 64B of the Act and SUP 15.11 <u>The parts of SUP 15.3 that deal with COCON breaches</u> | Notifying a <u>significant</u> breach of <i>COCON</i> to the <i>FCA</i> | Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force. |
| ... | | |

Annex B

Amendments to the Code of Conduct sourcebook (COCON)

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

2 Individual conduct rules

...

2.3 Firms: training and breaches

...

- 2.3.3 G ~~Section 64B(5) of the Act requires a relevant authorised person to notify the FCA if it knows, or suspects, that any member of its conduct rules staff has failed to comply with any of the rules in COCON. Further~~ There are rules and guidance on notifications to the FCA by a relevant authorised person can be found in SUP 15.3 (General notification requirements) and SUP 15.11 (Notification of COCON breaches and disciplinary action) that deal with reporting by a relevant authorised person of COCON breaches to the FCA.

Annex C

Amendments to the Supervision manual (SUP)

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

[*Editor's Note:* The changes to Form C shown below replace the corresponding changes in the new version of Form C made by the *Individual Accountability Instrument 2015* (FCA 2015/31) which was also due to come into force on 7 March 2016.]

10A FCA Approved Persons

...

10A Form C: Notice of ceasing to perform controlled functions (including senior management functions) Annex 6R

...

The *FCA* and *PRA* have produced notes which will assist both the applicant and the approved person...Please read these notes, which are available on the *FCA* and *PRA* website at

<http://fshhandbook.info/FS/html/SUP/10A/Annex6>

<https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex6.html>

...

Form C – Notice of ceasing to perform controlled functions (including senior management functions)

Version ~~May 2015~~ February 2016

...

List of controlled functions

Section 3

...

3.03: For Relevant Authorised Persons, does the firm also seek to notify the *FCA* and/or *PRA* under one or more both of section 63(2A) (Duty to notify regulator of grounds for withdrawal of approval), ~~section 64B(5) (Breach of conduct rules)~~ and ~~or~~ section 64C (Requirement for Relevant Authorised Persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000-?

YES NO

If the firm has answered "No", please go to section 4

If the firm has answered "Yes", please complete the below:

3.04 If the firm is making a notification of under question 3.03 based on any ~~known or suspected~~ breach(es) of the individual or senior manager conduct rules set out in the *FCA*'s COCON or *PRA*'s Conduct Rules, please complete the relevant boxes below. -

| | Tick the rule(s) relevant to this notification | Tick if this is a known breach | Tick if this is a suspected breach |
|--------------------------------------|--|--------------------------------|------------------------------------|
| Individual Conduct Rules | | | |
| Rule 1: You must act with integrity. | <input checked="" type="checkbox"/> | | |
| ... | | | |

3.05 For each breach please provide the following information. Please attach additional sheets as necessary.

Details of the ~~known or suspected~~ breach:

3.06 If the firm is making a notification under section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000, please provide details below of disciplinary action taken and the reasons for this action. Please do not repeat information already included in the answers to Questions 3.04 and 3.05 above. If necessary please cross refer to the answers provided.

3.07 If the firm is making a notification under section 63(2A) (Duty to notify regulator of grounds for withdrawal of approval) of the Financial Services and Markets Act 2000, please provide details below. Please do not repeat information already included in the answers to Questions 3.04 and 3.05 above. If necessary please cross refer to the answers provided.



...

[*Editor’s Note:* The changes to Form D shown below replace the corresponding changes in the new version of Form D made by the *Supervision Manual (Notification Forms) (Amendment) Instrument 2015* (FCA 2015/63) which was also due to come into force on 7 March 2016.]

**10A Form D: Notification of changes to personal information or
Annex 7R application details and conduct breaches/disciplinary action related
to conduct**

...

Form D – Notification: Change to personal information/application details and conduct breaches/disciplinary action related to conduct. Version 7.8: March 2016

...

What sections should you complete?

The question below will help you determine the sections of the form you must complete

Please select the outcome

...

...

Notifications under ~~Section~~ section 64B(5) or 64C of the Financial Services and Markets Act 2000

YES You must complete sections 1, 2, 6 & 7

...

**Fitness and Propriety – Notifications under ~~Section 64B(5) or~~ section 64C of the
Financial Services and Markets Act 2000 Section 6**

This section should be completed by a firm that is a relevant authorised person to:

- ~~(a) make a notification under section 64B(5) (Breach of conduct rules) of the Financial Services and Markets Act 2000 of known or suspected breach of the individual or senior manager conduct rules set out in the FCA’s COCON or PRA Conduct Rules;~~
- ~~(b) (a) make a notification of disciplinary action (as defined in section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000) due to any action, failure to act or circumstance that amounts to a breach of the individual or senior manager conduct rules set out in the FCA’s COCON or PRA Conduct Rules;~~
- ~~(c) (b) make a follow up notification to update a determination that has previously been the subject of a notification that has been made by the firm in relation to (a) or (b) (as appropriate and to the extent required by, in the case of the FCA FCA, SUP 10C, SUP 15.6.4R and SUP 15.11.8G, or in the case of the PRA PRA, Notifications 11.4 and 11.5 in the PRA’s Rulebook).~~

6.01 Initial or update on previous notification

6.01.1 Is the firm updating a previous notification made under ~~section 64B(5) or~~ section 64C of the Financial Services and Markets Act 2000?

YES NO

If the firm has answered “No”, please go to section 6.02

If the firm has answered “Yes”, please complete the below:

Date of previous notification:

| |
|--|
| Please provide brief details of prior notification including reference number: |
| Description of the update to the previous notification (this includes updates to previous notifications made under section 64B(5) (Breach of Conduct Rules) and 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000): |

6.02 Notification of ~~breaches of the individual or senior manager conduct rules and /or disciplinary action where the reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of the individual or senior manager conduct rules.~~

6.02.1 ~~If the firm is making a notification under section 64B(5) of the Financial Services and Markets Act 2000 of any known or suspected breach(es) Please include details in the relevant boxes below of the individual or senior manager conduct rules set out in the FCA's COCON or PRA Conduct Rules, please complete the relevant boxes below relevant to this notification.~~

| | Tick the rule(s) relevant to this notification | Tick if this is a known breach | Tick if this is a suspected breach |
|-----|--|--------------------------------|------------------------------------|
| ... | | | |

6.02.2 For each breach of an individual or senior manager conduct rule please provide the following information. Please attach additional sheets as necessary.

| |
|---|
| Relevant rule(s): Date when known or suspected breach came to the attention of the firm: Date or period of known or suspected breach: |
| Details Further details of the known or suspected breach: |

6.02.3 ~~If the firm is making a notification under section 64C of the Financial Services and Markets Act 2000, please~~ Please provide details below of disciplinary action taken and the reasons for this action. Please do not repeat information already included in the answers to Questions 6.02.1 and 6.02.2 above. If necessary please cross refer to the answers provided.



...

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

...

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

...

How to apply for approval

...

10C.10.9 D ...

(4) A *firm* must not use Form E if:

(a) ...

(b) a notification has been made or should be made to the *FCA* or *PRA* under any of the following:

(i) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or

(ii) ~~section 64B(5) (Notification of non-compliance with *COCON* or equivalent *PRA* rules); or [deleted]~~

(iii) ...

...

...

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

...

Ceasing to perform an FCA-designated senior management function

...

10C.14.7 R ...

(2) Form C is qualified if the information it contains:

...

(d) includes a notification about the *FCA-approved SMF manager* under one of the provisions of the *Act* listed in *SUP 10C.14.22R* (notification of grounds for withdrawal of approval, ~~breach of conduct rules~~ and disciplinary action).

...

Notifications about fitness, disciplinary action and breaches of COCON

...

10C.14.22 R If a *firm* is required to notify the *FCA* about an *FCA-approved SMF manager* under any of the following:

- (1) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or
- (2) ~~section 64B(5) of the *Act* (Breach of conduct rules); or~~ [deleted]

...

...

10C.14.24 G Table: Explanation of the sections of the *Act* mentioned in *SUP 10C.12.22G*

| Section | Summary of relevant parts | Other Handbook material | Comments |
|--|---|--|----------|
| ... | | | |
| Section 64B(5) (Breach of conduct rules) | If a <i>firm</i> knows or suspects that an <i>approved person</i> has failed to comply with <i>COCON</i> , the <i>firm</i> should notify the <i>FCA</i> of that fact. | <i>SUP 15.11</i> (Notification of <i>COCON</i> breaches and disciplinary action) | |
| ... | | | |

...

10C Annex 1G Summary of forms and their use in the senior management regime for SMF managers

| Function | Form | Submission |
|--|------|------------|
| ... | | |
| <p>(8) <i>Firm</i> obliged to notify the <i>FCA</i> under:</p> <p>(a) section 63(2A) of the <i>Act</i> (Duty to notify regulator of grounds for withdrawal of approval); <u>or</u></p> <p>(b) section 64B(5) of the <i>Act</i> (Breach of conduct rules); or [deleted]</p> <p>(c) section 64C of the <i>Act</i> (Requirement for relevant authorised persons to notify regulator of disciplinary action).</p> | ... | ... |
| ... | | |

...

15 Notifications to the FCA or PRA

...

15.2 Purpose

...

- 15.2.5 G *SUP* 15.11 (Notification of COCON breaches and disciplinary action) provides *rules* and *guidance* on notifications to the *FCA* by a *relevant authorised person* where ~~it knows or suspects that any *conduct rules staff* has failed to comply with *COCON* or it~~ the *relevant authorised person* takes disciplinary action in relation to any *conduct rules staff* and the reason for taking that action is a reason specified in *rules* made by the *FCA*. ~~These are requirements~~ This is a requirement imposed under *sections 64B* and *section 64C* of the *Act*.

...

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

...

- 15.3.14B G (1) ...
- (2) If the same thing has to be notified under *SUP* 15.11 and *SUP* 15.3.11R, a *firm* should make separate notifications under both. This is because:

~~notification under SUP 15.11 is annual and notification under SUP 15.3.11R is immediate.~~

- (a) notification under SUP 15.11 is annual and notification under SUP 15.3.11R is immediate; and
- (b) the details of what has to be notified under those requirements are different.

...

15.11 Notification of COCON breaches and disciplinary action

...

Reasons for making a notification to the FCA

...

15.11.3 G ~~Under section 64B of the Act, if a firm knows or suspects that any conduct rules staff has failed to comply with COCON, it must notify the FCA. [deleted]~~

...

15.11.7 G A firm should make a separate notification about a person under section 64C of the Act where:

- (1) it has made a notification to the FCA about a person pursuant to ~~section 64B of the Act~~ SUP 15.3.11R(1)(a) because of a breach of COCON; and
- (2) it subsequently takes disciplinary action against the person for the action, failure to act, or circumstance, that amounted to a breach of COCON.

15.11.8 G If, after a firm has made a notification for a person (A) pursuant to:

- (1) ~~section 64B of the Act~~; or
- (2) ~~section 64C of the Act~~;

section 64C of the Act, it becomes aware of facts or matters which cause it to change its view that A has breached COCON, or cause it to determine that A has breached a provision of COCON other than the provision to which the notification related, the firm should inform the FCA of those facts and matters and its revised conclusion in line with a firm's obligation to comply with Principle 11, SUP 15.6.4R and, if applicable, SUP 10C.

15.11.9 G ~~A firm that is considering whether to make a notification in respect of a suspected breach of COCON should satisfy itself that it has reasonable grounds for its suspicion before making the notification. If a firm has made a notification about a person pursuant to section 64B of the Act based on a suspicion, the firm should inform the FCA of any subsequent determination it makes in relation to~~

~~that matter.~~

If a firm takes disciplinary action as a result of a conduct breach (see SUP 15.11.6R) against an employee but the employee has appealed or plans to appeal, the firm should still report the disciplinary action under section 64C of the Act but should include the appeal in the notification. The firm should update the FCA on the outcome of any appeal.

15.11.10 G ~~A firm should make a notification pursuant to section 64B of the Act even if the matter giving rise to the notification relates to a person who is no longer a member of the conduct rules staff of the firm, including where that person is no longer an employee of the firm. [deleted]~~

15.11.11 G In relation to any *conduct rules staff*, the FCA does not expect a firm to notify it pursuant to ~~section 64B or~~ section 64C of the Act if the ~~known or suspected~~ breach of COCON occurred before the application of COCON to that firm.

Timing and form of notifications: SMF managers

15.11.12 G Where a firm is required to notify the FCA pursuant to ~~section 64B or~~ section 64C of the Act and that notification relates to an *SMF manager*, SUP 10C sets out how and when the notification must be made, and the relevant *notification rules* in SUP 10C apply.

Timing and form of notifications: certification employees and other conduct rules staff

15.11.13 R A firm must make any notifications required pursuant to ~~section 64B or~~ section 64C of the Act relating to a *certification employee* or *other conduct rules staff* annually. That notification should be made in October each year and cover the year up to the first day of that month.

15.11.14 R A firm must make any notifications required pursuant to ~~section 64B or~~ section 64C of the Act relating to a *certification employee* or *other conduct rules staff* on Form H (SUP 15 Annex 7R).

15.11.15 R A firm must make notifications pursuant to ~~section 64B or~~ section 64C of the Act relating to a *certification employee* or *other conduct rules staff* in accordance with the *rules* and *guidance* in SUP 15.7.

General guidance on notifications of rule breaches and disciplinary action

15.11.16 G A firm is not required to: submit nil return notifications pursuant to section 64C of the Act.

(1) ~~submit nil return notifications pursuant to section 64B or section 64C of the Act;~~

(2) ~~submit a notification pursuant to section 64B of the Act in respect of a suspected breach of COCON where the firm no longer has reasonable grounds for the suspicion at the time of the notification.~~

- 15.11.17 G The obligation to notify pursuant to ~~section 64B~~ or section 64C of the *Act* does not replace or limit a *firm's* obligation to comply with *Principle 11*.
- 15.11.18 G When considering whether to make a notification pursuant to ~~section 64B~~ or section 64C of the *Act*, a *firm* should also consider whether a notification should be made under any *notification rules*, including, without limitation, any *notification rules* that require a notification to be made to the *PRA*.
- 15.11.19 G The obligations to make a notification pursuant to ~~section 64B~~ or section 64C of the *Act* apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

...

The form in the following annex is deleted and is replaced with the text shown on the following pages. The deleted text is not shown and the new text is not shown underlined.

[*Editor's Note*: The version of Form H shown below replaces the version of Form H created by the *Individual Accountability Instrument 2015* (FCA 2015/31) which was also due to come into force on 7 March 2016.]

...

15 Annex 7R Form H: The notification of disciplinary action relating to certification employees and other conduct rules staff form



Application number
(for FCA/PRA use only)

Form H

Notification of Disciplinary Action relating to certification employees and other conduct rules staff

FCA Handbook Reference: SUP 15 Annex 7R
7 March 2016

Name of *firm*
(as entered in 2.01)

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 845 606 9966
Facsimile +44 (0) 207 066 0017
E-mail iva@fca.org.uk
Website <http://www.fca.org.uk>

Contact Details**Section 1**

Contact for this notification

| | | |
|-------------|-----------------------------------|--|
| 1.01 | Title | |
| 1.02 | First Name | |
| 1.03 | Surname | |
| 1.04 | Job Title | |
| 1.05 | Business address | |
| 1.06 | Post code | |
| 1.07 | Phone number (including STD code) | |
| 1.08 | Email address | |
| 1.09 | Mobile No | |
| 1.10 | Fax No. | |

Firm Identification Details**Section 2**

2.01 Name of *firm*

2.02 Firm Reference Number (FRN)

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

This section should be completed by a firm to:

- (a) make an annual notification of disciplinary action (as defined in section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000) if the reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of the individual conduct rules set out in the *FCA's* Code of Conduct (COCON); or
- (b) make a follow up notification to update a notification that has been previously made by the firm in relation to (a).

Disciplinary Action Details

Section 4

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

| A | B | C | D | E | F | G | H | I | J | K | L |
|--------------|----------------|------------------|-----------------------------------|---|---|---|---|---|--|---|---|
| Title | Surname | Forenames | IRN <i>(See note 1)</i> | Date of Birth <i>(See note 1)</i> | National Insurance Number <i>(See note 1)</i> | Passport Number <i>(See note 1)</i> | Nationality <i>(See note 1)</i> | Job Title / Position And Department / Division | Please identify the relevant conduct rule(s) that have been breached which form the basis of the disciplinary action taken <i>Refer to Conduct Rules</i> | Please provide more information in relation to the conduct rule breached. Please also state here whether the firm is updating a previous notification or is making a new notification. <i>Free text description (2000 characters only. Anything greater than this please provide an attachment.) (See note 2)</i> | Please provide information as to the disciplinary action taken: <ul style="list-style-type: none"> • issuing of a formal written warning • suspension or dismissal of the person • reduction or recovery of any of the person's remuneration <i>Free text description (2000 characters only. Anything greater than this please provide an attachment.) (See note 3)</i> |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |

Note 1:

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

Note 2: If the firm is updating a previous notification, please confirm this in this column but include the details in column L (see note 3)).

Note 3:

(a) If the person about whom the notification is being made is appealing against the firm's decision, please include details here.

(b) If the firm is updating a previous notification, please include the details in this column. This includes (1) any appeal made by the subject of the notification subsequent to a previous notification or (2) the outcome of any appeal previously notified.

Declaration

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

The firm confirms that the information provided is accurate and complete to the best of the firm's knowledge. The firm will notify the *FCA* immediately if there is a material change to the information provided.

The firm authorises the *FCA* and *PRA*, as applicable, to make such enquiries and seek such further information as it thinks appropriate to verify information that it considers relevant to this notification.

The firm understands that the *FCA* and/or *PRA* may require it to provide further information or documents at any time.

For the purpose of complying with the Data Protection Act 1998, personal data about an individual that is the subject of a notification under this Form will be used by the *FCA* and/or *PRA* to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation, and will not be disclosed for other purposes without the permission of the firm.

In addition to other regulatory responsibilities, *firms* have a responsibility to disclose to the *FCA* and/or *PRA* matters of which it or they would reasonably expect to be notified. Failure to notify the *FCA* and/or *PRA* of such information may lead to the *FCA* and/or *PRA* taking disciplinary or other action against the firm.

By signing below, the person submitting this form on behalf of the firm confirms that this form is accurate and complete to the best of his or her knowledge and he or she has read and understood the notes to this form.

Name of the *firm*

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

Position

Signature

Date

Appendix 2: Made rules (legal instrument)

SYSC 1 Annex 1

**ACCOUNTABILITY (FOREIGN BRANCHES) (AMENDMENT)
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 63E (Certification of employees by relevant authorised persons);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. The instrument comes into force on 7 March 2016.

Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Accountability (Foreign Branches) (Amendment) Instrument 2016.

By order of the Board
25 February 2016

Annex

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

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

1 Annex 1 Detailed application of SYSC

...

| Part 2 | Application of the common platform requirements (SYSC 4 to 10) | |
|--------|--|---|
| ... | | |
| 2.13C | G | ... |
| 2.13D | R | <i>SYSC 4.5 (Management responsibilities maps for <u>UK</u> relevant authorised persons), <u>SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons)</u>, SYSC 4.7 (Senior management responsibilities for <u>UK</u> relevant authorised persons: allocation of responsibilities), <u>SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities)</u>, SYSC 4.9 (Handover procedures and material) and SYSC 5.2 (Certification regime) also:</i> |
| | | ... |
| ... | | |
| 2.15 | R | <i>The <u>common platform requirements</u>, except the <u>common platform record-keeping requirements</u>, apply to a <i>firm</i> in relation to activities carried on by it from an establishment in the <i>United Kingdom</i>. However, SYSC 4.5 (Management responsibilities maps for <u>UK</u> relevant authorised persons), <u>SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons)</u>, SYSC 4.7 (Senior management responsibilities for <u>UK</u> relevant authorised persons: allocation of responsibilities), <u>SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities)</u>, SYSC 4.9 (Handover procedures and material) and SYSC 5.2 (Certification regime) apply in accordance with the <i>rules</i> in those sections.</i> |
| ... | | |
| 2.18 | R | <i>The <u>common platform organisational requirements</u>, except the <u>common platform requirements on financial crime</u>, also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> (other than an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i>) with respect to activities wherever they are carried on. However, SYSC 4.5 (Management responsibilities maps for <u>UK</u> relevant authorised persons), <u>SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons)</u>, SYSC 4.7 (Senior management</i> |

| | |
|-----|--|
| | responsibilities for <u>UK</u> relevant authorised persons: allocation of responsibilities), <u>SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities)</u> , <u>SYSC 4.9 (Handover procedures and material)</u> and <u>SYSC 5.2 (Certification regime)</u> apply in accordance with the <i>rules</i> in those sections. |
| ... | |

...

| Provision | COLUMN A | COLUMN A+ | COLUMN A++ | COLUMN B |
|------------------|--|--|---|---|
| SYSC 4 | Application to a common platform firm other than to a UCITS investment firm | Application to a UCITS management company | Application to a full-scope UK AIFM of an authorised AIF | Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs |
| ... | | | | |
| <i>SYSC 4.5</i> | Whole section applies to <u>UK relevant authorised persons</u> only | Not applicable | Not applicable | Whole section applies to <i>relevant authorised persons</i> only <u>Not applicable</u> |
| <u>SYSC 4.6</u> | <u>Applies to EEA relevant authorised persons and third country relevant authorised persons in accordance with the rules in SYSC 4.6</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Not applicable</u> |
| <i>SYSC 4.7</i> | Whole section applies to <u>UK relevant authorised persons</u> only | Not applicable | Not applicable | Whole section applies to <i>relevant authorised persons</i> only <u>Not applicable</u> |

| | | | | |
|-----------------|--|-----------------------|-----------------------|--|
| <u>SYSC 4.8</u> | <u>Applies to <i>third country relevant authorised persons only</i></u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Not applicable</u> |
| SYSC 4.9 | Whole section applies to <u><i>third country relevant authorised persons and UK relevant authorised persons only</i></u> | Not applicable | Not applicable | Whole section applies to <i>relevant authorised persons only</i> <u>Not applicable</u> |

Financial Conduct Authority



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