

Policy Statement

PS16/22

Strengthening accountability in banking and insurance: regulatory references final rules



September 2016

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In this Policy Statement, we report on the main issues arising from Consultation Paper CP15/31 (*Strengthening accountability in banking and insurance: regulatory references*) and publish the final rules.

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We have developed the policy in this underlying rules in the context of the existing UK and EU regulatory framework. We will keep the policy under review to assess whether any amendments will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

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Abbreviations used in this paper

| | |
|------------------|---|
| APER | Statements of Principle and Code of Practice for Approved Persons |
| APR | Approved Persons Regime |
| AR | Appointed Representatives |
| CBA | Cost benefit analysis |
| CF | Controlled Function |
| FCA | Financial Conduct Authority |
| FSMA | Financial Services and Markets Act 2000 |
| FEMR | Fair and Effective Markets Review |
| FICC | Fixed Income, Currency and Commodity Markets |
| PCBS | Parliamentary Commission on Banking Standards |
| PRA | Prudential Regulation Authority |
| PS | Policy Statement |
| SHF | Significant Harm Functions |
| SIMF | Significant Insurance Management Functions |
| SMF | Senior Management Functions |
| SIMR | Senior Insurance Managers Regime |
| SM&CR | Senior Managers and Certification Regime |

1. Overview

Introduction

- 1.1** In this Policy Statement (PS), the Financial Conduct Authority (FCA) publishes final rules on regulatory references. References are a key tool in allowing firms to share relevant information on individuals to support their assessment of potential new recruits as fit and proper.
- 1.2** These rules form part of the new accountability regimes introduced in March this year for deposit takers and Prudential Regulation Authority (PRA) investment firms (collectively referred to as 'banks' in this document), and Solvency II firms and large non-directive insurers (collectively referred to as 'insurers' in this document).

Who does this Policy Statement affect?

- 1.3** Section 2 of the PS will be of interest to banks and insurers, as well as individual candidates for regulatory roles in the Senior Managers and Certification Regime (SM&CR) and the Senior Insurance Managers Regime (SIMR).
- 1.4** The changes set out in Section 3 will be of interest to all authorised firms.
- 1.5** In general, it is expected that appointed representatives of banks will be affected by these proposals in the same way as appointed representatives (AR) of non-banks. This is because the Approved Persons Regime (APR) currently applies to individuals employed by an AR of a bank.

Is this of interest to consumers?

- 1.6** Consumers may be interested in how individual accountability is being enhanced in banks and insurers. More generally, the changes in this PS form part of our broader initiative to try to improve the culture and governance of banks and insurers, which should bring significant benefits to consumers.

Context

- 1.7** The Financial Services (Banking Reform) Act 2013¹ created the legislative framework that underpins the SM&CR for banks. This reflected the recommendations of the Parliamentary

¹ www.legislation.gov.uk/ukpga/2013/33/contents/enacted

Commission on Banking Standards (PCBS)², which was appointed to consider and report on professional standards and culture in the UK banking sector.

- 1.8** In 2015, the Fair and Effective Markets Review (FEMR)³ published further recommendations that aim to raise standards in fixed income, currency and commodity (FICC) markets. One of FEMR's recommendations was that 'the FCA and the PRA should consult on a mandatory form for regulatory references, to help firms prevent the 'recycling' of individuals with poor conduct records between firms...'.
- 1.9** The FCA and the PRA accepted this recommendation and issued a joint consultation on rules for a mandatory template in October 2015.⁴ This PS sets out the response to that consultation and the final rules for regulatory references.
- 1.10** The new regulatory reference rules will support the FCA objectives of consumer protection and market integrity by providing firms with effective tools to better assess an individual's fitness and propriety. This should, in turn, help to ensure that individuals take greater responsibility for their own conduct.

Summary of feedback and our response

- 1.11** The FCA and the PRA together received 30 responses to the consultation. Most respondents supported the consultation's key principles, but provided feedback on a number of specific issues.
- 1.12** In particular, respondents were concerned that they would not have sufficient time to implement the changes before the SM&CR and SIMR began (7 March 2016). Recognising these concerns, we published rules in January 2016 for an interim position⁵, to apply from 7 March 2016. This interim position carried over the FCA's existing reference requirements under the APR, and introduced the first tranche of the PRA's new regulatory reference rules.
- 1.13** Other key areas of feedback included:
 - a.** The need for the standard reference template to reflect recent changes to the Financial Services and Markets Act 2000 (FSMA) regarding Conduct Rule breach notification. Specifically, the Treasury removed the provision in the FSMA requiring banks to report all known or suspected breaches of the Conduct Rules to regulators; banks now only report instances of disciplinary action as a result of a Conduct Rule breach.⁶
 - b.** Practical difficulties in updating references where new information comes to light following an individual's departure, including data protection concerns.
 - c.** Requests for us to clarify whether firms have a duty to investigate suspected misconduct or a duty to offer employees a right to reply as part of their disciplinary processes.

² Changing banking for good: Report of the Parliamentary Commission on Banking Standards, www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf.

³ www.bankofengland.co.uk/markets/Documents/femrjun15.pdf.

⁴ www.fca.org.uk/static/documents/consultation-papers/cp15-31.pdf.

⁵ www.fca.org.uk/static/fca/article-type/policy%20statement/ps16-03.pdf.

⁶ Section 64C of the FSMA requires banks to notify the regulators of disciplinary action relating to a breach of the conduct rules. Section 64C defines disciplinary action as the: (a) issuing of a formal written warning; (b) suspension or dismissal of the person; and/or (c) reduction or recovery of any of the person's remuneration.

- d. Requests for us to clarify what should be disclosed under the overarching requirement to provide 'all relevant information' (above and beyond the mandatory disclosures) and what type of information we expect to be disclosed beyond the six year time limit proposed for mandatory disclosures.
 - e. The need for transitional arrangements to allow time to develop new IT systems and processes. Some firms estimated they could need up to 12 months.
- 1.14** We have addressed these areas of feedback in Sections 2 and 3 of this PS. In relation to timing for implementation of the new regulatory reference rules, we have introduced a five month transitional period to allow firms time to make the necessary changes to their processes and systems. We consider this timeframe to be appropriate, given the changes we have made to simplify the standard template. In addition, some of the most challenging requirements (such as the requirement to update a reference) are, in practice only likely to impact firms once the rules have been in force for some time.
- 1.15** This allows the full reference regime to come into effect on 7 March 2017 to coincide with the implementation of the full certification regime and application of Conduct Rules to 'other conduct rules staff'.⁷ Banks and insurers will have to comply with the rules in this PS for all candidates being recruited to senior management functions (SMFs), senior insurance management functions (SIMFs), FCA controlled functions (CFs) or significant harm functions (SHFs) from that date onwards. The PRA's final rules also apply to candidates of other roles: for example, notified non-executive directors. The PRA have published their final rules alongside this PS, in PS27/16.

Next steps

What do you need to do next?

- 1.16** Firms will need to ensure that they are ready to implement the new regulatory reference rules on 7 March 2017.
- 1.17** Once the SM&CR is extended to all other firms regulated under FSMA, as required by the Bank of England and Financial Services Act 2016, we will consider whether to extend the full regulatory references rules to other FCA-regulated firms.

⁷ www.handbook.fca.org.uk/handbook/glossary/?starts-with=O.

2. Regulatory references for banks and insurers

- 2.1** In this section, we summarise the feedback that we received to our proposals for regulatory references for banks and insurers, and explain how we have taken this feedback into account in the final rules.

The obligation to request references

- 2.2** In CP15/31, we consulted on imposing an obligation on banks and insurers to request a reference from all previous employers in the last six years for individuals applying for SMF, SIMF, CF and SHF roles. The majority of respondents generally supported this proposal. However, we received considerable feedback on the following points:
- a.** Some respondents suggested that firms should only be obliged to request a reference where the previous employer is also a bank or insurer, as other firms may not understand what information is relevant for SMF, SIMF, CF and SHF fitness and propriety.
 - b.** Some also highlighted legal difficulties with obtaining information on individuals' conduct and fitness and propriety from overseas employers or non-financial services firms.
 - c.** Some firms challenged that the obligation to request a reference when hiring or promoting relevant candidates either internally, from within the same group, or in respect of contingent or contract workers (i.e. individuals working for a firm but not permanently employed by it) and credit union volunteers as disproportionate.
 - d.** A few respondents raised potential issues with the proposal to require banks and insurers to obtain regulatory references before applying to the FCA or the PRA for pre-approval. It was highlighted that this may be difficult where the candidate had not informed their current employer at that stage in the process. For instance, if a candidate's current employer is listed in the UK, the candidate's resignation may trigger an obligation to issue a regulatory notification under Listing Rule 9⁸. In this scenario, a regulatory reference request from a prospective employer could alert the candidate's current employer of their impending resignation. There may also be circumstances where a requesting firm takes reasonable steps to obtain a reference but the firm providing the reference fails to do so within a reasonable timeframe.
 - e.** Firms have queried what constitutes 'reasonable steps' to obtain a reference, and whether there should be a limit on the time a firm has to respond to a reference request, to ensure consistency of approach across all firms.

⁸ www.handbook.fca.org.uk/handbook/LR.pdf.

Our response

Scope of application

We think it is important for banks and insurers to seek references from all previous employers in the last six years, irrespective of the firm type or their regulated status. Any FCA-authorised firm is already required to respond to such requests, albeit in a different form. Removing this requirement would limit the exchange of information between financial services firms and impede the ability of banks and insurers to conduct robust fit and proper assessments on their employees.

References from non-financial services firms are likely to be general employment references; however, these can still provide important information to the hiring firm.

Obtaining references from overseas firms

We note the comments regarding the potential difficulty in obtaining references from overseas employers, or non-financial services firms more generally. However, we highlight that the obligation on the requesting firms is to take *reasonable steps* to obtain a reference.⁹

Reasonable steps

We believe it is the responsibility of each firm to judge what constitutes reasonable steps in the context of the circumstances of a case (and, where necessary, discuss this with the FCA as part of the authorisations process). Given this challenge, we have not prescribed what 'reasonable steps' means in the context of obtaining a reference as it is likely to vary, making any definition impractical to apply. However, we have added guidance to say that we expect that regulated firms providing a reference should normally be able to do so within six weeks.

Contingent or contract workers

We think it is appropriate for banks and insurers to request references when recruiting any individual to perform a pre-approved role or a SHF, including contingent workers or volunteers. There is a duty on firms to ensure that staff in these roles meet the regulatory standards of being fit and proper (this is a statutory obligation in sections 60A and 63F of the FSMA) and references are a key tool in achieving this.

Intra-group moves

We agree with respondents that it may not always add value to seek references for intra-group moves. Therefore, the final rules allow firms within a group not to request a reference from each other where the group has centralised records or alternative means of sharing relevant information as part of the fit and proper assessment of candidates. The onus is still on the recruiting firm within the group to obtain the necessary information to satisfy their obligations to ensure the individual is fit and proper.

Timing during application process

Ideally, references should be obtained before an application for approval is submitted. However, we understand that there will inevitably be circumstances

⁹ SYSC 22.2.1(2)R

where this may not be possible. In these circumstances, the final rules have been amended to allow references to be obtained no later than one month before the end of the application process. This applies unless requesting or providing a reference would require the recruiting firm or the employer giving the reference (or any other person) to make a public announcement. In these cases, there will be no time limit, and references can be obtained at any time during the application process.

We have also added guidance to say that where references have not been obtained before an application is submitted and we ask for the information to be provided, the statutory clock for processing the application can be paused.

Applications cannot be determined until the firm can confirm that its due diligence is complete.

Changes have also been made to the application for approval forms, to ask banks and insurers to confirm if references have been obtained in accordance with the regulators' rules and, if not, ask the firm to explain why.

The obligation to provide references and mandatory disclosures

- 2.3** We consulted on imposing an obligation on banks and insurers to provide details of the following information in response to a reference request from an authorised firm:
- a.** All breaches of an individual conduct requirement.
 - b.** Any findings that the individual was not fit and proper.
 - c.** Any disciplinary action associated with either of the above.
 - d.** Details of all roles held, including a summary of responsibilities.
 - e.** Providing a regulatory reference using a standard template.
- 2.4** Again, the majority of firms generally supported these proposals, and in particular supported the use of a standard template. However, a considerable number of respondents said that the requirement to disclose breaches of individual conduct requirements should reflect the recent change to the FSMA. This would remove the requirement for banks to include in a reference all known or suspected breaches, and instead only include instances where those breaches were subject to disciplinary action.
- 2.5** We also received queries regarding the level of detail required in disclosures, and some respondents suggested that this should be at a relatively high level to avoid disclosure of confidential firm information or breaches of an individual's privacy. In particular, we received a challenge on the benefit of including adjustment or reduction of remuneration within the definition of "disciplinary action".
- 2.6** Some respondents also felt that it was disproportionate to include summary details of responsibilities in addition to job title.

- 2.7** A further point was made about contingent workers (in addition to the point made in paragraph 2.2c) was that discipline may be under the control of the seconding firm, meaning banks providing a reference may have limited disclosable information about these employees.

Our response:

Changes to the FSMA breach notification requirements

We agree that the requirements to disclose breaches of individual conduct requirements in a reference should mirror the FSMA's revised notification requirements for banks, focusing on breaches where disciplinary action has been taken. We have reflected this change in the final rules. Section 64C of the FSMA defines disciplinary action as:

- issuing a formal written warning
- suspension or dismissal of the person, and/or
- reduction or recovery of any of the person's remuneration

As explained in PS16/6¹⁰, suspensions imposed pending an internal investigation do not constitute 'disciplinary action' under section 64C, nor do our final rules require disclosure of such information in regulatory references as part of the mandatory information disclosures.

Likewise, the reduction or recovery of an individual's remuneration should only be notified to the PRA and/or the FCA under section 64C of the FSMA, and included in a regulatory reference as part of the mandatory information disclosures, if it is imposed due to a breach of an individual conduct requirement, but not if it is triggered by a downturn in financial performance, for example.

In addition to the specified mandatory disclosures, banks and insurers are required to consider if there is any other relevant information that should be disclosed. This is dealt with in Section 3 of the PS.

Level of detail required in the standard template

A reference should provide a factual description of the breach (including date(s) of when it occurred and the basis for the disciplinary action) and its outcome. We would not normally expect disclosures to have to include commercially sensitive information. However, if such a scenario arose, a firm could apply to the regulators for a waiver, if appropriate.

We have removed the requirement to provide details of an employee's responsibilities in addition to their role.

We have also clarified that firms can make changes to the format of the template as long as it does not affect what has to be disclosed under the rules, and added guidance to say that firms may add qualifying information if they choose to: for example, to provide information about mitigating circumstances.

¹⁰ www.fca.org.uk/static/documents/policy-statements/ps16-06.pdf.

Furthermore, we have made changes to the template to allow regulatory references to be provided on a group basis. A group reference is still required to provide the necessary information on a legal entity basis, regardless of how many times the individual has changed roles or moved between firms within the group (whether a bank, insurer, or other firm type) in the six year period.

Contingent workers

When providing a reference on such an individual, a firm should provide all available information it reasonably considers to be relevant, including disciplinary action taken because of a breach of an individual conduct requirement. Where no relevant records are held, there is nothing to disclose.

The obligation to update a reference

- 2.8** We consulted on an obligation for a bank or insurer to revise a reference already provided if new relevant information came to light, and on an obligation to send the revised reference to all prior recipients of the original reference. As per our consultation, the obligation to update a reference would apply for the six years since the date the original reference was provided.
- 2.9** Respondents understood what we were trying to achieve by requiring references to be updated, but had a number of significant concerns:
- a.** Some respondents were concerned that an updating requirement based on the date a reference was provided could, in theory, require records being held for long periods (and in extremis forever), if each time an update is provided the six years 'resets'. One suggestion was to reduce the time limit applicable to updating, from six years to one or two years.
 - b.** We were also asked to clarify certain practical aspects; for example, firms may not know where an ex-employee currently works, what type of information would trigger an update, and what is expected of firms on receipt of an updated reference.
 - c.** Firms were also concerned that information could be passed onto firms that do not need it (for example, to a firm where the individual no longer works), and that this would breach the Data Protection Act.
 - d.** Without a duty to investigate, firms may not be incentivised to investigate potential breaches where an individual has left the firm, and so references, and particularly updating, may not deliver any meaningful information.
 - e.** If investigations were to occur or conclude after an employee has left, then the ex-employee would need a 'right to reply'.
- 2.10** Points d and e above are relevant to the original reference as well as updated references. Therefore, we have responded to these two points in Section 2 under 'Systems and Controls', and in Section 3 under the heading 'Fair process'.
- 2.11** Respondents were also concerned that these proposals would create 'chains' of firms passing information between themselves, when combined with the 'all relevant information' provision. We were asked whether firms providing a reference would need to disclose unverifiable adverse information that they had received in a reference from a previous employer. If so, there was

concern that this may breach data protection and common law obligations. It was suggested that sharing the information with the Regulators was an alternative approach.

Our response:

Changes to the updating requirement

We believe the updating requirement is a valuable tool to incentivise good conduct. However, we agree that there is scope to improve the effectiveness and proportionality of our proposals, and to be clearer that the intention is not to create 'chains' of references. We have therefore retained the updating requirement but introduced the following limitations:

- Firms only need to update the current employer (where that employer is a FSMA firm). This avoids data protection concerns about sharing personal information with firms that may not have a legitimate reason for receiving such information. To facilitate this in practice, we have added a requirement on the updating firm to enquire whether the firms to which it has provided a reference in the past six years currently employ the individual concerned (in any capacity). We also require firms that receive such a request to respond. Where none of the firms contacted still employ the individual, no update is necessary.
- The updating requirement now applies:
 - to any notice period served between providing a reference and the individual leaving a firm
 - for ex-employers, six years from the date the individual left the firm

Also, misconduct that occurred more than six years ago, but which came to light within six years from the date the individual left the firm, may require disclosure if that misconduct is serious (please refer to Section 3, sub-section entitled 'all relevant information' for what seriousness means for these purposes).

An updated disclosure is subject to the same standards as apply to an original reference; for example, it should be relevant and subject to due process in order to ensure fairness. In practice, we acknowledge that such updated disclosures are likely to be infrequent; nonetheless, on the occasions that they are necessary, they are likely to provide important information to the current employer.

What triggers the need to update?

The standards that apply to an updated reference are the same as apply to the original reference based on what firms reasonably consider to be relevant. The test is whether the new information arising would have caused the providing firm to have written the original reference differently had the information been known at the time, and the difference is significant for an assessment of the fitness and propriety of the individual.

In relation to 'all relevant information', updated disclosures based on conduct beyond six years from the date of the original reference request will be limited to misconduct that is serious. Please refer to Section 3 of the PS, which sets out

respondents' feedback to our proposals regarding 'all relevant information' and our response.

Receiving an updated reference

When a firm receives updated information, they should take account of the new information as part of their ongoing obligation to assess the fitness and propriety of their SMF, SIMF, CF and SHF employees.

Systems and controls

- 2.12** We consulted on a number of proposals designed to improve the systems and controls supporting the referencing process:
- a.** amending certain prescribed responsibilities for Senior Managers in banks to include compliance with the regulatory reference rules, and
 - b.** requiring banks (and all other firms) to retain records necessary to comply with the regulatory reference requirements
- 2.13** We received general support for the proposed changes to the prescribed responsibilities. However, many respondents felt that the combined impact of the proposals on banks' and insurers' record-keeping processes were potentially significant, as also mentioned in paragraph 2.9, 3.4 and 3.6.
- 2.14** We also received feedback that firms may not have records going back six years (for example, regarding Statements of Principle and Code of Practice (APER) breaches), or may not routinely link disciplinary action back to a Conduct Rule breach.

Our response

We have finalised the changes to the prescribed responsibilities without making any material changes to them.

However, we have modified the record-keeping requirements as follows to ensure they are proportionate:

- We have limited the record-keeping requirements for banks and insurers to six years retention of disciplinary and fitness and propriety findings.

We have added a rule saying a firm is not in breach of the regulatory reference requirements if the reference does not include something for which the firm is not required to keep records. We have clarified that whenever a firm takes disciplinary action for whatever reason it needs to consider if a breach of an individual conduct requirement has also occurred. In practice, banks will need to do this as part of the notification process to regulators of breaches of the Conduct Rules subject to disciplinary action. However, when and how a firm decides to undertake disciplinary action is a matter for individual firms to decide, and we have not imposed a wider duty on firms to investigate all potential breaches (see also Section 3, sub-heading 'Fair process'). We have amended the

standard template for banks and insurers accordingly and have added guidance to explain what the rules require.

We have retained the provision that says that the new referencing regime will not require firms to revisit disciplinary action that took place before the new rules. In this case, disclosure should be based on the records as they stand.

3.

Regulatory references – changes for all firms

- 3.1** In this section, we summarise the feedback received to our proposals on regulatory references for all authorised firms, and explain how we have taken this feedback into account in the final rules.

The obligation to provide references and ‘all relevant information’

- 3.2** We consulted on maintaining the existing requirement for firms to provide all information relevant to an individual’s fitness and propriety, on receipt of a request for a reference in relation to a candidate for a pre-approved role.
- 3.3** To accommodate the SM&CR and SIMR, we also proposed extending this requirement to include candidates of certified roles, and certain other PRA specified roles such as notified non-executive directors and key function holders in Solvency II insurers.
- 3.4** This was another area that generated considerable feedback. The key issues raised included the following:
- a.** Clarification on the type of information that should be disclosed in addition to the mandatory disclosures for banks and insurers. For example, firms asked if they should disclose criminal convictions, suspicions or open investigations.
 - b.** Legal constraints (for example, in overseas jurisdictions) may prevent firms from disclosing some information that may be relevant.
 - c.** Inconsistency, as firms will make different judgements on what is ‘relevant’.
 - d.** Some firms requested guidance for non-banks and non-insurers to help consistency of judgements about what is relevant information.
 - e.** Record-keeping, as when combined with the updating and record-keeping requirements, it could result in firms having to retain lots of information for very long periods, resulting in significant costs to firms.

Our response

As proposed, we have amended the obligation to provide a reference on receipt of a request, so that it includes candidates for pre-approved, certified, and certain PRA- specified roles.

With regard to what should be disclosed in a reference, there is a wide range of information that could be relevant to a hiring firm's consideration of whether an individual is fit and proper under the APR, SM&CR or SIMR. The specific mandatory disclosures applicable to banks and insurers only cover a subset of the total information that could be relevant. Therefore, former employers still need to exercise their judgement on what else is relevant to disclose, over and above the mandatory minimum.

For non-banks and non-insurers, the 'all relevant information' requirement is the principle rule. There are no additional specified mandatory disclosures.

However, we agree that further clarification on what type of information we expect to be disclosed under this requirement could help all firms make consistent judgements.

Therefore, our final rules do the following:

- Limit the requirement to disclose 'all relevant information' to the same time limit as required for the mandatory disclosures i.e. six years from the date of the reference request. We are not providing additional guidance on what 'all relevant information' means. Firms will need to apply judgement on a case-by-case basis: for example, taking account of existing Handbook guidance that refers to the number of upheld complaints. Firms will also be subject to the general obligation on employers that references are clear, fair and accurate, and need to consider other relevant legislation, such as those relating to the rehabilitation of offenders and spent convictions where appropriate. However, our final rules do confirm that the obligation to provide a reference does not require a firm to disclose information that has not been properly verified.
- Retain no time limit for misconduct that is serious – i.e. serious matters should always be disclosed, even if it took place more than six years ago. In practice, this means that when responding to a reference request, firms will need to check to see if their records show any serious matters at any time beyond the past six years, and disclose it accordingly. The FCA and the PRA have joint guidance, which provides non-exhaustive examples of what might constitute 'serious' for this purpose. This guidance is relevant for the purposes of regulatory references only (it is not, for example, guidance for the purposes of other Handbook Chapters, such as SUP15, DEPP and EG). We consider this necessary, as there is often a delay between misconduct occurring and when it comes to light. In addition, we believe it provides a meaningful incentive, as it makes it clear that serious matters are always likely to be relevant to the assessment of a person's fitness and propriety to perform SMF, SIMF, CF, SHF, or certain other PRA-specified roles. How this interacts with the updating requirement for banks and insurers is explained in Section 2.
- Clarify that disclosures should be what a firm *reasonably* considers to be relevant.

A small number of respondents suggested that it could be permissible under common law to disclose information such as whether individuals have resigned while under investigation for possible misconduct. We do not believe it is appropriate for the FCA to mandate specific disclosures other than those mandated for banks and insurers in Section 2 of this PS. Nevertheless firms may be entitled to lawfully disclose such information taking account of the circumstances of a specific case, and their general obligation as an employer, and our rules would not prevent this.

We would not normally expect criminal convictions to be disclosed in an employee reference. Banks recruiting a candidate to an SMF role are required by existing rules to obtain the fullest information that is lawfully able to obtain about the candidate under Part V of the Police Act 1997 and related subordinated legislation of the UK or any part of the UK before making an application.

Systems and controls

- 3.5** We consulted on a number of proposals designed to improve the systems and controls supporting the referencing process:
- a.** requiring all firms to have adequate policies and procedures for the purpose of regulatory references
 - b.** prohibiting all firms from entering into arrangements that conflict with their disclosure obligations (e.g. non-disclosure agreements), and
 - c.** requiring firms to arrange for orderly records to be kept that are sufficient to enable compliance with the regulatory reference requirements
- 3.6** We received general support for the proposals set out under a and b above. However, respondents were concerned that the record-keeping requirement would be too onerous. We also received requests for more information about what is adequate in terms of procedures and policies.

Our response

We have not sought to define 'adequate' in regard to policies and procedures, as we believe it is the responsibility of the firm to determine this, based on their own circumstances.

We have not included the proposed record-keeping requirement, set out in c above. However, we have included specific record-keeping requirements for banks and insurers, as set out in Section 2 of this PS. Firms are also reminded that the general rules on record-keeping still apply.¹¹

We have finalised all other requirements in this section without making any material changes to them.

¹¹ www.handbook.fca.org.uk/handbook/SYSC/9/1.html.

Fitness and propriety

- 3.7** We received requests for guidance on how firms should approach a review of the fitness and propriety of a new employee where the regulatory reference lacks detail or where it has not been possible to obtain a reference.

Our response

There is existing guidance on the fit and proper test for approved persons and certification staff in FIT.¹² We do not believe it is necessary to provide further guidance in this area.

The existing regulatory standards of being fit and proper (a statutory obligation in sections 60A and 63F of the FSMA) have not changed. Before taking up SMF, SIMF, CF and SHF roles, the recruiting firm will need to be satisfied that the individual is fit and proper, taking account of the available information. If the recruiting firm is unable to obtain a reference, this should be explained in the candidate's application for approval. When responding to a reference request, the firm should give all information it reasonably considers to be relevant, based on the information available.

Fair process

- 3.8** Some respondents queried whether the regulatory reference rules would introduce a duty on firms to investigate potential breaches, or require firms to offer employees a right to comment on information in a reference.
- 3.9** While this feedback was made primarily in response to the updating proposals for banks and insurers, as set out in Section 2, it was also raised as a general point.

Our response

We have considered the feedback regarding a 'right to reply', for both the updating requirement and the referencing requirements more generally. We have added guidance that applies both to the original and updated reference that says that due process should be followed. However, we have not set out any detailed rules, as we do not think this is a matter for the Regulators.

Firms are subject to common law and employment law, which apply independently of regulatory requirements. These include the duty to give references that are accurate and true. In particular, firms should investigate allegations before including them in a reference and usually allow the employee an opportunity to comment on the allegations.

Our proposed rules and guidance, as consulted on, explained that a firm's compliance with the regulatory referencing requirements needed to be

¹² www.handbook.fca.org.uk/handbook/FIT/1/?view=chapter.

consistent with firms' common law duties. We have confirmed this in our final approach. We have not provided prescriptive guidance on how firms should comply with their common law duties as we do not think that a financial services regulator is best placed to give guidance on common law or employment law. In addition, when and how a firm decides to undertake disciplinary action is a matter for individual firms to decide, and we have not imposed a duty on firms to investigate alleged misconduct by an employee or ex-employee.

However, we have introduced general guidance on fairness, and examples of the duty on firms under general law to exercise due skill and care in the preparation of a reference.

We set out our feedback regarding a 'duty to investigate' in Section 2 under 'Systems and Controls'.

We have retained the proposed guidance that, where feasible, firms should conclude open investigations before the employee departs but on the basis that this is not a requirement of the regulatory reference rules.

The above is relevant to the original reference and, for banks and insurers, it is also relevant to an updated reference.

4.

Feedback on our cost benefit analysis

- 4.1** This section covers the feedback we received on our cost benefit analysis (CBA) in CP15/31.
- 4.2** Annex 2 updates our CBA to deal with the policy changes that we have made to the draft rules, as set out in previous sections.

Summary of feedback and our response

- 4.3** In Annex 2 of CP15/31 we set out our CBA for the proposals on regulatory references; at the conclusion of the chapter, we asked stakeholders for any comments on our analysis of the compliance costs for banks, insurers and other firms.
- 4.4** This section provides a summary of respondents' comments and sets out our response.

Intra-group moves

- 4.5** Respondents were concerned about the costs of additional administration and time spent to provide regulatory references for individuals who are internally promoted within a group.

Our response

As set out in Section 2, we agree with respondents that it may not always add value to seek references for intra-group moves. Therefore, the final rules allow firms within a group not to request a reference from each other where the group has centralised records or alternative means of sharing relevant information as part of the fit and proper assessment of candidates.

New systems and processes

- 4.6** Respondents said that new systems and processes would be required to implement our regulatory reference regime. In particular, it was said that the regime may mean that firms need to move the referencing process out of Human Resources (or third-party providers) and instead require more legal or specialist staff to be involved in the process. The cost associated with record keeping was also raised as a significant issue. Some firms felt that they could need up to 12 months to prepare prior to implementation.

Our response

We think the changes and clarification we have provided on updating, 'all relevant information' and fair process will considerably help to address the concerns raised about the need for more legal and specialist staff to be involved

in the referencing process. For example, as set out in Section 2, we agree with feedback that the requirements to disclose Conduct Rule breaches in a reference should mirror the FSMA's new notification requirements for banks and they should focus on breaches where disciplinary action has been taken, as such legal and specialist input would have occurred as part of the disciplinary process and not at the point of providing a reference. However, we agree that there will most likely be legal costs associated with the provision of references containing adverse information. But we do not believe every reference provided will incur such costs.

The changes we have made also remove the need for banks and insurers to retain records of breaches where no disciplinary action was taken solely for the purpose of references.

As a result of this change, the majority of information that firms are required to disclose in regulatory references is information that firms should already be collecting due to their statutory obligations to retain such records for the purposes of regulatory reporting. In light of this, we think that there would only be minimal costs associated with updating these existing processes.

Setting the implementation date as 7 March 2017 recognises that firms will need to update their systems and processes. Having narrowed and clarified the scope of our rules we do not believe firms will need the 12 months to prepare suggested by some respondents.

Increased risk of litigation

- 4.7** Respondents were concerned that our proposals would increase the risk of litigation against firms as a result of employee disputes about the information contained in a reference. Furthermore, some respondents said the proposals may reduce the pool of individuals wanting to move into regulatory roles.

Our response

The disclosures that a firm makes in a regulatory reference should be true, fair and accurate, as required by common law. Firms should only disclose information where they have satisfied themselves of this. In addition, we think the changes we have made in our final rules will help mitigate some of the concerns raised, in particular:

- a. requiring disclosure of breaches of individual conduct requirements in the 'mandatory information' section of the standard template only if they culminate in internal disciplinary action
- b. limiting the requirement to disclose 'all relevant information' on incidents older than six years to cases involving misconduct that is serious and providing a non-exhaustive list of examples of what this might entail in guidance; and
- c. limiting the requirement to update a regulatory reference when new information comes to light, to a relevant candidate's current employer only.

Annex 1

List of non-confidential respondents

Association of British Credit Unions Limited

Association of Foreign Banks

The Association for Financial Markets in Europe

British Bankers Association

Berwin Leighton Paisner LLP

Chartered Banker Institute

City of London Law Society

Deutsche Bank AG

Employment Law Association

Financial Services Consumer Panel

HSBC Holdings plc

Irish League of Credit Unions

Lloyds Banking Group

Liverpool Victoria Friendly Society

Mr Matthew Speck

Nationwide Building Society

Prudential Group and Prudential Assurance Company Limited

Secure Trust Bank plc

Simmons & Simmons LLP

Standard Chartered Bank

Virgin Money Holdings (UK) plc

Yorkshire Building Society Group

The Zygos Partnership

Annex 2

Cost benefit analysis (changes in estimated costs)

1. We have made significant changes to the rules and guidance since consultation, but not to the policy intention. However, we consider these changes to the rules and guidance do not imply any material change to our analysis, or to the associated compatibility statements. This is because the changes we have made primarily either narrow or clarify the scope and application of our rules.
2. We think the changes we have made to the following proposals in CP15/31 will address the feedback respondents provided on the CBA and bring the compliance costs within the envelope of those estimated for banks and insurers in the original analysis:
 - allowing firms within a group not to request a reference from each other where the group has centralised records or alternative means of sharing relevant information as part of the fit and proper assessment of candidates
 - reflecting the deletion of section 64(B)(5) of the FSMA, by only requiring banks and insurers to disclose breaches of individual conduct requirements in the 'mandatory information' section of the standard template if they culminate in disciplinary action
 - limiting the requirement to update a regulatory reference when new information comes to light, to a relevant candidate's current employer only; and
 - limiting the regulatory reference record-keeping requirements to six years retention of disciplinary and fitness and properness findings
3. Furthermore, we think the changes we have made to the following proposals will address the CBA feedback and bring compliance costs within the envelope of those estimated for all firms in the original analysis:
 - limiting the requirement to disclose 'all relevant information' on incidents older than six years to cases involving misconduct that is serious and providing a non-exhaustive list of examples of what this might entail in guidance
 - removing the proposed regulatory reference record-keeping requirements apart from those relevant to banks as mentioned above; and
 - adding a rule to say that a firm is not in breach of the regulatory reference requirements if the reference does not include something for which the firm is not required to keep records
4. We consider that the remaining changes set out in this PS do not differ significantly from the drafts published for consultation. They will hence not lead to a change in the estimated compliance costs.
5. We believe that the proposed policy will still deliver the benefits discussed in CP15/31: namely,

better assessment of fitness and propriety of candidates of SMF, SIMF, CF and SHF roles. This should, in turn, help to ensure individuals take responsibility for their own conduct as well as have a positive impact on firm culture more generally.

6. Overall, the FCA remains of the view that the expected benefits of these requirements outweigh the estimated costs.

Impact on mutuals

7. The FCA does not consider that the changes between the draft rules published for consultation and the final rules published in this PS will have a significantly different impact on mutuals compared to other types of firm.

Annex 3

Summary of combined FCA and PRA regulatory reference requirements

| Requirement | Banks and insurers | Small non-directive insurance firms | FCA only-authorised firms |
|---|--------------------|-------------------------------------|---------------------------|
| Provide a reference upon request in relation to candidates of the following roles: SMFs, SIMFs, CFs, Certification Functions, Key Function Holders and Notified NEDs | YES | YES | YES |
| Request references going back six years | YES | NO | NO |
| Include mandatory information in the reference (going back six years) | YES | NO | NO |
| Include all relevant information in the reference (going back six years, unless serious when there is no time limit) | YES | YES | YES |
| Provide the reference in a mandatory template | YES | NO | NO |
| Update reference if appropriate, six years following resignation (including any notice period served) | YES | NO | NO |

Appendix 1

Made rules (legal instrument)

INDIVIDUAL ACCOUNTABILITY (REGULATORY REFERENCES) 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 137A (The FCA’s general rules);
 - (3) section 137T (General supplementary powers);
 - (4) section 138D (Actions for damages); 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(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 7 March 2017.

Amendments to the Handbook

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

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

Notes

- E. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Individual Accountability (Regulatory References) Instrument 2016.

By order of the Board
22 September 2016

Annex A

Amendments to the Glossary of definitions

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

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

*full scope regulatory
reference firm*

for the purpose of SYSC 22 (Regulatory references):

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

Amend the following definitions as shown.

employee

- (1) (for all purposes except those in (2), (3), ~~and~~ (4) and (4A)) an individual:

...

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

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

- (4) ...

- (4A) (for the purposes of SYSC 22 (Regulatory references)) has the same meaning as in (3) and, in addition, includes a *person* who:

- (a) is an approved person or director of another person (the “employer”); or
- (b) performs a function of another person (the “employer”) under an arrangement entered into by the employer or a contractor of the employer; or
- (c) performs any service or function for another person (the “employer”) in their capacity as an employee of another member of the employer’s group. For the purpose of (c) an employee of another member of the employer’s group means:
 - (i) an employee of that group member as defined in paragraph (3); or
 - (ii) an approved person or director of that group member; or
 - (iii) a person who performs a function of that group member under an arrangement entered into by the group member or a contractor of the group member.
- (5) for the purposes of (1) ~~and (2)~~ to (4A), “employment” is to be construed accordingly.

employer

- (1) (for the purposes of SUP 15.11 (Notification of conduct rule breaches and disciplinary action and COCON, and as defined in more detail in section 64A of the Act (Rules of conduct)), the *person* described as the “employer” in paragraph (4) of the *Glossary* definition of *employee*.
- (2) (for the purposes of SYSC 22 (Regulatory references)) the person described as the “employer” in paragraphs (3) and (4A) of the *Glossary* definition of *employee*.

Annex B

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

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

1.1A Application

...

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

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

...

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

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

| | |
|--------------------------|--|
| <i>UK domestic firm)</i> | |
|--------------------------|--|

1.1A.2 G ...

...

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

...

...

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

...

Actions for damages

- 1.4.2 R A contravention of a rule in *SYSC* 11 to *SYSC* 21, *SYSC* 22.8.1R or *SYSC* 22.9.1R does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

...

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

...

- 4.7.7 R Table: FCA-prescribed senior management responsibilities

| FCA-prescribed senior management responsibility | Explanation | Equivalent PRA-prescribed senior management responsibility |
|--|--|---|
| Part One (applies to all firms) | | |
| (1) Responsibility for the <i>firm's</i> performance of its obligations under the senior management regime | The senior management regime means the requirements of the <i>regulatory system</i> applying to <i>relevant authorised persons</i> insofar as they relate to <i>SMF managers</i> performing <i>designated senior management functions</i> , including <i>SUP</i> 10C | <i>PRA-prescribed senior management responsibility</i> 4.1(1) |

| | | |
|--|---|--|
| | <p>(FCA senior management regime for approved persons in relevant authorised persons).</p> <p>This responsibility includes:</p> <p>(1) compliance with conditions and time limits on approval;</p> <p>(2) compliance with the requirements about the <i>statements of responsibilities</i> (but not the allocation of responsibilities recorded in them); and</p> <p>(3) compliance by the <i>firm</i> with its obligations under section 60A of the <i>Act</i> (Vetting of candidates by relevant authorised persons); <u>and</u></p> <p><u>(4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory references) so far as they relate to the senior management regime, including the giving of references to another <i>firm</i> about an <i>SMF</i> manager or former <i>SMF</i> manager.</u></p> | |
| <p>(2) Responsibility for the <i>firm's</i> performance of its obligations under the employee certification regime</p> | <p>The employee certification regime means the requirements of sections 63E and 63F of the <i>Act</i> (Certification of employees) and all other requirements of the <i>regulatory system</i> about the matters dealt with in those sections, including:</p> <p><u>(1) SYSC 5.2 (Certification Regime);</u></p> <p><u>(2) the requirements in SYSC 22 (Regulatory references) so far as they relate to the employee certification regime, including the giving of references to another <i>firm</i> about a <i>certification employee</i> or former <i>certification</i></u></p> | <p><i>PRA-prescribed senior management responsibility</i> 4.1(2)</p> |

| | | |
|-----|---|--|
| | <i>employee</i> ; and (3) the corresponding <i>PRA</i> requirements. | |
| ... | | |

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

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

| FCA-prescribed senior management responsibility in relation to the branch | Explanation | Equivalent PRA-prescribed UK branch senior management responsibility |
|--|---|---|
| (1) Responsibility for the <i>firm's</i> performance of its obligations under the senior management regime | <p>The senior management regime means the requirements of the <i>regulatory system</i> applying to <i>relevant authorised persons</i> insofar as they relate to <i>SMF managers</i> performing <i>designated senior management functions</i>, including <i>SUP 10C</i> (<i>FCA senior management regime</i> for approved persons in relevant authorised persons).</p> <p>This responsibility includes:</p> <p>(1) compliance with conditions and time limits on approval;</p> <p>(2) compliance with the requirements about the <i>statements of responsibilities</i> (but not the allocation of responsibilities recorded in them); and</p> <p>(3) compliance by the <i>firm</i> with its obligations under section 60A</p> | <i>PRA-prescribed UK branch senior management responsibility</i> 6.2(1) |

| | | |
|--|---|--|
| | <p>of the <i>Act</i> (Vetting of candidates by relevant authorised persons); <u>and</u></p> <p><u>(4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory references) so far as they relate to the senior management regime, including the giving of references to another <i>firm</i> about an <i>SMF</i> manager or former <i>SMF</i> manager.</u></p> | |
| (2) Responsibility for the <i>firm</i> 's performance of its obligations under the employee certification regime | <p>The employee certification regime means the requirements of sections 63E and 63F of the <i>Act</i> (Certification of employees) and all other requirements of the <i>regulatory system</i> about the matters dealt with in those sections, including:</p> <p><u>(1) SYSC 5.2 (Certification Regime);</u></p> <p><u>(2) the requirements in SYSC 22 (Regulatory references) so far as they relate to the employee certification regime, including the giving of references to another <i>firm</i> about a <i>certification employee</i> or former <i>certification employee</i>; and</u></p> <p><u>(3) the corresponding <i>PRA</i> requirements.</u></p> | <i>PRA-prescribed UK branch senior management responsibility</i> 6.2(2) |
| ... | | |

...

5.2 Certification regime

...

- 5.2.9 G [Not used] SYSC 22 (Regulatory references) deals with obtaining references from a previous *employer* when a *firm* is planning to appoint someone to perform a *specified significant-harm function* as part of its assessment of

whether that *person* is fit and proper.

...

After SYSC 21 (Risk control: additional guidance) insert the following new chapter. The text is not underlined.

22 Regulatory references

22.1 Application

General application

22.1.1 R This chapter applies to all *firms* (subject to SYSC 22.1.5R).

Activities covered

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

Territorial scope and overseas firms

22.1.3 R There is no territorial limitation on the application of this chapter, subject to SYSC 22.1.5R and SYSC 22.1.6R.

22.1.4 G One effect of SYSC 22.1.3R is that the obligation to provide a reference can apply even if the *employee* worked in an overseas office of the *employer*.

22.1.5 R This chapter does not apply to an *overseas firm* that does not have an establishment in the *United Kingdom*.

22.1.6 R For an *incoming firm* or any other *overseas firm*, SYSC 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question (defined as “P” in SYSC 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

22.1.7 R (1) In order to decide whether someone is an *employee* of a *branch*, the *Glossary* definition of *employee* is applied to the *branch* as if the *branch* and the *firm* of which it forms part were separate *firms*.

(2) For the purpose of (1), paragraph (4A)(c) of the definition of *employee* (someone employed elsewhere in the *group*) does not apply.

22.2 Getting, giving and updating references: the main rules

Obligation to obtain references (full scope regulatory reference firms only)

22.2.1 R (1) If a *full scope regulatory reference firm* (A) is considering:

- (a) permitting or appointing someone (P) to perform a *controlled function*; or
 - (b) issuing a certificate under the certification regime for P;
- (as explained in more detail in rows (A) and (B) of the table in SYSC 22.2.3R), A must take reasonable steps to obtain appropriate references from:
- (c) P's current *employer*; and
 - (d) anyone who has been P's *employer* in the past six years.
- (2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in SYSC 22.2.3R.
 - (3) A must in particular request:
 - (a) the information in SYSC 22.2.2R(1) to (3); and
 - (b) (if P's current or previous *employer* is also a *full scope regulatory reference firm*) the information in SYSC 22.2.2R(4) (questions (A) to (F) of Part One of SYSC 22 Annex 1R).
 - (4) When deciding what information to request under (1), A must have regard to the factors in SYSC 22.2.2R(5) (Factors set out in SYSC 22 Annex 2R).

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:
 - (i) permitting or appointing someone (P) to perform a *controlled function*; or
 - (ii) issuing a certificate under the certification regime for P; or
 - (iii) appointing P to another position in the table in SYSC 22.2.3R;

(as explained in more detail in the table in SYSC 22.2.3R);
 - (b) A makes a request, for a reference or other information in respect of P from B, in B's capacity as P's current or former *employer*;
 - (c) B:

- (i) is P's current *employer*; or
 - (ii) has been P's *employer* at any time in the six year period preceding the request in (1)(b); and
- (d) A indicates to B the purpose of the request.
- (2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A's assessment of whether P is fit and proper.
- (3) B is only required to disclose under (1) and (2) something that occurred or existed:
 - (a) in the six years before the request for a reference; or
 - (b) between the date of the request for the reference and the date B gives the reference; or
 - (c) (in the case of serious misconduct) at any time.
- [**Note:** See SYSC 22.5.10G and SYSC 22.5.11G for *guidance* on the meaning of serious misconduct]
- (4) If B is a *full scope regulatory reference firm*:
 - (a) B must in addition disclose the information in questions (A) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements); and
 - (b) B must disclose the information in (a) whether or not A is a *full scope regulatory reference firm*.
- (5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in SYSC 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

22.2.3 R Table: What positions need a reference

| Position | When to obtain reference | Comments |
|---|--|----------|
| (A) Permitting or appointing someone to perform an <i>FCA controlled function</i> or a <i>PRA controlled function</i> . | <p>One <i>month</i> before the end of the application period</p> <p>Where a request for a reference would require:</p> <p>(a) the <i>firm</i> requesting the</p> | |

| | | |
|---|--|--|
| | reference; (b) the <i>employer</i> giving the reference; or (c) any other <i>person</i> ; to make a mandatory disclosure prior to P disclosing to its current <i>employer</i> that such application has been made, the date is the end of the application period. | |
| (B) Issuing a certificate under section 63F of the <i>Act</i> (Certification of employees by relevant authorised persons). | Before the certificate is issued | This includes renewing an existing certificate. |
| (C) Appointing someone to any of the following positions (as defined in the <i>PRA Rulebook</i>): (a) a notified non-executive director; (b) a credit union non-executive director; or (c) a key function holder. | Not applicable | <i>SYSC 22.2.1R</i> (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1). However <i>SYSC 22.2.2R</i> does apply to a <i>firm</i> asked to give a reference to a <i>firm</i> appointing someone to the position in column (1). |
| Note 1: Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public. | | |
| Note 2: P refers to the <i>employee</i> or ex- <i>employee</i> about whom the reference is given as defined in more detail in <i>SYSC 22.2.1R</i> and <i>SYSC 22.2.2R</i> . | | |
| Note 3: The application period means the period for consideration referred to in section 61 of the <i>Act</i> (Determination of application). | | |

Obligation to revise references: The main rule (full scope regulatory reference firms only)

22.2.4 R If at any time:

- (1) a *full scope regulatory reference firm* (B) has given a reference under *SYSC 22.2.2R* to another *firm* (A) about an *employee* or ex-

employee of B (P);

- (2) B was also a *full scope regulatory reference firm* when it gave the reference in (1);
- (3) either of the following applies:
 - (a) B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or
 - (b) the following applies:
 - (i) B has since giving the reference reached conclusions of the type described in question (E) of Part One of SYSC 22 Annex 1R or taken disciplinary action of the type described in question (F) of Part One of SYSC 22 Annex 1R; and
 - (ii) if B had taken or reached those conclusions or actions within the six year period referred to in Part One of SYSC 22 Annex 1R, this chapter would have required B to draft the reference differently; and
- (4) it would be reasonable to consider the differences in (3) to be significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must:

- (5) make reasonable inquiries as to the identity of P's current *employer*; and
- (6) give A details of those differences in writing as soon as reasonably practicable, unless SYSC 22.2.5R says that B does not have to do so.

22.2.5 R B does not need to update A if:

- (1) A is no longer a *firm*;
- (2) P has not yet been *employed* by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to *employ* P;
- (3) A is no longer P's *employer*; or
- (4) despite making reasonable enquiries under SYSC 22.2.4R, B does not know whether P is still *employed* by A.

22.2.6 R This *rule* sets out time limits about the obligation to update a reference in SYSC 22.2.4R.

- (1) If B still *employs* P, SYSC 22.2.4R applies throughout the period B remains *employed*.
- (2) If B no longer *employs* P, the obligation to update ends six years after P ceased to be *employed* by B.
- (3) If B no longer *employs* P and the matters or circumstances are not serious misconduct by P, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation applies in addition to the one in (2).

[**Note:** See SYSC 22.5.10G and SYSC 22.5.11G for *guidance* on the meaning of serious misconduct]

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

22.2.7 R If at any time:

- (1) a *full scope regulatory reference firm* (B) has given a reference under SYSC 22.2.2R to another *firm* (A) about an *employee* or *ex-employee* of B (P);
- (2) B asks A whether P is still an *employee* of A; and
- (3) B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.

22.3 Drafting the reference and the request for a reference

How to draft the reference

22.3.1 G There are no requirements about the form in which a *firm* that is not a *full scope regulatory reference firm* should give a reference.

22.3.2 G SYSC 22.4 has requirements about the form in which a *full scope regulatory reference firm* should give a reference.

How to draft 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.
 - (2) As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is

because B should include that information even though B is not specifically asked to include it.

- 22.3.4 G A *firm* asking for a reference under this chapter from a current or former *employer* that is not a *firm* will normally need to specify what information it would like.

Inclusion of additional material

- 22.3.5 G (1) This chapter sets out minimum requirements for a reference. It does not prevent a *firm* from including more than is required by this chapter.
- (2) If a *firm* does disclose more than is required by this chapter the reference should still meet its duties under general law to its former *employee* and the recipient (see SYSC 22.5.3G to SYSC 22.5.5G).
- 22.3.6 G Nothing in this chapter prevents a *firm* from disclosing material outside the time limits under this chapter.

22.4 Drafting the reference: detailed requirements for full scope regulatory reference firms

Purpose of SYSC 22 Annex 1R

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

How to draft the reference

- 22.4.2 R (1) A *full scope regulatory reference firm* must use the template in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) when giving a reference under this chapter to another *firm* (A).
- (2) A *firm* may make minor changes to the format of the template in Part One of SYSC 22 Annex 1R when giving a reference under this chapter, provided that the reference includes all the information required by SYSC 22 Annex 1R.
- (3) This *rule* applies even if A is not a *full scope regulatory reference firm*.
- 22.4.3 G (1) SYSC 22.4.2R does not stop a *full scope regulatory reference firm*

including matters in the reference not required by the template in SYSC 22 Annex 1R.

- (2) A *full scope regulatory reference firm* may include the material required by the template and additional material in the same document.
- (3) Any additional material should not alter the scope of any of the questions in the templates.

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

PRA requirements

- 22.4.5 R B may combine in a single reference what the *PRA's rules* require and what this chapter requires.

22.5 Giving references: additional rules and guidance for all firms

Verification

- 22.5.1 R This chapter does not require a *firm* to disclose information that has not been properly verified.
- 22.5.2 G (1) For example, this chapter does not necessarily require a *firm* to include in a reference the fact that an *ex-employee* left while disciplinary proceedings were pending or had started. Including such information is likely to imply that there is cause for concern about the *ex-employee* but the *firm* may not have established that the *ex-employee* was actually responsible for misconduct.
- (2) However, a *firm* may include such information in a reference if it wishes to (see SYSC 22.3.5G).

Accuracy

- 22.5.3 G A *firm* should, when giving a reference under this chapter, provide as complete a picture of an *employee's* conduct record as possible to new *employers*.

Fairness

- 22.5.4 G (1) A *firm* supplying a reference in accordance with this chapter owes a duty under the general law to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.
- (2) The *firm* may give frank and honest views, but only after taking

reasonable care both as to factual content, and as to the opinions expressed.

- (3) References should be true, accurate, fair and based on documented fact.

- 22.5.5 G (1) An example of the general duty described in SYSC 22.5.4G is that fairness will normally require a *firm* to have given an *employee* an opportunity to comment on information in a reference. The *firm* might do this through, for example, disciplinary proceedings.
- (2) Paragraph (1) does not mean that the *firm* should provide an opportunity to comment on the reference itself, as opposed to the allegations on which it is based.
- (3) A *firm* may have given the *employee* an opportunity to comment on allegations that are later included in a reference even though, at the time that the *firm* is giving that opportunity, no reference is being contemplated. That may mean that the *firm* gives the *employee* their opportunity to comment on the allegations some time before the reference is prepared.
- (4) Paragraph (1) does not mean that a *firm* will be unable to include an allegation in a reference if it has offered the *employee* an opportunity to comment on the allegation but the *employee* has unreasonably refused to do so.
- (5) Where a *firm* should have given an *employee* an opportunity to comment on an allegation if the allegation is to be included in a reference, this chapter requires the *firm* to give the *employee* that opportunity rather than merely to leave the allegation out of the reference.
- (6) Paragraph (5) may mean that where the *firm* has not given its *employee* an opportunity to comment on a matter at the time it first arose, it will have to give the *employee* the opportunity around the time that the *firm* is preparing the reference.
- (7) The obligation to give an *employee* an opportunity to comment does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see SYSC 22.5.18G).
- (8) This chapter does not require the *employee's* views to be included in the reference. Instead the *firm* should take those views into account so far as appropriate when deciding whether something should be disclosed and how the disclosure is drafted.

Outsourcing

- 22.5.6 G The requirements in this chapter for a *firm* (B) to give a *firm* (A) a reference

also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

Circumstances in which the ex-employee left

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

Missing or incomplete information

- 22.5.8 G (1) If a *firm*'s records do not cover the maximum periods contemplated by SYSC 22.2.2R or SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements), the *firm* should note that in the reference.
- (2) A *firm* should not include a warning of the type described in (1) as a matter of routine. It should only be included if there is a genuine need to include it.

All relevant information: Calculation of six year period for disclosure

- 22.5.9 G (1) In general there is a six year limit on what should be disclosed under SYSC 22.2.2R(1) to (3).
- (2) Where the matter to be disclosed consists of a single course of conduct (such as market manipulation) the six year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six year limit.
- (3) This *guidance* is also relevant to the six year time limits for updating references in SYSC 22.2.6R.

All relevant information: Removal of six year period

- 22.5.10 G (1) SYSC 22.2.2R(1) to (3) normally has a six year time limit. SYSC 22.2.2R(3)(c) removes that time limit for serious matters. This paragraph (SYSC 22.5.10G) and SYSC 22.5.11G have *guidance* about this. This *guidance* is also relevant to the time limits for updating references in SYSC 22.2.6R.
- (2) The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. In general, the longer ago the matter occurred, the less likely it is still to be serious for these purposes.
- (3) In determining whether something is serious for these purposes, the key question is how important the information still is for the

requesting *firm's* assessment of the *employee's* fitness for the function that they are going to perform.

- (4) In considering what is relevant, a *firm* should, in particular, have regard to SYSC 22.5.4G (Fairness).
- (5) The table in SYSC 22.5.11G provides *guidance* on some of the factors which a *firm* should take into account when determining whether a matter is serious.
- (6) The *guidance* in this paragraph and in the table in SYSC 22.5.11G is only designed for the purposes of this chapter. It does not, for example, apply for the purposes of SUP 15 (Notifications to the FCA), DEPP or EG.

22.5.11 G Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose

| Factors to take into account | Comments |
|--|--|
| (A) Whether P has committed a serious breach of individual conduct requirements. | <p>Individual conduct requirements has the same meaning as in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements).</p> <p>Factors to take into account in deciding whether the breach is serious include the following.</p> <ul style="list-style-type: none"> (1) The extent to which the conduct was deliberate or reckless. (2) The extent to which the conduct was dishonest. (3) Whether the breaches are frequent or whether they have continued over a long period of time. The fact that breaches were frequent or repeated may increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance. (4) The extent of loss, or risk of loss, caused to existing, past or potential investors, depositors, policyholders or other counterparties or customers. (5) The reasons for the breach. For example, where the breach was |

| | |
|---|--|
| | caused by lack of experience which has been remedied by training or further experience, it is less likely that the breach will still be relevant. |
| (B) Whether the conduct caused B to breach requirements of the <i>regulatory system</i> or P was concerned in a contravention of such a requirement by B and, in each case, whether P's conduct was itself serious. | <p>(1) The factors in (A) are relevant to whether P's conduct was serious.</p> <p>(2) The seriousness of the breach by B is relevant. The factors in (A) are also relevant to this.</p> <p>(3) A breach by B of certain requirements is always likely to be serious under (2). Breach of the <i>threshold conditions</i> is an example. However that does not mean that P's involvement will automatically be serious.</p> |
| (C) Whether P's conduct involved dishonesty (whether or not also involving a criminal act). | Dishonesty is an important factor but it is not automatically decisive in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure. |
| (D) Whether the conduct would have resulted in B's dismissing P, had P still been working for B, based on B's disciplinary policies and the requirements of the law about unfair dismissal. | |
| (E) Whether the conduct was such that, if B was considering P for a role today and became aware of the historical conduct, B would not employ P today notwithstanding the time that has passed. | |
| Note 1: P refers to the <i>employee</i> about whom the reference is being written. | |

Note 2: B refers to the *firm* giving the reference.

Breach of APER

- 22.5.12 G (1) An example of information that may be relevant under SYSC 22.2.2R(1) to (3) is the fact that the *employee* has breached a requirement in APER.
- (2) This means that any *firm* (not just one that is a *full scope regulatory reference firm*) should consider whether it needs to disclose a breach of APER when giving a reference under this chapter.

Agreements not to disclose information

- 22.5.13 R A *firm* must not enter into any arrangements or agreements with any *person* that limit its ability to disclose information under this chapter.
- 22.5.14 G SYSC 22.5.13R covers all types of agreements and arrangements. For example:
- (1) it is not limited to an agreement or arrangement entered into when the *employee* leaves;
- (2) it applies however the *employment* ends (see SYSC 22.5.7G); and
- (3) it covers a “COT 3” Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS).
- 22.5.15 G A *firm* should not give any undertakings to suppress or omit relevant information in order to secure a negotiated release.
- 22.5.16 G The obligation to supply information to another *firm* under this chapter will apply notwithstanding any agreement prohibited by SYSC 22.5.13R.

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 weeks of being asked to.

Duty to investigate allegations

- 22.5.18 G (1) A *firm* should, wherever feasible, conclude investigative procedures before the *employee* departs.
- (2) However, this chapter does not create a duty to investigate alleged misconduct by an *employee* or former *employee*.
- (3) There are several reasons why a *firm* may find it appropriate to investigate potential misconduct by an *employee* or former *employee*, including:

- (a) assessing the actual and potential damage resulting from misconduct;
- (b) identifying other individuals potentially culpable or accountable for the breach;
- (c) satisfying itself that the *SMF manager* responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it; and
- (d) (where the *employee* has *remuneration* susceptible to malus or clawback) enabling it to consider whether any adjustments are justified.

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, etc). The recruiting *firm* should carry out a criminal records check itself if necessary. *SUP 10C.10.16R* requires a *relevant authorised person* to carry out such a check when appointing an *SMF manager*.

22.6 Giving and updating references: additional rules and guidance for full scope regulatory reference firms

Omitting or supplementing mandatory disclosures

- 22.6.1 G (1) A *firm* may have concluded that an *employee* is unfit or has breached *COCON* or *APER* (as described in questions (E) to (F) of Part One of *SYSC 22 Annex 1R* (Template for regulatory references given by relevant authorised persons and disclosure requirements)). The *firm* may later become aware of facts or matters causing it to revise its original conclusions.
- (2) If so, the *firm* may decide not to disclose in a reference its conclusion or may qualify its conclusion with supplementary information.
- 22.6.2 G (1) A *firm* may have concluded that an *employee* is unfit or has breached *COCON* or *APER* (as described in questions (E) to (F) of Part One of *SYSC 22 Annex 1R* (Template for regulatory references given by relevant authorised persons and disclosure requirements)). However the *firm* may consider that the disclosure is incomplete without including mitigating circumstances.
- (2) For example, if the *firm* is reporting a breach of *COCON* it may consider that the breach is very uncharacteristic of the *employee* and that they have had an exemplary record since then. In that case, the *firm* should include those views.

Requirement to consider whether there has been a conduct breach

- 22.6.3 G (1) If a *firm* has 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 relevant authorised persons and disclosure requirements) against an *employee* and is asked to give a reference about that *employee*, the *firm* should (if it has not already done so) consider whether the basis on which it took that action amounts to a breach of any individual conduct requirements covered by question (F).
- (2) If the *firm* decides that the basis on which it took that action does amount to a breach of those requirements, it should include that disciplinary action in the reference under question (F).
- (3) Paragraph (2) applies even if the grounds of the disciplinary action did not include such a breach of individual conduct requirements.
- (4) SYSC TP 5.4.5R disappplies the requirement in (1) for disciplinary action taken before 7 March 2017 or, in the case of *relevant authorised persons*, 7 March 2016, where a *full scope regulatory reference firm's* records do not record whether previous conduct subject to disciplinary action amounted to a breach.
- (5) The obligation to consider whether there was a conduct breach does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see SYSC 22.5.18G).

All relevant information: Interaction with mandatory disclosures

- 22.6.4 G (1) SYSC 22.2.2R(1) to (3) may require a *full scope regulatory reference firm* to disclose information that goes beyond the mandatory minimum information in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements).
- (2) This may mean, for instance, that a *firm* should in some cases disclose a conclusion that an *employee* or former *employee* has breached *COCON* or *APER* where that conclusion was reached outside the time limits in Part One of SYSC 22 Annex 1R.

Updating references fairly

- 22.6.5 G (1) SYSC 22.5.1R to SYSC 22.5.5G (Verification, accuracy and fairness) also apply to updating a reference under SYSC 22.2.4R.
- (2) Therefore fairness may require a *firm* to have given an *employee* an opportunity to comment on an allegation if it is included in an update to a reference.

22.7 Getting references: additional rules and guidance for full scope regulatory reference firms

Intra-group transfers

- 22.7.1 R (1) This *rule* applies when:
- (a) a *full scope regulatory reference firm* (A) would otherwise have to ask another *person* (B) for a reference under SYSC 22.2.1R; and
 - (b) A and B are in the same *group*.
- (2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under SYSC 22.2.1R (Obligation to obtain references).
- (3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.
- (4) If A, in accordance with this *rule*, does not ask for a reference or a full reference it must access the information resources referred to in this *rule* and get the relevant information within the time specified by SYSC 22.2.3R.
- 22.7.2 G (1) SYSC 22.7.1R means that a *firm* recruiting someone from another member of its *group* is not required to request a reference from the other where the *group* has centralised records or alternative measures in place to ensure sharing of relevant information between its members.
- (2) The recruiting *firm* should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

Who should be asked to give a reference

- 22.7.3 G The *Glossary* definition of *employer* covers more than just a conventional employer and so it may not always be obvious who a *person's employer* is. Therefore a *full scope regulatory reference firm* appointing someone to a position that requires a reference may have to get the *employee's* help in identifying their previous *employers*.
- 22.7.4 G (1) SYSC 22.2.1R (Obligation of a full scope regulatory reference firm to try to obtain a reference) applies even if the *ex-employer* is not a *firm*.

- (2) A *full scope regulatory reference firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the *FCA* accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

- 22.7.5 G (1) SYSC 22.2.1R (Obligation of a full scope regulatory reference firm to try to obtain a reference) applies even if the *employer* has already got a reference for the *employee*. For example:
- (a) a *relevant authorised person* should have a reference whenever it renews the certificate of a *certification employee*; and
 - (b) changing jobs within the same *full scope regulatory reference firm* may require a reference.
- (2) However, the *full scope regulatory reference firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see SYSC 22.7.6G to SYSC 22.7.8G).
- 22.7.6 G If a *relevant authorised person* (A):
- (1) appoints someone (P) to a *specified significant-harm function* position;
 - (2) obtains a reference from an *ex-employer*; and
 - (3) later wishes to renew P's certificate under the certification regime;
- it is unlikely that A will need to ask for another reference from that *ex-employer* or ask for it to be reissued unless there is a change in P's role of the type described in SYSC 5.2.17G (major changes in role).
- 22.7.7 G (1) If a *full scope regulatory reference firm* (A):
- (a) appoints someone (P) to a *specified significant-harm function* or an *approved person* position;
 - (b) obtains a reference from an *ex-employer* (B); and
 - (c) later wishes to:
 - (i) appoint P to another *specified significant-harm function* or *approved person* position; or
 - (ii) keep P in the same *specified significant-harm function* but make a change in P's role of the type described in SYSC 5.2.17G (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 a *specified significant-harm function* to an *approved person* position or vice versa;

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

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

22.7.8 G If:

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

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

When references are to be obtained

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

- 22.7.10 G
- (1) Where a *relevant authorised person* needs to fill a vacancy for a *specified significant-harm function* which could not have reasonably been foreseen, the *FCA* recognises that it may not be reasonable to expect the *relevant authorised person* to obtain references prior to issuing a certificate.
 - (2) In such cases, the *relevant authorised person* should take up the

reference as soon as reasonably possible.

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

- 22.7.11 G (1) Although this chapter (see SYSC 22.2.3R) only requires a *full scope regulatory reference firm* to try to get a reference for a *person* it is recruiting to perform an *FCA controlled function* or a *PRA controlled function* towards the end of the application process, the *FCA* would normally expect a *firm* to have obtained the reference before the application for approval is made.
- (2) The main examples of circumstances in which it would be reasonable for a *firm* to delay getting a reference are where asking for a reference earlier will create a serious risk of:
- (a) breaching the confidentiality of a wider commercial or corporate transaction;
 - (b) prematurely triggering the need for a public announcement; or
 - (c) the *candidate* not applying for the position in the first place because it would reveal to the *candidate's* current *employer* the proposed move too soon.
- (3) The *FCA* may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. SUP 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the *FCA* has to make a decision about an application.
- (4) *Full scope regulatory reference firms* are reminded that the *Act* itself requires a *firm* to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see SUP 10C.10.14G for more detail). SYSC 22.7.11G(2) does not affect that obligation.

22.8 Additional rules and guidance for all firms

Policies and procedures

- 22.8.1 R A *firm* must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.
- 22.8.2 G SYSC 22.8.1R does not require a *firm* to create or keep records that are not

required under SYSC 22.9.1R (General record keeping rules) or another *rule*.

Appointed representatives

- 22.8.3 R This chapter applies to a *firm's appointed representatives* as well as to the *firm*.
- 22.8.4 R When a *relevant authorised person* is permitting or appointing someone to perform a *controlled function* whose approval is given under SUP 10A.1.15R or SUP 10A.1.16R (appointed representatives of relevant authorised persons), the requirements of this chapter for *firms* that are not *full scope regulatory reference firms* apply in place of the requirements that only apply to *full scope regulatory reference firms*.
- 22.8.5 G A *firm* should ensure its *appointed representative* complies with the requirements of this chapter when the *appointed representative* appoints an *approved person* under SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives).
- 22.8.6 G (1) A *firm* should ensure that its *appointed representative* gives a reference when another *firm* (or its *appointed representative*) asks that *appointed representative* to give a reference in accordance with this chapter.
- (2) A *firm* is not responsible for its *appointed representative's* giving references if another *principal* has accepted responsibility for this.

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

- 22.8.7 G If:
- (1) a *firm* (A) is thinking of employing someone (P);
 - (2) P is *employed* by a group services company (D) that is not a *firm*;
 - (3) P (in their capacity as an *employee* of D) performs a function or service for a *firm* (B) in the same *group* as D such that P is also an *employee* of B; and
 - (4) A intends to appoint (P) to a position that entitles A to obtain a reference from B;
- then:
- (5) (if A is a *full scope regulatory reference firm*) A should ask both B and D for a reference;
 - (6) B is obliged to give the reference if A asks it to (whether or not A is a *full scope regulatory reference firm*);
 - (7) B should ask D to provide it with the information needed to provide

a reference in accordance with this chapter;

(8) D may give a reference but (as it is not a *firm*) it is not obliged to; and

(9) D and B may give a single joint reference.

22.8.8 G SYSC 22.8.7G also applies where:

(1) D is not in the same *group* but has seconded P to B; and

(2) P (in their capacity as an *employee* of D) performed any function or services for B such that P was also an *employee* of B.

22.8.9 G If:

(1) a *firm* (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another *firm* (B); and

(2) P was an *employee* of other members of B's *group* as well as of B;

then:

(3) (if A is a *full scope regulatory reference firm*) A should ask all the group members that *employed* P for a reference;

(4) B should give a reference if A asks it to (whether or not A is a *full scope regulatory reference firm*);

(5) P's *employers* in that group (including any that are not *firms*) may give a single joint reference; and

(6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which *employer* within the *group*.

22.9 Records

General record keeping rules (full scope regulatory reference firms only)

22.9.1 R (1) A *full scope regulatory reference firm* must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.

(2) This *rule* only applies to records in relation to the following questions in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements):

(a) question (E) (fit and proper); and

(b) question (F) (disciplinary action).

Time limit for records to be kept (full scope regulatory reference firms only)

- 22.9.2 G SYSC 22.9.1R does not have an express time limit for which a *firm* should retain the records as its effect is that those time limits are the same as the time limits in SYSC 22 Annex 1 (Template for regulatory references given by relevant authorised persons and disclosure requirements).

Reduction in disclosure obligations where there are limited record keeping requirements (all firms)

- 22.9.3 R A *firm* does not breach the requirements of this chapter by failing to include information in a reference that it would otherwise have to include if:

- (1) the reason for the omission is that the *firm* does not have the necessary records; and
- (2) neither SYSC 22.9.1R nor any other requirement of or under the *regulatory system* requires the *firm* to have those records.

- 22.9.4 G If a *firm* is asked to give a reference in circumstances where the record keeping requirements in SYSC 22.9.1R do not apply:

- (1) it is still required to give the reference;
- (2) it should give the reference based on the records it does have; and
- (3) it will not breach the requirements of this chapter by failing to include information in a reference if the reason for this is that it does not have the necessary records, as long as it is not required to have those records by some other requirement in the *Handbook* outside this chapter or some other requirement of or under the *regulatory system*.

Effect of previous record keeping requirements (full scope regulatory reference firms only)

- 22.9.5 G
- (1) SYSC 22.9.1R applies to keeping records created before the date this chapter came into force as well as ones created afterwards.
 - (2) A *full scope regulatory reference firm* does not breach the requirements of this chapter by failing to include something in a reference because it destroyed the relevant records before the date this chapter came into force in accordance with the record keeping requirements applicable to it at the time of destruction.

22 Annex 1R Template for regulatory references given by relevant authorised persons and disclosure requirements

Part One: Form of Template

Guide to using this template:

Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the “No” box for the relevant question.

In this template:

- “we” / “our firm” refers to the firm or firms giving the reference (as set out in either 1A or 1B below) ;
- “individual” refers to the subject of the reference (as set out in 2 below);
- “your” refers to the firm requesting the reference (as set out in 3 below)

| Information requested | | Response |
|------------------------------|--|-----------------|
| 1A | Name, contact details and firm reference number of firm providing reference; or | |
| 1B | Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference | |
| 2 | Individual’s name (i.e. the subject of the reference) | |
| 3 | Name, contact details and firm reference number of firm requesting the reference | |
| 4 | Date of request for reference | |

| | | |
|---|-------------------|--|
| 5 | Date of reference | |
|---|-------------------|--|

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

Question A

Has the individual:

- (1) performed a specified significant harm function for our firm; or
- (2) been an approved person for our firm.

Answer:

| | |
|-----|--|
| Yes | |
| No | |

Question B:

Has the individual performed one or more of the following roles in relation to our firm:

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

Answer:

| | |
|-----|--|
| Yes | |
| No | |

Question C:

If we have answered ‘yes’ to either Question A or B above, we set out the details of each position held below, including:

- (1) what the controlled function, specified significant-harm function or key function holder role is or was;
- (2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;
- (3) whether any potential FCA governing function is or was included in a PRA controlled function; and
- (4) the dates during which the individual held the position.

Answer:

Question D

Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:

Answer:

| | |
|-----|--|
| Yes | |
| No | |

If 'yes', we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

Question E

Have we concluded that the individual was not fit and proper to perform a function:

Answer:

| | |
|-----|--|
| Yes | |
| No | |

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.

If 'yes', and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

Question F

We have taken disciplinary action against the individual that:

(1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:

(a) apply or applied to the individual; or

(b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under *PRA* rules (including if applicable, *PRA* rules in force before 7 March 2016); or

(2) relates to the individual not being fit and proper to perform a function.

Answer:

| | |
|-----|--|
| Yes | |
| No | |

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

| |
|--|
| |
|--|

Question G

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? This disclosure is made on the basis that we shall only disclose something that:

(1) occurred or existed:

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

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

(2) is serious misconduct.

Answer:

| | |
|-----|--|
| Yes | |
| No | |

If 'yes', we have provided the relevant information below.

| |
|--|
| |
|--|

Part Two: Definitions used in Part One

Section One of Part Two of this annex defines terms used in this annex.

Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

| Section One: Meaning of certain terms and phrases | |
|---|--|
| Defined term or phrase | Meaning |
| B | B refers to the <i>employer</i> or <i>ex-employer</i> giving the reference as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R. |
| P | P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R. |
| A finding or conclusion by B that P was not fit and proper to perform a function (see questions (E) to (F) of the template) | <p>This means a finding or conclusion by B in the following circumstances where:</p> <ul style="list-style-type: none"> (a) B assesses the continuing fitness and propriety of P as an <i>approved person</i> in accordance with the requirements of the <i>regulatory system</i>, including when carrying out this assessment under section 63(2A) of the <i>Act</i> (annual assessment of <i>approved persons</i> by a <i>relevant authorised person</i>); or (b) B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the <i>Act</i> (Certification of employees by relevant authorised persons) for P. <p>Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed.</p> |
| Individual conduct requirements | Individual conduct requirements mean any of the following: |
| | <ul style="list-style-type: none"> (a) <i>COCON</i>; (b) <i>APER</i>; (c) the <i>PRA</i>'s Individual Conduct Standards or Senior Insurance Manager Conduct Standards (in Chapter 3 of the Part of the |

| | |
|---|--|
| | <p><i>PRA Rulebook</i> called Solvency II Firms: Insurance – Conduct Standards and in Chapter 3 of the Part of the <i>PRA Rulebook</i> called Non-Solvency II Firms: Large Non-Solvency II Firms – Conduct Standards);</p> <p>(d) the <i>PRA</i>’s Individual Conduct Rules or Senior Manager Conduct Rule (in Chapters 2 and 3 of the Part of the <i>PRA Rulebook</i> called CRR Firms: Conduct Rules and in Chapters 2 and 3 of the Part of the <i>PRA Rulebook</i> called Non-CRR Firms: Conduct Rules); or</p> <p>(e) the <i>PRA</i>’s Conduct Standards (in Chapter 3 of the Part of the <i>PRA</i>’s Rulebook called CRR Firms: Fitness and Propriety and Chapter 3 of the Part of the <i>PRA Rulebook</i> called Non-CRR Firms: Fitness and Propriety).</p> |
| Function (as referred to in questions (E) to (F)) | A function means a function as an <i>approved person</i> or <i>certification employee</i> . |
| Disciplinary action | <p>Disciplinary action has the same meaning as in section 64C(2) of the <i>Act</i> (Requirement for relevant authorised persons to notify regulatory of disciplinary action), which is:</p> <p>(a) the issue of a formal written warning; or</p> <p>(b) the suspension or dismissal of P; or</p> <p>(c) the reduction or recovery of any of P’s remuneration.</p> <p>This definition applies even if B is not a <i>relevant authorised person</i>.</p> |
| Notified non-executive director, credit union non-executive director and key function holder | These terms have the same meaning as they do in the <i>PRA Rulebook</i> . |
| Specified significant harm function, approved person, controlled function and PRA controlled function | These terms have the same meaning as they do in the <i>Glossary</i> . |
| Potential FCA governing function | <p>Potential FCA governing function means a function:</p> <p>(a) that would have been an <i>FCA controlled function</i> but for:</p> <p>(i) <i>SUP</i> 10A.11 (Minimising overlap with the PRA approved persons regime); or</p> <p>(ii) <i>SUP</i> 10C.9 (Minimising overlap with the PRA</p> |

| | <p>approved persons regime);</p> <p>(b) but instead is included in a <i>PRA controlled function</i> under the following parts of the <i>PRA Rulebook</i>:</p> <p>(i) Part 2 of “Senior management functions”;</p> <p>(ii) Part 2 of “Insurance – Senior Insurance Management Functions”;</p> <p>(iii) Part 6 of “Solvency II Firms: Senior Insurance Managers Regime – Transitional Provisions”; or</p> <p>(iv) Part 6 of “Non-Solvency II Firms: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions.</p> |
|--|---|
| Section Two: Supplementary requirements | |
| Item of template for which supplemental requirements apply | Supplemental requirements |
| Questions (E) and (F) | <p>If:</p> <p>(a) the finding or disciplinary action was reached or taken by another member of B’s <i>group</i> with the authority to do so; and</p> <p>(b) the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not <i>regulated activities</i>) by B;</p> <p>this question applies to such finding or disciplinary action in the same way as it does to findings or disciplinary action made or taken by the <i>firm</i> itself.</p> |
| Question (F) | This question is subject to SYSC TP 5.4.5R (where there is no need to disclose disciplinary action that took place before certain dates if the <i>firm</i> ’s records do not show whether there was a breach of individual conduct requirements). |
| The whole of Part One of this annex | The template to be used by a <i>firm</i> in giving a reference includes everything in Part One of this annex except for the “Guide to using this template” paragraph. |

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

| Matters to take into account | Comments |
|---|---|
| (A) Any outstanding liabilities of that person from commission payments | |
| (B) Any relevant outstanding or upheld complaint from an <i>eligible complainant</i> against P | |
| (C) Section 5 of the relevant Form A in <i>SUP</i> 10A Annex 4 (Application to perform controlled functions under approved persons regime) or <i>SUP</i> 10C Annex 2 (Application to perform senior management functions) | |
| (D) <i>FIT</i> 2 (Main assessment criteria) | |
| (E) The persistency of any life policies sold by P | This only applies if <i>SUP</i> 16.8.1G(1) (Persistency reports from insurers) applies to B |
| Note: P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in <i>SYSC</i> 22.2.1R and <i>SYSC</i> 22.2.2R. | |

Amend the following as shown.

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

Purpose of SYSC TP 5

5.1.1 G SYSC TP 5:

- (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and
- (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references).

5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017.

Application

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

Certification: The transitional period

...

5.3.4 G ...

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

Transitional provisions about regulatory references: Full scope regulatory reference firms

- 5.4.1 R (1) If on 7 March 2017 an employee (P) is already performing a specified significant-harm function for a relevant authorised person (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate for P for that significant-harm function does not apply.
- (2) Paragraph (1) ceases to apply if there has been a significant change in P's responsibilities forming part of that specified significant-harm function as compared to the position on 7 March 2017.

5.4.2 R SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an *approved person* that is made before 7 March 2017 but that has not yet been finally determined by that date.

5.4.3 G (1) SYSC 22.7.5G to SYSC 22.7.8G (Asking for a reference to be updated) deal with a *full scope regulatory reference firm* (A) that is obliged to get a reference from an *ex-employer* (B) and wants to rely on one that B has already given A.

(2) The SYSC material referred to in (1) can apply where the reference was given before 7 March 2017.

(3) One relevant factor is whether B is a *full scope regulatory reference firm*. This is because the *FCA* requirements about *firms* asked to give regulatory references that applied to *firms* that are not *full scope regulatory reference firms* before 7 March 2017 were similar to those in SYSC 22. As such, the existing reference may already be sufficient.

(4) The main difference between the requirements for a *firm* that is not a *full scope regulatory reference firm* before and after 7 March 2017 is that the range of functions for which A is entitled to ask for a reference was widened. For example, there was no obligation to supply a reference for a *certification employee* before then.

5.4.4 G SYSC 22.2.4R (Obligation to revise references) does not apply to references given before 7 March 2017.

5.4.5 R Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if the disciplinary action referred to in that item took place before:

(1) (in the case of a *relevant authorised person*) 7 March 2016; or

(2) (in the case of any other *full scope regulatory reference firm*) 7 March 2017;

if the *firm*'s records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.

Transitional provisions about regulatory references: All firms

5.5.1 R If a *firm* (A) asks another *firm* (B) for a reference before 7 March 2017, SYSC 22 (Regulatory references) applies to B if B gives the reference after that date.

5.5.2 G SYSC 22 applies to a reference requested or given after 7 March 2017 even if the matters covered by the reference occurred before then.

...

Sch 1 Record keeping requirements

...

Sch 1.2G

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|----------------------------|--|---|--------------------------|---|
| ... | | | | |
| <i>SYSC</i> 14.1.53R | ... | ... | ... | ... |
| <u><i>SYSC</i> 22.9.1R</u> | <u>Employment history of employees</u> | <u>As specified in the rule in column 1</u> | <u>Not specified</u> | <u>As specified in <i>SYSC</i> 2.9.2G</u> |

...

Sch 5 Rights of actions for damages

...

Sch 5.4G

| | | | Rights of action under section 138D | | | |
|--|---------------|-----------|--|---|-----|------------------|
| Chapter/Appendix | Section/Annex | Paragraph | | | | |
| | | | For private person? | Removed? | | For other person |
| ... | | | | | | |
| <i>SYSC</i> 11 to <i>SYSC</i> 19A, and <i>SYSC</i> 19D | ... | | ... | ... | ... | ... |
| <u><i>SYSC</i> 22</u> | | | <u>Yes (apart from <i>SYSC</i> 22.8.1R and <i>SYSC</i></u> | <u>No (apart from <i>SYSC</i> 22.8.1R and</u> | | <u>No</u> |

| | | | | | |
|--|--|-----------------|--------------------------------|--|--|
| | | <u>22.9.1R)</u> | <u>SYSC</u> <u>22.9.1R)</u> | | |
|--|--|-----------------|--------------------------------|--|--|

Annex C

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

...

10A.15 References and accurate information

References

- 10A.15.1 ~~R~~ (1) ~~If SYSC 22 (Regulatory references) says that if a firm (A):~~
G
- (a) is considering appointing a *person* (P) to perform any ~~FCA~~ *controlled function* or certain other functions;
 - (b) requests ~~another firm (B), as a reference from a firm (B) that is P's current or former employer of that person, for a reference or other information in connection with that appointment~~ employer; and
 - (c) indicates to B the purpose of the request;
- B ~~must~~ should, as soon as reasonably practicable, give a reference to A ~~all relevant information of which it is aware~~.
- (2) This applies even if A is a firm to which SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) applies rather than this chapter. When giving the information to A under (1), B must have regard to the purpose of the request and, in particular, to:
- (a) ~~any outstanding liabilities of that person from commission payments;~~
 - (b) ~~any relevant outstanding or upheld complaint from an eligible complainant against that person;~~
 - (c) ~~section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);~~
 - (d) ~~FIT 2 (Main assessment criteria); and~~
 - (e) ~~if SUP 16.8.1G(1) (Persistency reports from insurers) applies~~

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

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

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

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

10A.15.3 G ~~SUP 10A.15.1R applies even if A (the firm asking for a reference) is a firm to which SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) applies rather than this chapter. [deleted]~~
A

The need for complete and accurate information

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

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

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

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

...

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

...

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

...

10C.10.23 G ~~[Not used]~~ Please see SYSC 22 (Regulatory references) about the requirement for a firm to ask for references from previous employers.

...

10C.16 References and accurate information

References

- 10C.16.1 ~~R~~ (1) ~~If SYSC 22 (Regulatory references) says that if a firm (A):~~
G
- (a) is considering appointing a *person* (P) to perform any ~~FCA controlled function~~ or certain other functions;
 - (b) requests ~~another firm (B), as a reference from a firm (B) that is P's current or former employer of that person, for a reference or other information in connection with that appointment~~ employer; and
 - (c) indicates to B the purpose of the request;
- B ~~must~~ should, as soon as reasonably practicable, give a reference to A ~~all relevant information of which it is aware~~.
- (2) This applies even if A is a firm to which SUP 10A (FCA Approved Persons) applies rather than this chapter. When giving the information to A under (1), B must have regard to the purpose of the request and, in particular, to:
- (a) ~~any outstanding liabilities of that person from commission payments;~~
 - (b) ~~any relevant outstanding or upheld complaint from an eligible complainant against that person;~~
 - (c) ~~section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);~~
 - (d) ~~FIT 2 (Main assessment criteria); and~~
 - (e) ~~if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B, the persistency of any life policies sold by that person.~~
- 10C.16.2 G SYSC 22 also requires firms to get a reference before applying to have someone approved as an approved person.
- ~~The requirement in SUP 10C.16.1R(1) for firm (B) to give to firm (A) all relevant information of which it is aware concerning a person firm A is considering appointing to perform any of the FCA controlled functions, also applies where firm A has outsourced the collection of that information to another (unregulated) third party, where firm B has been made aware that the unregulated third party is acting on behalf of firm A.~~

10C.16.3 G ~~A *firm* supplying a reference in accordance with SUP 10C.16.1R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based. [deleted]~~

10C.16.4 G ~~SUP 10C.16.1R applies even if A (the *firm* asking for a reference) is a *firm* to which SUP 10A (FCA approved persons) applies rather than this chapter. [deleted]~~

The need for complete and accurate information

10C.16.5 G (1) The obligations to supply information to:

(a) the *FCA* under this chapter;

(b) ~~another *firm* under SUP 10C.16.1R; [deleted]~~

apply notwithstanding any:

(c) ...

...

...

...

Amend the following forms as shown.

10A **Form A: Application to perform controlled functions under the approved**
Annex 4D **person regime**



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

<http://handbook.fca.org.uk/handbook/SUP/10A/Annex4>

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

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

Long Form A – Solvency II firms only

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

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

...

Fitness and Propriety

Section 5

...

5.05 Other Matters

...

5.05.5

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

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

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

YES ☐ NO ☐

...



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

~~<http://fshandbook.info/FS/html/FCA/SUP/10A/Annex4>~~ <http://handbook.fca.org.uk/handbook/SUP/10A/Annex4>

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

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

Short Form A – Solvency II firms only

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

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

...

Fitness and Propriety

Section 5

...

5.05.5

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

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

Please note that ~~for candidates for PRA-controlled functions,~~ a firm is required to use reasonable efforts to obtain a reference from any previous employer of the candidate, ~~or any organisation at which the candidate is or was a non-executive director during the last 5 6 years~~ (see SYSC 22 and Insurance- Fitness and Propriety 2 in the PRA Rulebook). "Employer" has an extended meaning for these purposes.

YES ☐NO ☐

...



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/ PRA use only)

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

- <https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex4.html>
- <http://www.bankofengland.co.uk/PRA>

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

Long Form A – Large non-directive insurers only

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Large Non-Solvency II Firms: Senior Insurance Managers Regime – Applications and Notifications

7 March 2016~~7~~

Fitness and Propriety

Section 5

5.05 Other Matters

5.05.5

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

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

Please note that ~~for candidates for PRA-controlled functions~~, a firm is required to take reasonable steps to obtain appropriate references from any current or previous employer of the candidate, ~~or at any organisation at which the candidate is or was a non-executive director during the last 5-6 years (see SYSC 22 and Large Non-Solvency II Firms- Fitness and Propriety 2-5 in the PRA Rulebook).~~ "Employer" has an extended meaning for these purposes.

YES ☐ NO ☐



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

YES ☐ NO ☐



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

<https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex4.html>

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

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

Short Form A – Large non-directive insurers only

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications

7 March 2016~~7~~

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Fitness and Propriety

Section 5

Parts 5.01 to 5.05.3 of this section have been removed. However if there has been a change to the detail in this section since your last approval, you must submit a Long Form A as opposed to a Short Form A informing the FCA and/or PRA of the revised detail.

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5.05.5

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

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

~~Please note that for candidates for PRA-controlled functions, a firm is required to use take reasonable efforts to obtain a reference from any current previous employer of the candidate, or any organisation at which the candidate is or was a non-executive director during the last 5 6 years (see Large Non-Solvency II Firms - Fitness and Propriety 2 in the PRA Rulebook). "Employer" has an extended meaning for these purposes.~~

YES ☐ NO ☐



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

YES ☐ NO ☐

Amend the following forms as shown.

10A Form E: Internal transfer for an approved person
Annex 8D



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

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

<https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex8.html>

www.bankofengland.co.uk/PRA

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

Form E

Internal transfer of an approved person (for Solvency II firms only)

FCA Handbook Reference: SUP 10A Annex 8D

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

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New arrangement and controlled functions**Section 4**

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4.05

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

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

Please note that a firm is required to take reasonable steps to obtain appropriate references from any current or previous employer of the candidate during the last 6 years (see SYSC 22 and Insurance-Fitness and Propriety 2.5 in the PRA Rulebook). "Employer" has an extended meaning for these purposes.

YES ☐ NO ☐



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

The *FCA* and *PRA* have produced notes which will assist both the applicant and the *candidate* in answering the questions in this form. Please read these notes, which are available on the *FCA* and *PRA*'s websites at <https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex8.html>
www.bankofengland.co.uk/PRA

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

Form E

Internal transfer of an approved person (for large non-directive insurers only)

FCA Handbook Reference: SUP 10A Annex 8D

PRA Rulebook Reference: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications

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New arrangements and controlled functions

Section 4

4.05

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

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

Please note that a firm is required to take reasonable steps to obtain appropriate references from any current or previous employer of the candidate during the last 6 years (see SYSC 22 and Insurance-Fitness and Propriety 2 in the PRA Rulebook). "Employer" has an extended meaning for these purposes.

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YES ☐ NO ☐

Amend the following forms as shown.

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



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex2D.html>

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

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

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

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

7 March 2016

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Fitness and propriety

Section 5

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5.05 Other Matters

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

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

Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any current or previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety 2 in the PRA Rulebook). “Employer” has an extended meaning for these purposes.

YES ☐

NO ☐

➔

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

YES ☐

NO ☐

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BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex2D.html>

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

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

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

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

7 March 2016⁷

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Fitness and Propriety

Section 5

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

5.1

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

YES ☐ NO ☐

Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any current or previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety 2 in the PRA Rulebook). "Employer" has an extended meaning for these purposes.



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

YES ☐ NO ☐

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Application number
(for FCA use only)

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

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex2D.html>

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

Short Form A – EEA Relevant Authorised Persons Only

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

7 March 2016⁷

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Fitness and Propriety

Section 5

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

5.1

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

Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any current or previous employer of the candidate during the last 6 years (see SYSC 22). "Employer" has an extended meaning for these purposes.

YES ☐ NO ☐



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

YES ☐ NO ☐

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Application number
(for FCA use only)

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

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex2D.html>

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

Long Form A – EEA Relevant Authorised Persons only

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

7 March 2016~~7~~

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Fitness and propriety

Section 5

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5.05 Other Matters

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5.05.4

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

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

Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any current or previous employer of the candidate during the last 6 years (see SYSC 22). "Employer" has an extended meaning for these purposes.

YES ☐ NO ☐



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

YES ☐ NO ☐

...

Amend the following form as shown.

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



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

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

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex3D.html>

www.bankofengland.co.uk/PRA

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

Form E

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

FCA Handbook Reference: SUP 10C Annex 3D

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

7 March 2016⁷

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Senior management functions

Section 4

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4.04

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YES ☐ NO ☐

4.05

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

Please note that a firm is required to use reasonable steps to obtain an appropriate reference from any current or previous employer of the candidate during the last 6 years (see SYSC 22 and Fitness and Propriety 2 in the PRA Rulebook). "Employer" has an extended meaning for these purposes.

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